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Writ Appeal No.3594 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal No.3594 of 2019

P.Easwaramoorthy (died)

1. E.Amirthavalli
2. E.Jothi Kannan
3. R.Gomathi
4. K.Kokila
5. K.Sagunthala

... Appellants

Vs.

1. The Director General of Police,
Chennai – 600 004.
2. The Commissioner,
Disciplinary Proceedings,
Vellore – 632 009.
3. B.Pushpalatha

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.9465 of 2007 dated 15.03.2012.

For Appellant : Mr.M.Devaraj
For Respondents : Mr.K.V.Sajeev Kumar,
Special Government Pleader [R1
& R2]
Mr.G.Pugazhendi [R3]

JUDGMENT



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(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

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This writ appeal has been directed against the order passed by the Writ Court dated 15.03.2012 made in W.P.No.9465 of 2007.

2. That the first petitioner deceased Eswaramoorthy was working as Police Constable from 1959, thereafter he was promoted as Sub-Inspector of Police in the year 1977 and thereafter, he was further promoted as Inspector of Police in the year 1992. During his service, he was awarded several awards for his efficient service.

3. Though he attained the age of superannuation on 30.09.1997, he was not permitted to retire. The reason being that there was a disciplinary proceedings, which was already initiated and pending against him.

4. Thereafter, on 06.01.2000, a charge memo had been issued with four charges against the said employee, where an enquiry was conducted and the Enquiry Officer ultimately in his enquiry report has stated that charges 1 and 3 were proved, whereas charges 2 and 4 were not proved.

5. Based on the proven charges i.e., charges 1 and 3 agreeing with



the view taken by the Enquiry Officer, the Disciplinary Authority had decided to inflict the punishment of removal of service against the employee by an order dated 04.04.2002. Challenging the said order, the said writ petition was filed.

6. During the pendency of the writ petition, the said Easwaramoorthy died, therefore the remaining petitioners 2 to 8 as the legal representatives of the employee had been impleaded as party petitioners, who are the appellants before this Court.

7. It is to be noted that the third respondent B.Pushpalatha is also one of the legal heirs of the said Eswaramoorthy as she had not come forward to join with other legal heirs to pursue the writ petition and file this appeal, she has been shown as respondent.

8. We have perused the order passed by the learned Judge, which is impugned herein, where the learned Judge has not accepted the contention of the writ petitioners/appellants on the ground that once the Enquiry Officer based on preponderance of probability had come to a conclusion that four out of two charges had been proved, the Writ Court



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under Article 226 of the Constitution cannot re-appreciate the evidence and cannot employ the view of the Writ Court as against the view that has been expressed by the Enquiry Officer, mainly on that reason the learned Judge refused to interfere with the Enquiry Officer's report as well as the conclusion arrived at by him to state that the two out of four charges had been proved and based on which, punishment inflicted by the disciplinary authority removing the employee from service.

9. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondent and Mr.M.Devaraj, learned counsel appearing for the appellants.

10. During the last hearing, we directed the learned Special Government Pleader to produce the original files consisting of the Enquiry Officers report, pursuant to which, the learned Special Government Pleader has produced the original file, where the Enquiry Officer's report running several pages have been perused.

11. In the said Enquiry Officer's report, we find that there were 29



witnesses examined, out of the 29 witnesses 26 witnesses had turned hostile, the remaining three witnesses also even though had deposed the case of the prosecution, but not corroborating with each other.

12. Though we are conscious of the fact that in departmental disciplinary proceedings it is fair enough to have a preponderance of probability, but in the present case even though such an allegation had been made as if that the deceased employee had demanded a sum of Rs.1,000/- as bribe, with regard to the witnesses, who had been enquired by the Enquiry Officer, in support of the said claim, since almost all the witnesses except three had turned hostile it cannot be stated that the charges framed against the deceased employee can be said to be proved.

13. Therefore, based on such a Enquiry Officer's report and because of the conclusion he has arrived at insofar as charge nos.1 and 3 as if that it has been proved, the disciplinary authority ought not to have inflicted the punishment and he should have applied his mind on the entirety of the Enquiry Officer's report and to pass a suitable order.

14. Such an exercise since the disciplinary authority has not made,



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we are of the view that the reasoning given by the Enquiry Officer and his conclusion arrived at in his report would not constitute that it is a case for punishment as if that the charges 1 and 3 out of the four charges have been proved, therefore, the ultimate conclusion reached by the disciplinary authority in inflicting the maximum punishment of removal of service against the employee cannot be countenanced. In that view of the matter, we feel that the order impugned passed by the Writ Court can be interfered with and accordingly, the following orders are passed in this writ appeal:

- ◆ That the impugned order passed by the Writ Court in W.P.No.9465 of 2007 is hereby set aside. As a sequel, the order of removal of service passed by the respondent Department against the deceased employee dated 04.04.2002 also is set aside. Consequently, there shall be a direction to the respondent to calculate the pensionary benefits and the family pension benefits payable to the appellants, who are the legal heirs of the deceased employee and the same shall be paid within a period of three (3) months from the date of receipt of a copy of this order.

- ◆ It is made clear that the wife of the deceased employee is entitled



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to get the family pensionary benefits till her life time.

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With these orders and directions, this writ appeal is allowed. No
costs.

(R.S.K.,J.)

(K.B., J.)

24.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

mp

To

1. The Director General of Police,
Chennai – 600 004.
2. The Commissioner,
Disciplinary Proceedings,
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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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