



WEB COPY

W.A. No.3183 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.11.2024

DELIVERED ON:12.11.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and**

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.3183 of 2024

and CMP. No.24530 of 2024

R.Xavier Rajamani

.. Appellant

Vs

1.The Joint Commissioner of Police,
Traffic (SOUTH) Zone,
No.132, EVK Sampath Road, Vepery,
Chennai – 600 007.

2.The Deputy Commissioner of Police,
Traffic (East), Anna Salai,
Chennai – 600 002.

3.The Assistant Commissioner of Police,
Poonamallee High Road, Kilpauk,
Chennai – 600 010.

4.The Assistant Commissioner of Police,
Ayanavaram, Chennai – 600 010.

..Respondents



Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 01.07.2024 in W.P. No.17153 of 2024 passed by this Court.

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For Appellant : Mr.G.Mutharasu

For Respondents : Mr.S.John J.Raja Singh,
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

The Writ Petitioner, aggrieved by the dismissal of W.P. No.17153 of 2024, in and by order dated 01.07.2024 has preferred the present Writ Appeal.

2. We have heard Mr.G.Mutharasu, learned counsel for the appellant and Mr.S.John J.Raja Singh, learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the appellant Mr.G.Mutharasu, would submit that the writ petitioner who is the appellant herein had challenged the order in Proceeding RC.No.38/853/Tr.PR/2024, PR.No.22/PR.EZ.2021,



T.Z.O.No.229 of 2024 passed by the second respondent on 14.03.2024, imposing punishment of postponement of increment for one year, postponing his future increments. However, he would submit that the first respondent vide Proceeding in RC.No.38/853/Tr.PR/2024, PR.No.22/PR.EZ.2021, T.Z.O.No.327 of 2024 dated 07.05.2024, modified the said punishment by imposing punishment of postponement of increment for one year without cumulative effect. Challenging the said orders of the respondents 1 & 2, Writ Petition came to be filed.

4. According to the learned counsel for the appellant, the Writ Court has failed to see that the petitioner had been acquitted by the Criminal Court from all criminal charges on the ground that the prosecution had failed to prove its case beyond reasonable doubt and without applying the ratio laid down by the Hon'ble Supreme Court in *G.M Tank Vs. State of Gujarat and others*, reported in (2006) 5 SCC 446, the Writ Court has proceeded to dismiss the Writ Petition on the ground that findings recorded in the criminal proceedings could not be relied on in Disciplinary Proceedings/Domestic Enquiry.



5. The learned counsel for the appellant would also invite our attention to the cross examination of P.W.1/Complainant in the criminal proceedings in C.C. No.8698 of 2021, where he has stated that he was not threatened. He would also highlight the fact that the alleged incident is after the office hours and therefore, the punishment imposed by the Authorities was disproportionate to the very charge itself and he would therefore pray for the Writ Appeal being allowed.

6. Per contra, the learned Additional Government Pleader would submit that the second respondent had initially imposed a punishment of postponement of increment for one year with cumulative effect and on an over all consideration of facts and circumstances and also taking a liberal view, the first respondent has modified the said punishment to one year without cumulative effect and therefore, when the Appellate Authority had applied its mind and modified the punishment originally imposed by the second respondent, the Court sitting under Article 226 of the Constitution of India would not lightly interfere and rightly, the Writ Court had dismissed the writ petition and the same does not warrant any interference in Appeal. He would pray for dismissal of the Writ Appeal.



7. We have carefully considered the rival submissions advanced by the learned counsel on either side. We have also gone through the records including the impugned order of the Writ Court.

8. First of all, we have noticed that the charge memo issued by the third respondent is not one merely relating to the alleged incident of threat and assault. It is seen from the charge memo dated 12.06.2021, that the appellant had not reported to duty on 11.03.2021 and that he had also not informed his higher officials regarding the same and further on the said date at about 7.45 pm., he had gone to the complainant's house and threatened and assaulted him.

9. In response to the said charge memo, the appellant has submitted his explanation on 01.07.2021, merely denying the charges levelled against him without substantiating the explanation any further. Importantly, the appellant has not denied the charge that he absented himself without informing his higher officials. No doubt, in the criminal case, the appellant has been acquitted and even the complainant himself has admitted that the



appellant did not threaten him. Unfortunately, the charge memo is not solely based on the alleged threat or assault committed by the appellant alone.

Therefore, merely because the appellant has been acquitted in the criminal case, it does not give sufficient ground from the appellant to be absolved in the Disciplinary Proceedings as well, especially when the charges levelled against him included unauthorised absence from duty.

10. In this context, we are unable to countenance the argument of the learned counsel for the appellant that the alleged incident occurred beyond officer hours at 7.45 pm and that even the complainant had conceded in his cross examination in C.C. No.8698 of 2021, that the appellant did not threaten him. All these may assume significance only if and when the charge memo was pertaining to the threat and assault alone. However, presently we have already seen that the charge memo was also regarding unauthorised leave without prior intimation to the higher officials.

11. On going through the records, we find that the said charges have not even been explained by the appellant, leave alone, offering sufficient or acceptable explanation for the same. In such view of the matter, we are



unable to accept the argument of the learned counsel for the appellant that the incident having occurred after office hours and that even the complainant had admitted that the appellant had not issued any threat and further in view of the appellant having been acquitted in the criminal case, the writ petition ought to have been allowed. In fact, the Writ Court has proceeded to dismiss the Writ Petition on mere consideration of the appellant being involved in the Criminal Case and having attacked the defacto complainant and causing injuries to him and being in the Police Force, the appellant ought not to have committed such type of a crime. The Writ Court has not even gone into the charge memo which is subject matter of the Disciplinary Proceedings where it is clear that the charges levelled are not merely the causing of injuries or issuing threats to the defacto complainant, but also on the grounds of unauthorised absence from duty and also for not intimating the higher officials in advance. Therefore, for these reasons as well, we do not deem it fit to interfere with the findings of the Writ Court.

12. At the same time, considering the fact that the appellant has been acquitted in the criminal case and the Appellate Authority has also deemed it fit to take a lenient view in the matter and considering the overall facts and



circumstances of the present case, we feel that it would be just and proper to modify the punishment imposed by the first respondent i.e., postponement of increment for one year to six months which would sub serve the cause of justice.

13. In fine, the Writ Appeal is ***partly allowed***. The order of the Writ Court is set aside and the impugned order of the first respondent dated 07.05.2024 imposing punishment of postponement of increment for one year without cumulative effect stands modified to the punishment of postponement of increment for six months, without cumulative effect. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

(D.K.K.J.,) (P.B.B.J.,)

12.11.2024

Internet: Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order

rkp



To

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D. KRISHNAKUMAR. J.,
and
P.B.BALAJI, J.

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Pre-delivery Judgment in
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