

W.A.(MD)No.1272 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.02.2025

PRONOUNCED ON : 03.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.1272 of 2024
and
C.M.P.(MD)No.9811 of 2024

- 1.The Director General of Police,
Office of the Director General,
Chennai-600 004.
- 2.The Commissioner of Police,
Madurai City Police,
Madurai.
- 3.The Deputy Commissioner of Police,
Madurai City, Law and Order,
Madurai.
- 4.The Assistant Commissioner of Police,
Thilagar Thidal (Law and Order) Range,
Madurai City.

... Appellants

Vs.

N.Venkatesh

... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.10190 of 2020, dated 03.04.2023.



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For Appellants :M/s.D.Farjana Ghoushia
Special Government Pleader
For Respondent :Mr.M.Jerin Mathew

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the State against the order, dated 03.04.2023, passed in W.P.(MD)No.10190 of 2020.

2. The writ petition was filed for issuance of a Writ of Certiorarified Mandamus, to quash the order, dated 20.07.2018, passed by the 3rd respondent. And order, dated 30.08.2018, passed by the 2nd respondent. And order, dated 11.06.2019, passed by the 1st respondent. Consequently, to direct the respondents to reinstate the writ petitioner into service with all continuity of service, service benefits and monetary benefits.

3. The brief facts as stated in the writ petition are that in the year 2003, the writ petitioner was recruited as Grade II Police Constable. While he was working at Armed Reserve, Madurai City, one Jansi Rani had filed a false



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complaint alleging that on 27.04.2013, the petitioner went to Jansi Rani's house and identified himself as policeman from Sellur Police Station and stated that an enquiry was pending against her husband at Virudhunagar SP Office and took Jansi Rani's husband under the guise of enquiry and illegally detained him in a village room near Rajapalayam and illegally demanded Rs.5,00,000/-, if not paid he would kill her husband. Based on the complaint Crime No.156 of 2013 was registered for the offences under Sections 147, 364(A) of I.P.C., on the file of Kudalpuhur Police Station, Madurai. Based on the FIR the writ petitioner was arrested and he was in custody. Then the petitioner was under deemed suspension with effect from 29.04.2013, vide suspension order, dated 02.05.2013, thereafter departmental proceedings in P.R.No.100 of 2013 under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was initiated. On 18.05.2017, the writ petitioner was reinstated in service. In the meanwhile, the criminal case was committed to Trial in S.C.No.98 of 2018 on the file of VI Additional District and Sessions Court, Madurai. Thereafter, in the departmental enquiry, a charge memo was issued on 09.07.2017, enquiry was conducted and the enquiry report, dated 31.12.2017 was submitted wherein it was held the charges are proved. The petitioner submitted his explanation to the enquiry report. Thereafter, the disciplinary authority, vide order, dated 20.07.2018, imposed the



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punishment of compulsory retirement. On appeal the appellate authority dismissed the appeal and then the mercy petition was also dismissed. Hence, the writ petition was preferred.

4. The respondents have filed counter affidavit wherein it is stated the writ petitioner demanded money, abducted one Kambarajan and the charges are serious and grave in nature. The criminal case is committed to Trial. In the meanwhile, department enquiry was conducted, wherein the charges were held to be proved. On appeal it was confirmed, then the mercy petition was dismissed, hence punishment of compulsory retirement was imposed. The respondents substantiated the impugned orders of punishment.

5. After considering the rival submissions, the Writ Court has held that the standard of proof for criminal case is “proof beyond reasonable doubt”, in civil cases it is “balance of probabilities” and in departmental proceedings a lesser standard of “some evidence” is adopted. And has rendered a finding that the present case it is the case of “zero evidence”. The Writ Court further held that the allegation against the writ petitioner is that he received illegal gratification to the tune of Rs.5,00,000/- from Jansi Rani wife of Kambarajan, but both the said Jansi



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Rani and Kambarajan were not examined. And the disciplinary authority could not produce even a scrap of evidence hence, it is a case of zero evidence. Therefore, the Writ Court has set aside the order of punishment and has allowed the writ petition and directed the respondents to reinstate the writ petitioner in service forthwith. Aggrieved over the same, the present writ appeal is preferred by the State.

6. The contention of the appellants is that the Writ Court has failed to consider other witnesses who have deposed that based on the complaint of Jansi Rani a case of abduction of her husband was registered against the writ petitioner. In the disciplinary proceedings, preponderance of probabilities is sufficient to prove the charges. The Sub Inspector who registered the abduction case has deposed and proved the charge. Registration of criminal case against a policeman will tarnish the image of the police force. Ample proofs are available for the involvement in abduction. The said Jansi Rani has specifically mentioned the name of the writ petitioner and another person in the complaint. The writ petitioner was not on duty on 27.04.2013 and there is no evidence to prove that the writ petitioner was found somewhere and not at the place of occurrence and the writ petitioner never submitted alibi and the Writ Court has failed to consider



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the said fact. The writ petitioner did not produce any evidence or documents in his favour during the oral enquiry. The Writ Court has not held that there is lapse in the procedure and has not found any fault with the enquiry officer. Hence, it is not necessary to reinstate the respondent herein / writ petitioner. Hence, the present writ appeal is preferred.

7. The primary contention of the appellants is that it is a case of illegal gratification and abduction. As far as illegal gratification is concerned, it is seen that it is not a case of red hand for receiving the illegal gratification but it is only the complaint of Jansi Rani. As far as the complaint of abduction is concerned, of course a criminal case is filed against the petitioner for abduction. But the said Jansi Rani and her husband did not depose before the enquiry officer. But the contention of the appellants that there are other witnesses who have clearly deposed in their statements that the writ petitioner had abducted the complainant Jansi Rani's husband. It is seen that the Writ Court has taken the said fact into consideration and held that the said two persons Jansi Rani and Kambarajan are competent to depose on the veracity of the allegation but both were not examined in the departmental enquiry and the appellants failed to produce any scarp of evidence. This Court independently perused the evidence and the appellants have



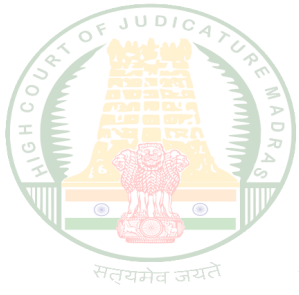
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relied on the criminal case of abduction. Further the other witnesses have deposed about the filing of the case and the contents of the FIR. The criminal case is still pending. Simply because a case is filed the same cannot be a proof for the alleged offence of abduction and there should be independent evidence to prove the same. As rightly pointed out by the Writ Court the complainant Jansi Rani and her husband did not appear and depose. Therefore, the appellants failed to prove the said allegation.

8. The appellants have submitted before the Writ Court that the said Jansi Rani and Kambarajan were not available in spite of summons and the couple had borrowed money from some persons and were absconding. The said reason cannot give right to the disciplinary authority to come to the conclusion that the charges are proved.

9. As rightly held by the Writ Court, it is a case of no evidence. Therefore, the Writ Court has rightly come to the conclusion that the charges are not proved. In fact, the Writ Court has directed to reinstate the writ petitioner without backwages and the writ petitioner was given liberty to claim the backwages, after conclusion of the criminal case.



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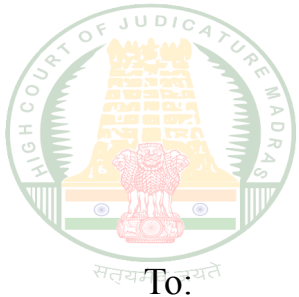
10. Therefore, this Court is of the considered opinion that the Writ Court is absolutely right in setting aside the punishment orders with a consequential direction of reinstatement. The Writ Court clearly denied backwages for the time being. Therefore, there is no infirmity in the order passed by the Writ Court.

11. For the reasons stated supra, the writ appeal is dismissed confirming the order passed in the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
03.04.2025

Index : Yes / No

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