



W.P.No.12341 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.08.2024

Orders Pronounced on : 13.09.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.12341 of 2020
and
W.M.P. No. 15181 of 2020

N.Murugan

... Petitioner

Vs

1. The Deputy Commissioner of Police,
Modern Control Room,
Greater Chennai Police,
Chennai.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 7.
3. The Assistant Commissioner of Police – IV,
Modern Police Control Room,
Vepery, Chennai – 7.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the records



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of the first respondent in connection with the impugned order passed by him in PR No. 251/PRIV(2)/2013 dated 23.12.2015 and confirmed by the second respondent in PR No. 251/PRIV(2)/2013 dated 04.03.2017 and PR No. 251/PRIV(2)/2013 dated 21.07.2020 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr. K.Venkataramani,
Senior Counsel
for Mr. M.Muthappan

For Respondents : Mr. V.Manoharan,
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 23.12.2015 passed by the first respondent, thereby removing the petitioner from service, and the order dated 04.03.2017 passed by the second respondent, thereby confirming the order passed by the first respondent, and the order dated 21.07.2020, thereby dismissing the appeal filed by the petitioner and confirmed the order passed by the disciplinary authority.

2. Heard Mr. K.Venkataramani, learned Senior Counsel appearing



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for the petitioner and Mr. V.Manoharan, learned Additional Government Pleader appearing for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. The petitioner was recruited to the post of Grade-II Police Constable in the year 1995. While being so, a criminal case has been registered as against the petitioner in Crime No. 539 of 2013 on the file of the Inspector of Police, Koyambedu Police Station for the offence punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for short) alleging that the petitioner and others murdered one Dayalan while he was on duty at Modern Control Room. In pursuance to the registration of an F.I.R, the petitioner was placed under suspension. After conducting a preliminary enquiry, the petitioner was served with a charge memo dated 03.02.2013, consisting of three charges.

3.1. The Enquiry Officer was appointed and conducted an enquiry. During the enquiry, 5 witnesses were examined and all three charges were held to be proved against the petitioner. Thereafter, the petitioner was



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served with the enquiry report and show cause notice. The petitioner submitted an explanation, but without being satisfied, the first respondent, by order dated 23.12.2015, removed the petitioner from service. Aggrieved by the same, the petitioner preferred an appeal before the second respondent, and the same was also dismissed, confirming the order passed by the first respondent, by order dated 04.03.2017.

3.2. In the meanwhile, the Investigating Agency filed a final report in Crime No. 539 of 2013 for the offences punishable under Sections 147, 148, and 302 read with Section 149 of IPC, in which the petitioner is arrayed as the first accused. The charge sheet was taken cognizance by the trial Court in S.C. No. 382 of 2016 on the file of the VI Additional Sessions Judge, Chennai. After a full-fledged trial, the petitioner and other accused persons were acquitted by the trial judgment dated 21.06.2019.

3.3. In view of the acquittal order passed by the Criminal Court, the petitioner once again submitted a representation seeking reinstatement into service. However, it was not considered, and as such, the petitioner



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challenged the orders passed by the first and second respondents in W.P. No. 2306 of 2020 before this Court. This Court, by order dated 31.01.2020, directed the petitioner to submit a fresh representation to the second respondent and directed the second respondent to consider the same and pass appropriate orders strictly in accordance with law within a period of eight weeks from the date of receipt of a copy of that order. As directed by this Court, the second respondent considered the representation submitted by the petitioner on the basis of the judgment passed by the Criminal Court dated 21.06.2019, rejected the representation submitted by the petitioner, and confirmed the punishment of removal from service. Aggrieved by the same, the present Writ Petition has been filed.

4. The learned Senior Counsel appearing for the petitioner submitted that the charges framed against the petitioner in the disciplinary proceedings are one and the same as those in the criminal case. The same witnesses, who were examined before the Enquiry Officer, had deposed before the Criminal Court. The Criminal Court found that there is no evidence to show that the petitioner and others were involved in the crime



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of murder. Therefore, the punishment of removal from service, which was imposed on the petitioner for the very same set of charges framed by the Criminal Court, cannot be sustained, and the petitioner is liable to be reinstated into service. All the witnesses are only hearsay witnesses, and there are no eyewitnesses to the scene of the crime. It is a case of circumstantial evidence, and the prosecution failed to produce any material to link the petitioner in order to prove the crime of murder on the basis of circumstantial evidence. The petitioner was implicated as an accused only on the basis of the confession statement of the co-accused.

5. He further submitted that, in fact, the witnesses to the confession statement were not examined by the prosecution. The main witnesses whose statements are the basis for the charges turned hostile. On the basis of the confession statement, there was no recovery from the petitioner. Due to enmity, the name of the petitioner was falsely implicated and subjected to criminal trial. On the basis of the very same charges, the petitioner was served with charge memo, and even before the commencement of the trial, the disciplinary proceedings were initiated,



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though the petitioner requested to defer the disciplinary proceedings till the completion of the criminal trial. In a hasty and high-handed manner, the disciplinary proceedings were initiated against the petitioner, and he was removed from service. Now, the criminal Court has held in favour of the petitioner, and as such, the order of punishment is liable to be set aside.

6. He also submitted that the Appellate Authority, viz., the second respondent, has to take into consideration all the points raised by the petitioner in his appeal, in the manner known to law. All the points therein were to be decided by following the rules. However, the second respondent did not even consider any grounds raised by the petitioner in the appeal, it is a clear violation of Rule 6(3) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (hereinafter referred to as 'the TNPSS (D&A) Rules' for short) and confirmed the punishment imposed by the first respondent, that too without any discussion. Before the Enquiry Officer, no witnesses had deposed about the involvement of the petitioner in the murder case. Even as per the case of the prosecution, the petitioner conspired along with other accused persons and was involved in the murder case. However,



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no witnesses had spoken about his conspiracy with the other accused before the Enquiry Officer. Except for the Investigating Officer, no one had spoken about the role played by the petitioner in the criminal case. In fact, the Investigating Officer also deposed that the statements recorded from the witnesses were only the basis, and only on the basis of the Investigating Officer's deposition, the Enquiry Officer held that all the charges were proved against the petitioner.

7. In support of his contentions, the learned Senior Counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Roop Singh Negi vs. Punjab National Bank** [(2009) 2 SCC 570], the relevant portion of which is extracted hereunder:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during



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investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”



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8. Therefore, the purported evidence collected during the investigation by the Investigating Officer against all the accused by itself could not be treated as evidence in the disciplinary proceedings.

9. In the case on hand, the confession statement of the petitioner was produced, and on the basis of the confession statement, the Enquiry Officer held all charges proved against the petitioner. The charges framed by the Criminal Court are also one and the same as those in the charge memo given to the petitioner in the disciplinary proceedings. Further, the witnesses who were examined before the disciplinary authority had deposed before the Criminal Court. After full consideration of the evidence, the Criminal Court held that the prosecution has failed to prove the charges. Therefore, the order of punishment cannot be sustained.

10. In support of his contentions, the learned Senior Counsel for the petitioner further relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Ram Lal vs. State of Rajasthan* (Civil Appeal



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No. 7935 of 2023, arising out of SLP (C) No. 33423 of 2018), in which it has been held that the charges were not just similar but identical and the evidence, witnesses and circumstances were all same. This is a case in which, in the exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority, as allowing them to stand will be unjust, unfair and oppressive.

11. In support of his contentions, the learned Senior Counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***G.M. Tank vs. State of Gujarat and others*** [(2006) 5 SCC 446], the relevant portion of which is extracted hereunder:-

“31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by



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the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

12. The learned Senior Counsel for the petitioner further submitted that the mere registration of the First Information Report against the accused cannot be the basis for the initiation of disciplinary proceedings, since the registration of the case against the accused is not in his hands. The First Information Report can be registered against anybody without any specific allegations. On receipt of the information, the First Information Report can be registered by the Investigating Officer. Therefore, the petitioner was falsely implicated in the First Information Report based on the confession statement of the co-accused. Subsequently, the prosecution failed to prove the confession statement and acquitted all the accused. The disciplinary authority has proceeded against the petitioner merely on the basis of the FIR, and as such, the punishment of removal from service



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cannot be sustained.

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13. In support of his contentions, the learned Senior Counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***The Commandant vs. P.Sakthivelayuthasamy*** (W.A. No. 2545 of 2013, dated 13.12.2018), the relevant portion of which is extracted hereunder:-

“2. Pending appeal, the order of the learned single Judge was given effect to. We do not find any merit in this appeal. Admittedly, the respondent has been honourably acquitted of all the charges, which were culminated out of a criminal case registered against the respondent wherein he has been acquitted on the ground that the occurrence was not during the course of the employment. Therefore, we are not inclined to agree with the reasoning of the learned single Judge. Non-intimation of the anticipatory bail order and the participation in the proceeding before the Revenue Divisional Officer would not per se attract any violation of the rule warranting action. In any case, such an action cannot be extended to dismissal. Similarly, bringing dis



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reputation also gives an impression against the respondent when the criminal case has ended in acquittal. The registration of the case against the accused is not in his hands. Thus, looking from any perspective, we do not find any merit in this appeal and the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.”

14. The first respondent filed a counter-affidavit and the submission of the learned Additional Government Pleader appearing for the respondents reveals that the petitioner was arrested and remanded to judicial custody pursuant to the registration of FIR in Crime No. 539 of 2013 on the file of the Inspector of Police, K10, Koyambedu Police Station, Chennai, for the offences under Sections 147, 148 and 302 read with 149 of IPC. While the investigation was pending, the disciplinary authority conducted a preliminary enquiry and the petitioner was served with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, in Punishment Roll No. 251/IV(2)/2013. The petitioner was served with charge memo consisting of the following three



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charges:-

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“(1) ஒழுக்கமும் கட்டுப்பாடும் நிறைந்த கண்ணியமிக்க காவல் துறையில் பொதுமக்களின் உயிரையும், உடமையையும் பாதுகாக்க வேண்டிய காவலராகிய நீர், உமது முன்விரோதம் காரணமாக, உமது காவலர் பதவியை துஸ்பிரயோகம் செய்து திரு.தயாளன் என்பவரை கொலை செய்ய திட்டத்தினை வகுத்ததுடன் கூலிப்படையினருக்கு பணம் கொடுத்து திட்டமிட்டு கொலை செய்துள்ளீர். எனவே நீர், காவல் துறையின் நற்பெயருக்கு களங்கத்தை ஏற்படுத்திய, மிகவும் கண்டிக்கத்தக்க குற்றம் புரிந்துள்ளீர் என்பதே உம்மீதான முதல் குற்றச்சாட்டாகும்.

(2) ஒழுக்கமும் கட்டுப்பாடும் நிறைந்த கண்ணியமிக்க காவல் துறையில் காவலராக பணி செய்யும் உமக்கும், இறந்த தயாளனுக்கும் இடையிலிருந்த நிலப்பிரச்சினைகளை சட்டத்தின்படி தீர்வு காணாமல் கொலை செய்ய திட்டமிட்டு அதன்படி காவல் நிலையத்தில், ஒட்டுனர் பணி செய்த நேரத்தில் கொலைக் குற்றத்தில் ஈடுபட்டு உயரதிகாரிகளை ஏமாற்றியுள்ளீர். இது ஒழுக்கமும் கட்டுப்பாடும் நிறைந்த கண்ணியமிக்க காவல் துறையின் நற்பெயருக்கு களங்கத்தை ஏற்படுத்திய மிகவும் கண்டிக்கத்தக்க குற்றம் புரிந்துள்ளீர் என்பது உம்மீதான இரண்டாவது குற்றச்சாட்டாகும்.

(3) திரு.N.முருகன், மு.நிகா.20141 நவீன காவல் கட்டுப்பாட்டறை (தற்காலிக பணிநீக்கம்) ஆகிய நீர் நவீன காவல் கட்டுப்பாட்டறை அயல்பணியாக V4.ராஜமங்கலம் காவல் நிலைய ரோந்து



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வாகனத்தில் ஓட்டுனராக பணிபுரந்த போது 28.04.2013 அன்று உமது முன் விரோதம் காரணமாக, உமது ஊரைச்சேர்ந்த திரு.தாயளன் என்பவரை, உமது கூட்டாளிகள் ஐவரின் உதவியோடு, கொலை செய்துள்ளீர். இது தொடர்பாக K10. கோயம்போடு காவல் நிலையத்தில் குற்ற எண்.539/2013 சட்டப்பிரிவு 302 இ.த.ச.வின் படி வழக்கு பதிவு செய்யப்பட்டு பழல் மத்திய சிறையில் அடைக்கப்பட்டுள்ளீர். இது உம்மீதான முன்றாவது குற்றச்சாட்டாகும். எனவே நீர் தமிழ்நாடு காவல் சார்நிலைப் பணி (ஒழுங்கு மற்றும் மேல் முறையீடு விதிகள் 1955 பிரிவு 3(ஆ) ன் படி மிகவும் கண்டிக்கத்தக்க செயல் புரிந்துள்ளீர் என்பதே உம்மீதான குற்றச்சாட்டுகளாகும்.”

15. There is no bar to proceeding with departmental disciplinary proceedings simultaneously when criminal prosecution is pending. The charge memo was duly served on the petitioner, and he submitted an explanation. Without satisfying the explanation submitted by the petitioner, the enquiry was conducted. The Enquiry Officer examined four witnesses, and the petitioner submitted a detailed self-explanation by way of defence. The brother-in-law of the deceased, viz., Dayalan, was examined as the first witness. He deposed that his brother-in-law, i.e., the said deceased, used to go to Chennai for his avocation. While that being so, on 25.04.2013, he went to Chennai for his avocation.



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from all the accused persons and the implication of the petitioner in the criminal case and deposed about the statements recorded from the witnesses and also the confession statements from the accused.

18. On a perusal of the statement of the first witness, viz., Loganathan, he categorically deposed that he suspected the petitioner in the murder of his brother-in-law, as he murdered the deceased due to previous enmity regarding a land dispute. On the basis of the said statement, the Investigating Officer conducted investigation and arrested the petitioner on 30.04.2013 and remanded him to judicial custody. The petitioner, on his own, confessed before the Investigating Officer that he, along with other accused persons, had murdered the deceased due to enmity regarding a land dispute. On the basis of the petitioner's confession statement, other accused persons were arrested and remanded to judicial custody and their confession statements also led to the recovery of all weapons used in the crime.

19. On a perusal of all depositions, the Enquiry Officer held that the charges are proved against the petitioner. In view of the enquiry report,



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and after giving an opportunity to the petitioner by issuance of a second show cause notice, the first respondent imposed the punishment of removal from service by order dated 23.12.2015. Aggrieved by the same, the petitioner preferred an appeal before the second respondent, and the same was also dismissed by order dated 04.03.2017. In the meanwhile, the Investigating Officer filed a final report, and the same has been taken cognizance of in S.C. No. 382 of 2013 on the file of the IV Metropolitan Magistrate Court, Chennai, for the offences under Sections 147, 148 and 302 read with 149 of IPC, as against the six accused persons, in which the petitioner was arrayed as the first accused.

20. After the trial, the trial Court acquitted all the accused persons on the ground that the prosecution failed to prove the charges and the benefit of doubt goes in favor of the accused. On the basis of the judgment of the criminal Court, the petitioner once again submitted a representation, and as directed by this Court, the second respondent considered and rejected the request made by the petitioner and confirmed the order of punishment imposed by the first respondent.



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21. On a perusal of the judgment passed by the Trial Court, the prosecution had examined P.W.1 to P.W.19. The persons who deposed before the Enquiry Officer, except the first witness, viz., Loganathan, and others, had not entered the box to give evidence before the Trial Court.

22. On a perusal of the evidence of P.W.1, it reveals that the petitioner, his brother, and others visited the house of the deceased and threatened him with dire consequences with an Aruval. The said evidence is also corroborated with the evidence of P.W.3, who is the wife of the deceased person's brother. Therefore, the petitioner had developed a hatred against the deceased and entered into quarrels frequently and also threatened him with dire consequences. Finally, when the deceased visited Chennai, the petitioner and other accused persons murdered him, that too while he was on duty. The petitioner had joined the disciplined force and instead of upholding the law and justice, he had brought disrepute to the Police Department, which will bring down its image in the eyes of the



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public. Therefore, the disciplinary authority rightly imposed the punishment of removal from service.

23. Admittedly, all the three witnesses, who were deposed before the Enquiry Officer, are hearsay witnesses. Though the witnesses in the trial Court to the confession statements of accused 1 to 4 turned hostile, one of the witnesses, who was examined as P.W.11, categorically admitted his signature in the confession statements of A1 to A4. On the basis of the confession statement, the material objects were seized, in which the persons stood as witnesses, though turned hostile and were examined as P.W.12, he categorically admitted his signature in the seizure mahazars, which were marked as Ex.P6 to Ex.P11 before the Trial Court. Therefore, the confession statements of the accused persons led to the recovery of material objects 7 and 8.

24. Further, the confession statement of the petitioner is clearly corroborated with the other accused persons' confession statements. Though there was no recovery from the petitioner, his confession statement corroborated with others' confession statements, and on the basis of other



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confession statements, the recovery of material objects 7 and 8 were made. However, the prosecution failed to prove the circumstantial evidence since there was no eyewitness or direct witness to the occurrence. Further, the Trial Court also concluded that the prosecution did not conduct the investigation in a proper manner. Therefore, the Trial Court acquitted the accused on the only ground that the benefit of doubt goes in favor of the accused.

25. The primary charge in the disciplinary proceedings relates to the involvement of the petitioner in the murder case. Further, the petitioner, while he was on duty, involved himself in the murder case. The petitioner was a Police Constable Grade-II in the service of the Police Department of the State of Tamil Nadu. Involvement of a member of the Police service in a heinous crime has a direct bearing on the confidence of society in the Police Department. Such a person is engaged by the State as part of the machinery designed to preserve law and order. Therefore, the State can legitimately assert that it is entitled to proceed against the petitioner by disciplinary proceedings for a breach of the standard of conduct which is expected of a



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member of the State Police service.

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26. The Hon'ble Supreme Court of India, in the case of ***Suresh Pathrella vs. Oriental Bank of Commerce*** [(2006) 10 SCC 572], held that the yardstick and standard of proof in a criminal case differrent from those in a disciplinary proceeding. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is based on the preponderance of probabilities. Therefore, acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings, as the standard of proof in both cases are totally different. In a criminal case, the prosecution has to prove its case beyond all reasonable doubt, whereas in a departmental proceeding, the department has to prove only the preponderance of probabilities.

27. It is relevant to extract the judgment of the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others vs. Heem Singh*** [(2021) 12 SCC 569], which held as follows:-



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“38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Assn. v. Union of India [Southern Railway Officers Assn. v. Union of India, (2009) 9 SCC 24 : (2009) 2 SCC (L&S) 552] , this Court held : (SCC p. 40, para 37)

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

(emphasis supplied)

39. In State v. S. Samuthiram [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , a two-Judge Bench of this Court held that unless the accused has an “honourable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for



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technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”. Noticing this, the Court observed : (SCC pp. 609-10, paras 24-26)

“Honourable acquittal

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.



25. *In R.P. Kapur v. Union of India [R.P. Kapur v. Union of India, AIR 1964 SC 787]* it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam v. Raghava Rajgopalachari [State of Assam v. Raghava Rajgopalachari, 1972 SLR 44 (SC)]* this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168]* which is as follows : (*Raghava case [State of Assam v. Raghava Rajgopalachari, 1972 SLR 44 (SC)]* , SLR p. 47, para 8)

‘8. ... The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what



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government authorities term “honourably acquitted”.’

(Robert Stuart case [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] , ILR pp. 188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the



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instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

(emphasis supplied)

28. The above case is squarely applicable to the case on hand. The petitioner was acquitted of the charge of murder. The circumstances in which the trial led to an acquittal have been elucidated in detail above. The verdict of the criminal Court did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial. Even in the disciplinary enquiry, evidence of the involvement of the petitioner in a conspiracy involving the death of the deceased would be difficult to prove. But the circumstances emerging from the record of the disciplinary proceedings bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the Police force. Therefore, the judgments relied upon by the learned Senior Counsel appearing for the petitioner are not



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helpful to the case on hand.

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29. Further, it is relevant to extract the judgment of the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others vs. Heem Singh*** [(2021) 12 SCC 569], which held as follows:-

“37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The Judge does not assume the mantle of the disciplinary authority. Nor does the Judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard



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governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is



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undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the Judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the Judges' craft is in vain.

30. Thus, it is clear that the Courts exercising power of judicial review are entitled to consider whether, while inferring the commission of misconduct on the part of a delinquent officer, a relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence that meets the requirements of legal principles. To determine whether the finding in a disciplinary enquiry is based on some evidence, an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the Court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the Court to re-appreciate



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evidentiary findings in a disciplinary enquiry or to substitute a view that appears to the Judge to be more appropriate.

31. Mere acquittal by the criminal Court would not give a clean chit to the delinquent in disciplinary proceedings. As stated supra, the manner in which the proceedings were conducted and the trial, due to which the petitioner was acquitted from the criminal charge, therefore, the judgment of the criminal Court cannot be considered in the disciplinary proceedings.

32. In view of the above, this Court finds no infirmity or illegality in the orders passed by the first and second respondents. The Writ Petition is devoid of merits and it is liable to be dismissed. Accordingly, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

13.09.2024

Index: Yes/No



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Neutral Citation/Yes/No

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To

1. The Deputy Commissioner of Police,
Modern Control Room,
Greater Chennai Police,
Chennai.
2. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 7.
3. The Assistant Commissioner of Police – IV,
Modern Police Control Room,
Vepery, Chennai – 7.



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G.K.ILANTHIRAIYAN, J.

kv

order in
W.P.No.12341 of 2020

13.09.2024