



W.P.No.21892 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.21892 of 2023
and WMP.No.21210 of 2023

S.Muthu Ramalingam

... Petitioner

Vs.

1.State Rep by,

The District Collector cum Panchayat Inspector,
Office of the Collectorate, Nallipalayam(Po),
Namakkal (Tk) & (Dt) 637 003

2.The Commissioner,

Mohanoor Panchayat Union,
Mohanoor (Po) & (Tk),
Namakkal District 637 003

3.The Headmaster,

Kandasamy Gounder Middle School,
Najai Edaiyaru, Mohanoor Panchayat,
Namakkal District

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent in Na.Ka.No.8881/2020/SaVuThi-1 dated 22.06.2023 and to quash the same and directing the first respondent to reinstate the petitioner in service with backwages within a stipulated period.

For Petitioner : Mr.K.S.Vivekanandam



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For Respondents

For R1 & 2 : Mr.V.Veluchamy,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 22.06.2023 thereby dismissed the petitioner from service.

2. The petitioner was appointed as Noon Meal Organizer on 23.11.1987. While being so, on a complaint, the petitioner was implicated as an accused in a case registered in crime No.309 of 2020 on the file of the Prohibition Enforcement Wing Police, Tiruchengode, Namakkal for the offence punishable under Sections 4(1)(a), 4(1)(g) read with 4(1-A) of Tamilnadu Prohibition Act. In pursuant to the arrest of the petitioner, the petitioner was placed under suspension from service on 29.05.2020. Thereafter, the petitioner was served with charge memo and after filing enquiry report, the petitioner was removed from service. In pursuant to the registration of FIR, investigation agency completed



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investigation and filed final report and the same has been taken cognizance in SC.No.104 of 2022 on the file of the Sub Court, Paramathy, Namakkal dIstrict.. The criminal case ended in acquittal by the judgment and decree dated 19.10.2023. Thereafter, the petitioner made representation dated 30.10.2023 for reinstating him into service.

3. Heard, the learned counsel appearing on either side.

4. On perusal of records revealed that the petitioner was served with charge memo consisting one charge as follows:

சத்துணவு அமைப்பாளர் மீது ஏற்படுத்தப்பட்ட குற்றச்சாட்டு

எண்-1

நாமக்கல் மாவட்டம் மோகனூர் ஊராட்சி கந்தசாமி கண்டர் நடுநிலைப்பள்ளி நன்செய் இடையார் சத்துணவு அமைப்பாளராகப் பணிபுரிந்து வந்த திரு.எஸ்.முத்துராமலிங்கம் என்பரான நீவிர் 14.05.2020 அன்று வீட்டில் கள்ளச்சாராயம் காய்ச்சி விற்பனை செய்ததாக திருச்செங்கோடு மதுவிலக்கு போலீசாரால் கைது செய்யப்பட்டு நீதிமன்ற காவலில் இருந்த தகவலை மேலதிகாரிகளுக்கு தெரியாமல் மறைத்துள்ளார்.



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4.1 Thereafter, the petitioner submitted explanation and without being satisfied with the same, the enquiry officer conducted disciplinary enquiry. The enquiry officer held the charge as 'proved'. On the strength of the same, the petitioner was removed from service. On the very same charge, the Prohibition Enforcement Wing Police filed final report and the same has been taken cognizance in SC.No.104 of 2022. In fact, the very same witnesses were examined before the criminal court. However, the criminal court found that the entire case is false one and the petitioner has been falsely implicated in the case. The relevant portion of the said order is extracted hereunder:

அத்தோடு இவ்வழக்கில் ஓர் பொய்யான புகாரை கொடுக்கிறோம் என்று தெரிந்திருந்தும், பொய்யாக ஆவணங்களை தயார் செய்து பொய்சாட்சி என்று தெரிந்தே இந்நீதிமன்றத்தில் சாட்சியம் அளித்திருக்கிற, அ.சா.5-காவல் ஆய்வாளர் திரு.பிரபு மீது, கு.வி.மு.ச.பிரிவு 344-ன் கீழ், பொய் சாட்சியம் அளித்த குற்றத்திற்காக சட்டப்படி உரிய நடவடிக்கை எடுக்க, இந்நீதிமன்ற தலைமை எழுத்தருக்கு இதன்மூலம் உத்தரவிடப்படுகிறது.



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4.2 Thus it is clear that the Prohibition Enforcement Wing Police themselves informed about the alleged occurrence and registered the FIR. The same Officer conducted investigation and filed final report. That apart, they cooked up the witnesses. In fact, on the very same set of charge, the petitioner was subjected for disciplinary proceedings. Though enquiry officer found the charge as 'proved', for the very same set of charge, the criminal court held that the charge itself is baseless and all witnesses are cooked up by the investigation agency. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***GM Tank Vs. State of Gujarat and others*** reported in ***(2006) 5 SCC 446***, wherein it is held as follows:

“The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in



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the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather



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oppressive to allow the findings recorded in the departmental proceedings to stand.

*In our opinion, such facts and evidence in the department 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 finding recorded in the domestic enquiry was found to be valid by 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's* case (*supra*) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”*

5. In view of the above, the impugned order passed by the first respondent cannot be sustained and it is liable to be quashed. Accordingly, the impugned order dated 22.06.2023 is quashed and this writ petition is allowed. The first respondent is directed to reinstate the petitioner into service forthwith with all service and attendant benefits.



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Consequently, connected miscellaneous petition is closed. There shall be
no order as to costs.

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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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