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W.P.No.30250 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

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THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.30250 of 2023

and

W.M.P.No.29849 of 2023

T.Gunasekaran

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.

2.The Superintendent of Police,
District Police Office,
Nilgiris District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent herein in his proceedings C.No.D1/SMR – 38/2023 dated 04.10.2023 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.



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For Petitioner : M/s.G.Bala and Daisy
For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

The petitioner was working as Grade-I Police Constable. While so, on 02.07.2020, the petitioner's wife namely Saranya committed suicide leaving behind tender child of two years and six months. Under the said circumstances, a case in Crime No.1464 of 2020 was registered and later on the petitioner was charged for offences under Sections 306 read with 498(A) and 304(B) of Indian Penal Code, before the Mahila Fast Track Court, Theni in SC.No.38 of 2021 and was acquitted on 08.12.2021. It can be seen that none of the prosecution witnesses including the parents of the deceased wife of the petitioner supported the case of the prosecution. Therefore, the petitioner was acquitted. Simultaneously, charges for harassing his wife and getting involved in the criminal case was levelled against the petitioner. A charge memo dated 02.11.2020 containing both the charges were issued against the petitioner. In the departmental enquiry also, only three witnesses



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were examined who are the relatives of the petitioner's wife viz., her parents and sisters. All the three of them turned hostile in the departmental enquiry.

In the cross examination, it is specifically answered that the petitioner did not harass nor demanded any dowry. However, the enquiry officer, considering the evidence before him, held that in the statement originally given, the witnesses had imputed the allegations against the petitioner and held that the charges have been proved. However, the disciplinary authority after considering the reply given by the petitioner to the second Show Cause Notice, exonerated the petitioner and dropped all further proceedings by an order dated 09.05.2023. The Disciplinary Authority came to the said conclusion, because, the statement relied upon by the enquiry officer were given during the preliminary enquiry. When they had answered otherwise in their examination in the enquiry, such finding of the enquiry officer cannot be sustained. After the said order was passed by the Disciplinary Authority, the Deputy Inspector General of Police, Coimbatore Range, took up the issue by way of *suo motu* review under Rule 15A of the Tamil Nadu Police Subordinate Service Rules. A Show Cause Notice was issued to the petitioner calling upon his explanation as to why the punishment should not be imposed. The petitioner submitted his explanation. After considering the



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explanation, the authority passed an order for setting aside the exoneration and imposing the punishment of removal from service as against which the present writ petition is filed.

2. The writ petition is resisted by the respondents by filing a counter affidavit. Before going into the merits of the various contentions raised on either side, it can be seen that originally the petitioner was exonerated and for the first time, the Deputy General of Police has exercised *suo motu* power and imposed the punishment.

3. Under the said circumstances, even though there is no specific provision of an appeal as against the order passed in *suo motu* revision, by virtue of Section 66 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The petitioner is entitled to file an appeal before the next higher authority, as if the the order passed is an order of dismissal from service. Therefore, the next higher authority namely Director General of Police, is available in the rank of the respondent department, the petitioner can very well file an appeal.



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4. Considering the matter requires appreciation of evidence and going into the merits of the matter and coming to an conclusion whether the petitioner would be a fit candidate to be in service of the police department or not, this Court deems it fit that one opportunity should be granted to the petitioner to file an appeal as against the impugned order. The said appeal if any filed within a period of one month from the date of receipt of a copy of this order and the same shall be considered on merits by the said authority.

5. In view thereof, this Writ Petition is disposed of on the following terms:-

(i)The petitioner shall file an appeal raising all the contentions, as against the impugned order dated 04.10.2023 to the file of the Director General of Police, Chennai within a period of 30 days from the date of receipt of a copy of this order.

(ii)As and when such an appeal is filed, same shall be treated as an appeal under Section 66 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the same shall be treated as having been filed within the time and the same shall be considered on merits and in



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accordance with law.

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(iii)The said exercise shall be done by the Director General of Police within a period of two months from the date of receipt of a copy of the appeal. No costs. Consequently, connected writ miscellaneous petition is also closed.

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Index : Yes

Speaking Order:Yes

Neutral Citation :No

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To

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