



W.P.No.20360 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P. No.20360 of 2020

S.Balraj

... Petitioner

Vs.

1. Director General of Police,
Law & Order,
Chennai 600 004.

2. Inspector General of Police,
Armed Police,
Trichy.

3. The Commandant,
I Battalion, Trichy.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent herein in his proceedings Rc.No.482529/APIII(1)/2020, dated 21/11/2020 and the orders passed by the second respondent herein in his proceedings C.No. A1 /Appeal-38/2020, dated 20/02/2020 and the order passed by the third respondent herein in his proceedings P.R.No.28/2019, dated 29/11/2019 and quash the same and consequently reinstate the petitioner into service together with all consequential service and monetary benefits within a time-frame as deem fit and proper by this Honourable Court.



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W.P.No.20360 of 2020

For Petitioner : Mr.G.Bala and Daisy

For Respondents : Mr.S.Arumugam,
Government Advocate

ORDER

The petitioner has filed this Writ Petition challenging the disciplinary action taken for the charges framed against him.

2. The petitioner joined the Police Service as Grade II Police constable on 01.02.2011 and was subsequently promoted to the post of Naik in the year 2016. In the year 2019 he was issued with charge memo for leaving the work place without prior permission on 03.08.2019 and quarrelling with the Inspector of police (in Charge), under the influence of Alcohol by claiming an unequal preference for the grant of leave in view of seniority in service and abused her in filthy language by standing in an inappropriate manner before her. After the above charges have been proved, the petitioner has been issued with the second Show cause notice and subsequently, he was dismissed from service.

3. Mr.G.Bala and Daisy, learned counsel for the petitioner submitted that capital punishment of removal from service is disproportionate to the



W.P.No.20360 of 2020

allegations proved against him and the Authorities concerned considered the past conduct and previous punishments imposed on the petitioner, without giving him any opportunity to make his statement on the above aspects.

4. The learned counsel for the petitioner placed reliance on the Judgment of the Supreme Court held in the *State of Mysore Vs. K.Manche Gowda* reported in *1964 (4) SCR 540* and it has been later followed by this Court in *W.P.No.12354 of 2020, dated 01.08.2022* in *T.Sathish Kumar Vrs. Director General of Police, Tamil Nadu, Chennai 4 and 2 ors.*

5. Mr.S.Arumugam, learned Government Advocate appearing for the Respondents submitted that the charges framed against the petitioner are serious in nature and under the influence of alcohol the petitioner has behaved in an inappropriate manner by claiming leave and hence the punishment of removal from service cannot be called as disproportionate to the charges.

6. The petitioner does not have any quarrel about the charges proved against him. But the only contention of the petitioner is that the punishment



W.P.No.20360 of 2020

is disproportionate to the charges framed against him. As the punishment order is making reference about the past conduct, previous punishment, no opportunity given to him to make his submission on this aspect.

7. As submitted by the learned counsel for the petitioner, the decision rendered in *Mysore Vs. K.Manche Gowda case* cited supra, the Supreme Court has held that if the past record of the Government servant is relied upon for imposing punishment, that itself should be framed a separate charge and only then the same can be taken into account while imposing punishment. In the case on hand, obviously there is no charge in respect of the petitioner's previous punishment or past conduct in order to make his present charge as aggravated one. In the words of the Supreme Court, the proposition laid by this Court as under:

"9. In the light of the above submissions, it is ordered as follows:

i) The impugned order dated 14.05.2022 passed by the first respondent is set aside.

ii) The matter is remitted back to the revisional authority, namely the first respondent herein and the first respondent is directed to serve show cause notice to the



W.P.No.20360 of 2020

petitioner, calling upon him to submit his explanation with regard to the past conduct and earlier punishments, and after affording opportunity of hearing to the petitioner, the first respondent shall pass orders on merits and in accordance with law, within twelve weeks from the date of receipt of a copy of this order."

8. In the case on hand also, in the punishment order, there is a discussion about the past conduct and previous punishment in order to justify the punishment of removal from service.

9. The learned counsel for the respondents submitted that it is not the only reason for imposing a major punishment, but the gravity of the charges was relevant for imposing the major punishment.

10. However, when the order of punishment has made a reference about the past conduct and previous punishment of the petitioner, as the dictum laid down by the Supreme Court, a specific charge ought to have been framed on that aspect in order to give an opportunity to the petitioner



W.P.No.20360 of 2020

to make his submission. In that case, it is understandable from the charges that the disciplinary Authority thought it fit to impose the major punishment of removal from service and the punishment order has a reference about the past conduct and previous punishments of the petitioner. In such case, the petitioner ought to have been issued with a notice in order to make his submission on the past conduct and previous punishments.

11. Since the petitioner has not been given with any opportunity though the charges framed against him have been proved, I feel the Revisional Authority can consider the above omissions and pass appropriate orders. Accordingly, the matter is remitted back to the Revisional Authority, viz., the first Respondent, Director General of Police, Law and Order, Chennai 600 004 and the first respondent is directed to pass orders either by modifying the punishment or to cause notice on the petitioner in respect of the past conduct and previous punishment by affording him an opportunity to make his submission before passing any orders.



W.P.No.20360 of 2020

12. With the above directions, this Writ Petition is disposed of. No costs.

19.02.2024

Index: Yes / No
Speaking order / Non-speaking order
vum

To:

1. Director General of Police,
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R.N.MANJULA ,J.

vum



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W.P.No.20360 of 2020

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