



W.A(MD) No.284 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserving the order	Date of Pronouncing the order
19.09.2024	22.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA
PRASAD**

**W.A(MD) No.284 of 2020
and CMP (MD) Nos.2007 of 2020 and 6981 of 2021**

- 1.The Director General of Police,
Tamil Nadu, Chennai – 4.
 - 2.The Deputy Inspector General of Police,
O/o. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli District.
 - 3.The Superintendent of Police,
O/o.The Superintendent of Police,
Nagercoil, Kanyakumari District. ...
- Appellants/Respondents

-VS-

A.Gnanaselvadhas ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P. (MD) No.5093 of 2017 dated 24.09.2019.

For Appellants : Mr.M.Senthil Ayyanar



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Government Advocate

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For Respondent : Mr.D.Selvam
for Mr.V.Manikandan

J U D G M E N T

**(Judgment of this Court was delivered by
J.SATHYA NARAYANA PRASAD, J.)**

The writ appeal had been filed challenging the order passed by the learned Single Judge in W.P. (MD) No.5093 of 2017 dated 24.09.2019 quashing the order passed by the third appellant dated 24.04.2012 imposing the punishment of compulsory retirement and the consequential direction passed by the second respondent dated 15.06.2012 and 06.02.2017, respectively. Aggrieved by which, the respondents have come forward with the present appeal.

2. The respondent/writ petitioner had filed the writ petition challenging the impugned order of the third respondent in L.1/Pr No. 63/2011, dated 24.04.2012 and the consequential order of the second respondent in C.No.C4/AP.26/2012, dated 15.06.2012 and the consequential proceedings of the first respondent, dated 06.02.2017, in Rc.No. 102380/AP2(1)/2016 and also for a consequential direction to the



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respondents to reinstate the petitioner with consequential benefits.

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3. The case of the respondent/writ petitioner is that while he was working as Head Constable, he was suspended from service with effect from 08.06.2010. A charge memo dated 13.05.2011 was issued to him by the third respondent under Rule 3(b) of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, containing 13 charges that he borrowed money from various third parties without prior permission. One of the charges is that, he cheated one Russel, S/o.Thangam, on the pretext of getting employment in Police or Military to his grandson and criminal case is under investigation. According to the petitioner, he has not borrowed any money from Russel. However, he has borrowed money from one Isaac, co-employee and a false complaint was given against the petitioner as though he got money from the said Russel and cheated him. The other 12 charges are that, he borrowed money from 12 persons mentioned in the charge memo.

4. The respondent/writ petitioner submitted his explanation to the said charge memo, denying the charges leveled against him. The third respondent ordered domestic enquiry. In the enquiry, all the 12



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persons deposed that the petitioner borrowed money from them, who are relatives and wives of the serving personnel. No document was filed to prove the said borrowing. The respondent/writ petitioner did not borrow money from the said Russel and did not cheat him. On the other hand, he borrowed money from Isaac, who is son-in-law of the said Russel. A false criminal case filed against the petitioner and the same was quashed by this Court by order dated 28.04.2011 in CrI.O.P.(MD)No.15344 of 2010. The third respondent accepted the finding of the Enquiry Officer and without properly appreciating the enquiry officer's report and the evidence let in the domestic enquiry, by order dated 24.04.2012, imposed a punishment of compulsory retirement. Similarly, the respondents 2 and 1 rejected the appeal and the review application.

5. The learned Government Advocate appearing for the appellants submitted that the respondent/writ petitioner borrowed money from 12 different people and cheated one person under the guise of getting employment and all the 13 charges were proved against the petitioner that the petitioner had committed an offence by abusing his official position, lowered down the reputation of the police force. The misconduct committed by the petitioner is grave and serious in nature.



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The punishment of compulsory retirement was imposed for the proven charges. The criminal case filed by Russel, was quashed by this Court, as the said Russel and the petitioner have compromised the matter between themselves. The respondent/writ petitioner, who was working as Head Constable and holding a position of Trust, has committed the misconduct, which is serious in nature. The punishment of compulsory retirement imposed on the petitioner is proportionate to the charges leveled against him.

6. The learned Government Advocate would further submit that the said fact of borrowing of money is proved by examination of 12 witnesses i.e., P.W.1 to P.W.12 from whom the delinquent/respondent has borrowed money and they all in one voice deposed that they had lodged complaint to their higher officers of the respondent/writ petitioner and thereafter, he had settled the money to the lenders from whom he borrowed the money. The only issue ought to have considered by the learned Judge is as to whether the delinquent/writ petitioner sought prior permission of the Department or not for borrowing the money. Admittedly, there was no such permission obtained by the respondent/writ petitioner and therefore, Rule 8(2) of the Tamil Nadu



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Subordinate Police Officers Conduct Rules, 1964 had been violated and the delinquency is proved.

7. Heard the learned counsel for the parties and perused the material available on record.

8. In the case on hand, 12 persons who were alleged to have lent money to the petitioner have examined and all of them have stated that they did not take any documents from the petitioner for the alleged lending by them. The petitioner has denied that he borrowed money from them. The contention of the petitioner is that all the 12 persons are either relatives or wives of the serving personnel and the same is not denied by the appellants herein. The Enquiry Officer as well as the third appellant as disciplinary authority failed to consider that no document was produced by 12 witnesses to prove the alleged borrowing by the petitioner. Further, one Russel, who gave complaint to the Police for the alleged cheating by the petitioner, was not examined as a witness in the domestic enquiry. On the other hand, the matter was compromised between the said Russel and the petitioner and the criminal case filed against the petitioner by the said Russel, was quashed by this Court by



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order dated 28.04.2011 in CrI.O.P.(MD) No.15344 of 2010 in Crime No. 40 of 2010.

9. Furthermore, it was held by the first appellant in the review petition that the respondent/writ petitioner has cheated the persons by giving false assurance of getting employment but this is not the charge levelled against the petitioner and no evidence was let in to show that the petitioner cheated many persons with false assurance of getting employment to them. Another complaint in Crime No.65 of 2011 given by one Bright Livingston was also closed as mistake of fact.

10. Hence, it is clear that the charges leveled against the petitioner were not proved in the domestic enquiry and the first appellant rejected the review application filed by the respondent/petitioner without properly appreciating the materials on record and also held that the petitioner cheated many persons with false assurance of getting employment, when there were no such charges leveled against the petitioner. This shows non-application of mind on the part of the appellants.



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11. This Court directed the the respondent/writ petitioner to file an affidavit vide its order dated 09.09.2024. Pursuant to the said order, the respondent/writ petitioner has filed an affidavit in which it is categorically stated there were 13 charges levelled against the respondent/writ petitioner and as on date, for each count of charges was settled by the respondent/writ petitioner by way of disposing his property as follows:-

“a) 1st Count was based on the complaint lodged by Tmt. Flower, W/o Vincent, before Superintendent of Police, Kanniyakumari District, it was alleged that, during 2006, I have approached her and demanded Rs.60,000/- as loan to meet my expenses in construction of house, and promised to return by disposing my property but failed to return, based on the enquiry I was called up for enquiry on 20.03.2012 before the Deputy Superintendent of Police, Kanniyakumari Sub Division, soon after the date of enquiry I have settled the disputed amount to the complainant.



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b) 2nd Count was based on the complaint lodged by Tmt.Santhi W/o Moni, before Superintendent of Police, Kanniyakumari District, it was alleged that, during 2006, I have approached her and demanded Rs.40,000/- and promised to return the money, during enquiry on 20.03.2012, it was recorded on the minutes of proceedings that on 06.07.2010 she received a sum of Rs.20,000/- from myself and the balance of Rs.20,000/- was settled soon after the enquiry date.

c) 3rd Count was based on the complaint lodged by Tr.J.Raju, and alleged that during 2008, I borrowed a sum Rs.20,000/- to meet my family expenses, and during enquiry, he himself deposed that, on 26.06.2010 I have returned the full hand loan amount and the same was recorded before Deputy Superintendent of Police during the enquiry.

d) 4th Count was based on the complaint



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lodged by Tr. Russel Raj, alleged that, I have borrowed a sum of Rs.25,000/- for the purpose of purchasing property, and during enquiry, I paid the entire amount, which was deposed by himself, as full amount was returned, no amount is outstanding and the same was recorded before Deputy Superintendent of Police during the enquiry proceedings.

e) 5th Count was based on the complaint of Tr.Chelladurai, alleged that, I have borrowed a sum of Rs.20,000/- for funding my sister marriage, and the full amount was returned and the same was recorded before Deputy proceedings. of Police during the enquiry proceedings.

f) 6th Count was based on the complaint lodged by Tr. Russel S/o Thangaian, alleged that, I have demanded a sum of Rs.1,00,000/- to arrange good job for his son and obtained Rs.50,000/- as



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advance, but failed to return, further stated that, it was a personal loan and not for securing job, the Complainant has come down and filed a Compromise Quash and the complaint was quash via, Crl. OP(MD) 15344 of 2010 before the Hon'ble Madurai High Court.

g) 7th Count was based on the complaint of Tr.N.Ebanesar alleged that, I have borrowed a sum of Rs.50,000/- for construction of my house, however during enquiry, the Police officials found that, present complaint is a Mistake of Fact, based on the same, it was closed. Even though, it was mistake of fact, I have settled the said amount to the complainant as on date.

h) 8th Count was based on the complaint lodged by Tmt.Rajeswari W/o George, who alleged that, I have borrowed a sum of Rs.1,55,000/- as loan for construction of house. Before enquiry, I have returned full amount to the complainant and



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the same was recorded before Deputy Superintendent of Police during enquiry.

i) 9th Count was based on the complaint lodged by Tmt.Janatha W/o Christudhas, alleged that, a sum of Rs.1,00,000/-was borrowed for the purpose of construction of house, before enquiry, I have returned a sum of Rs.55,000/- and soon after enquiry I have settled the balance amount of Rs. 45,000/- to the complainant.

j) 10th Count was based on the complaint lodged by Tr.Robinson S/o Lekshmanan, who has alleged that, a sum of Rs.1,80,000/- was borrowed to meet medical expenses of my wife, and I have returned the full amount to the complainant and the same was recorded before Deputy Superintendent of Police during enquiry.

k) 11th Count was based on the complaint lodged by Tr.Rajasundaram S/o Arumaimony,



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alleged that, a sum of Rs.33,000/- was borrowed for the purpose of marriage expenses, and the same was returned to the complainant and the same was recorded before Deputy Superintendent of Police during enquiry.

l) 12th Count was based on the complaint lodged by Tr.Rajammal W/o Tamil Mohan Gandhi, alleged that, a sum of Rs.30,000/- was borrowed to meet medical expenses of my mother, and I have returned the full amount to the complainant and the same was recorded before Deputy Superintendent of Police during enquiry.

m) 13th Count was based on the complaint lodged by Tmt.Saraswathi W/o Sundaram, alleged that, a sum of Rs.20,000/- was borrowed to family expenses, and I have returned the full amount to the complainant and the same was recorded before Deputy Superintendent of Police during enquiry.”



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12. It can be seen from the aforesaid affidavit that the respondent/writ petitioner has settled the amount he borrowed from all the 13 persons by way of disposing his property and there is no due in regard to 13 counts of charges.

13. In this factual matrix, we are inclined to modify the order of the learned Single Judge in W.P.(MD) No.5093 of 2017 dated 24.09.2019 and the same was modified imposing the punishment of 3 years increment cut with cumulative effect.

14. In the result, this writ appeal stands disposed of with the aforesaid modification. No costs. Consequently, the connected civil miscellaneous petition are closed.

[C.V.K., J.] [J.S.N.P., J.]
22.10.2024

Index: Yes/No
Speaking/Non Speaking
Neutral citation: Yes/No
PKN



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