



W.A.(MD)No.853 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.07.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A(MD)No.853 of 2023

and

C.M.P.(MD)Nos.6848 & 11249 of 2023 and 7201 of 2024

1.The Secretary to Government,
Home (Police-VI) Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Chennai – 600 004.

3.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

4.The Superintendent of Police,
Theni District, Theni.

... Appellants/Respondents

VS

M.Saravanan

... Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 03.08.2022 passed in W.P(MD)No.10231 of 2020.



W.A.(MD)No.853 of 2023

For Appellants : Mr.N.Satheesh Kumar
Additional Government Pleader

For Respondent :Mr.C.P.R.Kamaraj

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra-Court appeal is preferred against the order, dated 03.08.2022, made in W.P.(MD)No.10231 of 2020, wherein, the Writ Court had quashed the orders of compulsory retirement inflicted on the respondent/Writ Petitioner and directed the appellants to reinstate the Writ Petitioner into service with all attendant and monetary benefits.

2.The short facts involved in the appeal is that the respondent/Writ Petitioner was working as Grade-II Police Constable and based on the complaint lodged by the wife of the respondent, Manimegalai on a charge of bigamy, an investigation was conducted on 28.10.2014, wherein, the statements of the complainant and others were recorded by the Investigation Officer and based on the report, the respondent was issued with a charge



W.A.(MD)No.853 of 2023

memo, dated 13.11.2014, that he had married one Jeyasudha during the subsistence of the first marriage with the complainant, Manimegalai. The respondent submitted his reply on 11.04.2015 and not satisfied with the reply, an Enquiry Officer was appointed. Based on the enquiry report submitted on 11.04.2015 holding that the charges are proved, the fourth appellant by order, dated 23.06.2015, had imposed a punishment of removal from service. In the appeal preferred as against the punishment, the second appellant had allowed the appeal and had set aside the punishment on the ground that the witnesses had not been examined in the enquiry, which vitiates the proceedings and thereby, remanded the matter back for conducting a *de nova* enquiry.

3.On remand, the fourth appellant conducted a fresh enquiry and by order, dated 22.06.2017 held that even though the witnesses had turned hostile, the perusal of the documents clearly proved that the delinquent had committed bigamy and as such, imposed the punishment of compulsory retirement from service. The appeal preferred to the third appellant was rejected on 20.11.2017 and the further appeal to the second appellant came to be rejected on 11.08.2018 and the revision preferred to the Government



W.A.(MD)No.853 of 2023

was also came to be dismissed vide G.O.(D)No.341 Home (Police VI) Department, dated 18.02.2020. Challenging the orders passed by the appellants, the respondent had preferred the Writ Petition.

4.The learned Judge by appreciating the arguments on the side of the Writ Petitioner held that since in the disciplinary proceedings, the Enquiry Officer had placed reliance on the statements made during the course of preliminary investigation, the entire proceedings became vitiated and by placing reliance on several decisions of the Hon'ble Supreme Court, came to the conclusion that since the order of punishment has been passed by relying on the evidences given in the preliminary enquiry and further, since already the punishment order was set aside and a *de nova* enquiry was ordered, the learned Judge allowed the Writ Petition by setting aside the punishment of compulsory retirement and directed the appellants to reinstate the respondent with all attendant and monetary benefits. Assailing the impugned order, the respondents in the Writ Petition are before this Court.



W.A.(MD)No.853 of 2023

5.The learned Additional Government Pleader appearing for the appellants argued that even though the learned Judge has come to a conclusion by placing reliance on several decisions of the Hon'ble Supreme Court, the same are not applicable to the facts of the present case. The learned Additional Government Pleader further contended that it is an admitted case that the respondent being a Grade-II Police Constable, while the first marriage with the complainant Manimegalai was subsisting, the respondent had entered into a marriage with one Jeyasudha, which is in violation of Rule 23 of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964. He further contended that when after conducting the enquiry, the punishment of removal from service was inflicted on the respondent, in the appeal, the punishment was set aside and a *de nova* enquiry was ordered and even though the respondent was successful in turning all the witnesses as hostile, but still there were overwhelming records available to prove that the respondent had married Jeyasudha, as second wife, while his marriage with the first wife Manimegalai, was subsisting.



W.A.(MD)No.853 of 2023

6.The Additional Government Pleader further contended that only by considering the available documents, the Enquiry Officer held that the charges are proved and based on which, a punishment of compulsory retirement alone was imposed, which is perfectly justified, he contended. The Additional Government Pleader further submitted that even though the respondent attempted to disown his first marriage by inventing a new story, but still, the first wife Manimegalai since deceased had nominated the respondent and her son born to them, as legal heirs and in fact, the service benefits of the first wife, since she was working as a Nurse, was settled to the respondent and in such circumstances, the respondent has escaped from the punishment of removal from service, but the present punishment of compulsory retirement is justified. However, the learned Judge had erroneously allowed the Writ Petition only on the ground that the evidence in the preliminary enquiry has been relied on while imposing punishment, which is factually incorrect, he contended and sought for interference of this Court.

7.Per contra, the learned Counsel for the respondent argued that earlier without even conducting any enquiry by examining the witnesses,



W.A.(MD)No.853 of 2023

purely based on the preliminary enquiry report, the respondent was imposed with a punishment of removal from service, which was rightly interfered with by the appellate authority and a *de nova* enquiry was ordered. The learned Counsel further contended that in the fresh enquiry, no witnesses have deposed as against the respondent and when such being the position, the Enquiry Officer, by placing reliance on the evidence, that was adduced during preliminary enquiry, has come to the conclusion that the charges are proved, which is against the settled proposition and as such, the punishment of compulsory retirement imposed cannot be sustained, which was rightly taken note of by the learned Judge and had set aside the orders imposing punishment of compulsory retirement and therefore, submitted that no interference is required and sought for dismissal of the appeal.

8.Heard the learned Counsel on either side and perused the materials available on record.

9.The respondent, who was appointed as a Grade-II Police Constable in the Police Department on 16.06.1993, was complained by his first wife Manimegalai that he had committed bigamy by marrying one Jeyasudha



W.A.(MD)No.853 of 2023

during the subsistence of the first marriage. Based on the complaint, a preliminary enquiry was conducted on 28.10.2014, in which, the Enquiry Officer had recorded the statements of complainant and other persons. Based on the preliminary enquiry, a charge memo was issued to the respondent on 13.11.2014 on the charge that he had married one Jeyasudha during the subsistence of the first marriage with the complainant Manimegalai. The respondent had submitted his reply on 11.04.2015 and not satisfied with the same, an enquiry was conducted, wherein, the report was filed by the Enquiry Officer that the charges levelled against the respondent were held to be proved. Based on the enquiry report, the fourth appellant/disciplinary authority, by order, dated 23.06.2015, imposed the punishment of removal from service.

10.At this stage, it would be pertinent to refer to the reply submitted by the respondent, dated 05.06.2015, for the charge memo issued against him. In fact, the respondent had never denied the fact that he had married Jeyasudha, as his second wife. It was his contention that only with the willingness and consent of his first wife Manimegalai, he had married Jeyasudha, as his second wife and all are living jointly without any



W.A.(MD)No.853 of 2023

problem. Only in respect of some payments regarding GPF, there were some quarrel between them, which led to the filing of the complaint by his first wife. The relevant portion of the reply is extracted hereunder for easy reference:

“மேற்படி எனது இருதார வாழ்க்கையில் என் முதல் மனைவிக்கோ, அவர்தம் குழந்தைகளுக்கோ, என் 2வது மனைவிக்கோ அவர் தம் குழந்தைகளுக்கோ சட்டப்படியும், நியாயப்படியும் கிடைக்க வேண்டிய பலன்கள் எதுவும் சேதமாகாது. மேலும் என் முதல் மனைவியும், 2வது மனைவியும் அரசு பணியில் பணிபுரிவதாலும், நானும் அரசு பணியில் பணிபுரிவதாலும், எங்களுக்குள் பொருளாதார சிக்கலோ, வேறு இடையூறுகளோ ஏற்பட்டதில்லை. நாங்கள் மூவரும் எங்கள் குழந்தைகளுடனும் சமுதாயத்தாருடனும் சேர்ந்து இன்று வரை ஒற்றுமையாக வாழ்ந்து வருகிறோம்.”

11. Therefore, when the respondent had not disputed the fact that he had married Jeyasudha, as his second wife, when the marriage with his first wife Manimegalai, was subsisting and thereby, has not denied the charge made against him and in view of his admission to the charge, no further enquiry was required, as no Police Officer having a spouse living shall enter into or contract marriage with any person as per Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964. It is for the disciplinary authority to take a decision in imposing punishment based on



W.A.(MD)No.853 of 2023

the admitted charges.

WEB COPY

12.However, even though a punishment of removal from service was imposed as against the respondent by orders of the fourth appellant/disciplinary authority, dated 23.06.2015, the second appellant in the appeal filed by the respondent had set aside the punishment and ordered for *de nova* enquiry on the ground that the witnesses have not been examined in the enquiry and thereby, the proceedings stood vitiated. In our considered opinion, when the respondent had even in his reply admitted the fact of the second marriage with Jeyasudha and had not denied the charges, there was nothing for the authority to enquire and all that was remaining was to decide on the punishment to be imposed by the disciplinary authority and as such, the order passed in the appeal for a *de nova* enquiry itself cannot be sustained.

13.However, based on the orders of the appellate authority, a fresh enquiry was conducted and it seems that the respondent was able to prevail upon the complainant and the witnesses, who have turned hostile. But, the Enquiry Officer, by relying on the available documents, has submitted a



W.A.(MD)No.853 of 2023

report on 11.04.2015 holding that the charges are proved. Based on the enquiry report, the fourth appellant had issued a notice to the respondent on 01.06.2017 and on receiving his explanation on 05.06.2017, by order, dated 22.06.2017, imposed a punishment of compulsory retirement. The appeal and the revision preferred to the appellants 1 to 3 came to be rejected.

14.The learned Judge had set aside the order imposing the punishment of compulsory retirement against the respondent on the ground that the Enquiry Officer had relied on the statements of witnesses including the complainant, which was given during the preliminary enquiry, that was conducted even prior to the framing of departmental charges. By placing reliance on several decisions of the Hon'ble Supreme Court that reliance on the statements made in the preliminary enquiry prior to the charge cannot be made and since the order of punishment of compulsory retirement was imposed by relying on those statements, the enquiry proceedings stood vitiated and thereby, had set aside the punishment and ordered for reinstatement into service.

15.Apart from the reply submitted by the respondent to the authorities



W.A.(MD)No.853 of 2023

by admitting the factum of his second marriage and have not denied the charges, there are other overwhelming documents available by which, the second marriage of the respondent with Jeyasudha stands amply proved, which has been taken note of by the Enquiry Officer and based on the report submitted, the disciplinary authority had inflicted the punishment of compulsory retirement. Even though as an afterthought, the respondent had tried to disown the marriage with his first wife/complainant-Manimegalai, since his first wife Manimegalai had died on 13.06.2021, the death certificate on 28.06.2021 certifies that the respondent is the husband and the legal heir certificate, dated 15.07.2021, issued by the Tahsildar, Ottanchathiram, reveals that the respondent being the husband and one Yashwanth/the son, are the legal heirs of the deceased Manimegalai. Since the deceased Manimegalai worked as a Nurse in the Health Department of the State Government, DCRG and all other service benefits have been settled to the Bank account of the respondent, who is the husband and the legal heir.

16. Apart from all these aspects, due to the death of the respondent's first wife/Manimegalai while in service, the respondent's son born through



W.A.(MD)No.853 of 2023

his first wife/Manimegalai, had submitted an application seeking compassionate appointment and the respondent being the other legal heir, had given no objection certificate for providing compassionate appointment to the son along with the details of his Aadhar No.9079 3461 9447. The Aadhar card of the son of the respondent and the Aadhar card of the respondent herein clinchingly establish the fact that the respondent is the husband of Manimegalai, and even though the respondent tried to disown his first marriage, he had never disputed the marriage with Jeyasudha.

17.All the above overwhelming documents available established the fact that Manimegalai was the first wife and during the subsistence of the marriage with the first wife, the respondent had married Jeyasudha, as his second wife and this marriage is in violation of Rule 23(1)(b) of the Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964, which is extracted for easy reference:

'Rule 23.Bigamous Marriages:-

1.(a)

(b) No Police Officer having a spouse living shall enter into or contract a marriage with any person.



W.A.(MD)No.853 of 2023

.....'

WEB COPY

18.As the respondent had admittedly entered into a marriage with Jeyasudha, as second wife while the marriage with the first wife Manimegalai is subsisting, which is in contravention to the above rule, by relying on the above documents available coupled with the reply submitted by the respondent admitting the factum of second marriage and also based on the enquiry report submitted, the fourth appellant, disciplinary authority, had imposed a punishment of compulsory retirement, which has been confirmed by the appellate authority and the revisional authority.

19.The learned Judge had interfered in the punishment imposed by the disciplinary authority only on the ground that the Enquiry Officer had relied on the statements of witnesses given during the preliminary enquiry, which is factually incorrect, as the overwhelming documents, as indicated above, are available and also the reply submitted by the respondent admitting the charges and further the admitted facts need not be proved. In such circumstances, we have no hesitation to interfere in the impugned orders passed by the Writ Court and accordingly, the order passed by the



W.A.(MD)No.853 of 2023

Writ Court is set aside and the order passed by the fourth appellant, as confirmed by the appellants 1 to 3 in imposing the punishment of compulsory retirement, is confirmed.

20.Resultantly, the Writ Appeal stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J] & [G.A.M., J]
23.07.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

cmr



WEB COPY



W.A.(MD)No.853 of 2023

To

- 1.The Secretary to Government,
Home (Police-VI) Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police,
Chennai – 600 004.
- 3.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.
- 4.The Superintendent of Police,
Theni District, Theni.



WEB COPY



W.A.(MD)No.853 of 2023

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Judgment made in
W.A(MD)No.853 of 2023

23.07.2024