



W.A.(MD)No.1066 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.A.(MD)No.1066 of 2019

Ananth

... Appellant / Petitioner

Vs.

1.The Government of Tamil,
Rep. by its Secretary,
Department of Home, Prohibition & Excise,
St.Fort George, Chennai.

2.The Additional Director General of Police (Prison),
CMDA Tower II,
No.1, Gandhi Irwin Road,
Egmore, Chennai.

3.The Superintendent of Police,
Central Jail, Trichy.

... Respondents / Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 01.04.2019 in W.P.(MD)No.5848 of 2017 and allow the writ appeal.



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For Appellant : Mr.M.Thirumurthy

For Respondents : Mr.K.Selvaganesan,
Addl. Government Pleader.

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

The appellant was appointed as Grade II Warden in Central Jail, Trichy on 07.06.2006. He was placed on probation for a period of two years. During this period, he got involved in a criminal case in Crime No.10 of 2007 on the file of the All Women Police Station, Tiruverumbur for the offences under Sections 417, 498(A) and 313 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. That led to the suspension of the appellant from service on 06.02.2008. The appellant was subsequently dismissed from service on 13.07.2009. The appellant rejoined service on 14.07.2009. An enquiry was conducted and the enquiry officer submitted his report on 28.05.2011. It was in favour of the appellant. However, the appointing authority discharged the appellant from service on the ground that his service during probation was not satisfactory vide proceedings dated 06.06.2011. Questioning the



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same, the appellant filed W.P.(MD)No.13368 of 2011. The writ petition was allowed on 13.06.2011 in the following terms:-

“2.It is seen from the records that by orders dated 03.07.2009, 18.12.2009, 16.07.2010 and 25.01.2011, the petitioner's probation period was extended. Since the petitioner has not been given a show cause notice as contemplated under Rule 26(a)(ii) and the probation having been terminated in violation of the said statutory rule, the impugned order cannot be sustained. Therefore, the impugned order is set aside granting liberty to the respondent to pass any fresh order, if any fresh order is required to be passed in accordance with law.

3.The writ petition is allowed with the above liberty. No costs. The connected miscellaneous petition is closed.”

On 04.07.2011, the appellant was once again reinstated in service. On 05.07.2011, the appellant was issued a show cause notice. He offered his explanation on 09.07.2011. On 14.07.2011, the third respondent once again discharged the appellant from service on the ground that his conduct during probation was not satisfactory. Challenging the same, the appellant filed W.P.(MD)No.5848 of 2017. It was dismissed vide order dated 01.04.2019. Challenging the same, this writ appeal came to be filed.



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2.It is true that a complaint was given against the appellant by one Kutty @ Vikaramathiammal before All Women Police Station, Tiruverumbur. The substance of the complaint was that the appellant had promised to marry her and subsequently jilted her. Based on the complaint, Crime No.10 of 2007 was registered. The case was investigated and final report was filed and it was taken on file in C.C.No.13 of 2008 on the file of the Judicial Magistrate, Musiri. The impugned order dated 14.07.2011 holds the pendency of the criminal case against the appellant herein. The appellant cannot be blamed for the non-conclusion of the criminal case. The appointing authority on the other hand comes to the conclusion that since the criminal case had not got concluded before the expiry of the period of probation, the appellant's conduct must be deemed to be unsatisfactory. Such an approach cannot be countenanced. It is relevant to note that subsequently, the case ended in acquittal based on the compromise between the parties. Copy of the judgment of acquittal dated 10.12.2014 made in C.C.No.13 of 2008 has also been enclosed in the typed set of papers. The appellant also states that he will forego his claim for backwages. The said undertaking given by the appellant through his counsel is placed on record.



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3.The learned Single Judge proceeded on the premise that there was suppression of involvement of criminal case by the appellant. The case on hand is not relating to suppression of facts. On the other hand, the matter pertains to the validity of the order discharging the appellant from service.

4.The Hon'ble Supreme Court in the decision reported in **2023 INSC 798 (The State of Punjab vs Jaswant Singh)** made a distinction between simpliciter termination and punitive termination and held as follows:

“This distinction is crucial since if the order of termination is punitive or stigmatic in nature, it becomes mandatory to conduct an inquiry following the procedure and an opportunity to be heard has to be given. Failure to do so may make such termination/discharge illegal and in violation of principles of natural justice. If an enquiry or assessment is conducted with the aim of uncovering any misconduct by an employee and results in their termination, it is considered punitive in nature.”.

The order impugned in the writ petition is punitive in character. It is not a case of discharge simpliciter. It is well settled that before passing such an order, proper enquiry has to be held. In this case, no such enquiry was



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conducted. No charge memo was issued against the appellant. In this view of the matter, we are satisfied that the order impugned in the writ petition has to be set aside. The writ petitioner shall be reinstated in service within a period of ten weeks from the date of receipt of copy of this order. He is entitled to all consequential benefits including notional promotion. The writ appeal is allowed. No costs.

(G.R.S. J.) & (R.P. J.)
14.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Secretary,
Department of Home, Prohibition & Excise,
St.Fort George, Chennai.
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