

W.P.(MD).No.10399 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.10399 of 2021

G.Abdul Khadar Ibrahim

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Deputy Commissioner of Police,
Armed Reserve,
Madurai City.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the Impugned Order in C.No.D2(1)/PR98/2019/CPO.No.1006/2021 dated 05.06.2021 on the file of the respondent No.1 and quash the same as illegal.

For Petitioner : Mr.G.Karthick,
For Lajapathi Roy Associates

For Respondents : Mr.J.John Rajadurai,
Government Advocate



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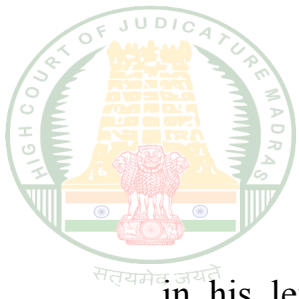
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ORDER

This writ petition has been filed to call for the records pertaining to the Impugned Order in C.No.D2(1)/PR98/2019/CPO.No.1006/2021 dated 05.06.2021 on the file of the respondent No.1 and quash the same as illegal.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

2.1. The petitioner was appointed in the post of Grade II Police Constable on 14.03.2009 and thereafter, promoted to the post of Grade I Police Constable in the year 2019. Belonging to the Muslim Religion and with utmost faith in his religion, the petitioner is maintaining beard by following the commandments of the Prophet Mohammed (Bukhari Volume 4 Chapter 64 Hadith 5892 and Chapter 65 Hadith 5893). The petitioner duly applied for earned leave from 09.11.2018 to 09.12.2018 (31 days) for the purpose of visiting Mecca and Madina for religious pilgrimage and the same was duly sanctioned vide proceedings of the Director General of Police, dated 07.11.2018. On completion of the religious pilgrimage, he returned back to office on 10.12.2018 for the purpose of extending his leave due to the infection

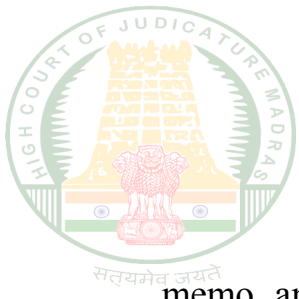


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in his left leg. Therefore, on 10.12.2018, the petitioner reported before the office with medical certificate for the purpose of extending his leave on medical grounds. Instead of providing him with a passport, he was required by the duty Sub-Inspector to meet Assistant Commissioner and seek permission for availing medical leave.

2.2. Following which, when the petitioner approached the Assistant Commissioner, the petitioner was refused with a permission for taking leave instead which, he was questioned about his appearance and beard. While so, the 2nd respondent, vide proceedings, dated 24.10.2019 required the petitioner to furnish his explanation for conducting a preliminary enquiry against him. For which, on 28.10.2019, the petitioner appeared and furnished his explanation for the preliminary enquiry. After a period of one year, the 2nd respondent had issued a charge memo dated 30.11.2019 framing two counts of charges allegedly for not reporting duty after completion of 31 days earned leave and for taking medical leave from 10.12.2018 to 30.12.2018 and for maintaining beard against the mandates of Madras Police Gazette dated 05.02.1957. Following which, the petitioner furnished his explanation to the said charge



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memo and thereafter an enquiry officer was also appointed in which the petitioner appeared, however, he was not allowed to cross examine the duty Sub-Inspector one Mr.Andavar who was a witness to the incident and the then Assistant Commissioner who was also a witness to the incident.

2.3. Negating all the allegations of the petitioner, the enquiry officer had mechanically stated that the charges were proved, vide his minutes dated 12.01.2021. Following which, on 24.02.2021, the petitioner submitted his representation to the 2nd respondent elaborating the defects in the enquiry. However, without considering the petitioner's explanation, the order of punishment of stoppage of increment for a period of three years with cumulative effect came to be passed by the 2nd respondent on 23.03.2021. As against the same, the petitioner preferred an appeal before the 1st respondent. However, the 1st respondent had modified the same with stoppage of increment for a period of two years without cumulative effect, vide order, dated 05.06.2021. Challenging the modification order passed by the 1st respondent, this writ petition came to be filed.

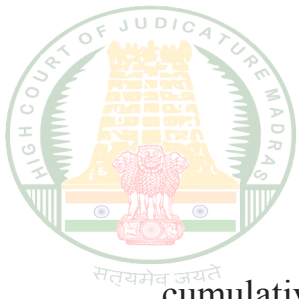


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3. The learned counsel appearing for the petitioner submitted that the 1st respondent without application of mind and appreciation of the standing orders had modified the punishment implicated on the petitioner by the 2nd respondent instead setting aside the same. The 1st respondent ought to have appreciated that the petitioner is a person belonging to the Muslim Religion who have religious faith in maintaining a beard throughout their lives and should have set aside the punishment imposed by the 2nd respondent and pressed for allowing the writ petition.

4. Per contra, the learned Government Advocate appearing for the respondents submitted that the petitioner is a habitual trouble monger with his vicious disciplinary nature and this is not the first charge memo and he was penalised with umpteen number of disciplinary actions within a period of twelve (12) years in service and the appellate authority, that is, the 1st respondent had properly applied his mind and has gracefully modified the punishment from stoppage of increment for a period of three years with cumulative effect to stoppage of increment for a period of two years without



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cumulative effect, despite recording the admission of the petitioner with respect to his delinquency in the enquiry and pressed for dismissal of the writ petition.

5. Heard, the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents. Perused the materials on record.

6. The learned counsel appearing for the petitioner drew my attention to the Madras Police Gazette dated 05.02.1957 on the subject of growing a beard in connection with the religious faith granting permission to the police officers. A careful perusal of the same would reveal that, vide said office memorandum which has been ordered that permission to grow beard could not be granted to police officers other than muslims, the latter is entitled to maintain a beard till his life time. The said norms throw light on the fact that Muslims are permitted to maintain trim and tidy beard even while on duty. India being a land of diverse religions and customs, the beauty and uniqueness of the land vest in the diversity of the citizen's beliefs and culture. Despite the department of the police of the Government of Tamil Nadu warrants strict discipline, the duty of

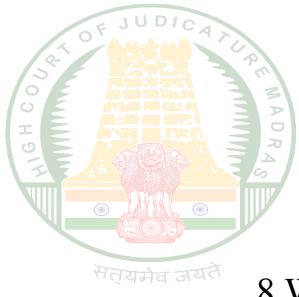


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upkeeping discipline in the department does not permit the respondents to initiate punishment on employees belonging to the minority communities, particularly Muslims for maintaining a beard which they do throughout their lives by following the commandments of Prophet Mohammed. That apart, as far as count one in charge memo is concerned, the petitioner has sought for medical leave, in view of the infection suffered by him after returning from a long leave of 30 days, the respondents ought to have granted with consent.

7. In view of the same, I am of the considered view that the modified punishment passed by the 1st respondent is shockingly disproportionate. Hence, I hereby quash the impugned order bearing C.No.D2(1)/PR98/2019/CPO.No. 1006/2021 dated 05.06.2021 passed by the 1st respondent and remand the matter back to the 1st respondent. The 1st respondent is directed to pass appropriate orders in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order.



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8. With the above directions, this writ petition stands allowed. There shall be no order as to costs.

05.06.2024

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

To

1. The Commissioner of Police,
Madurai City,
Madurai.
2. The Deputy Commissioner of Police,
Armed Reserve,
Madurai City.



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L.VICTORIA GOWRI, J.

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