IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.14011 of 2011

A.P.Rajasekaran ..Petitioner

-Vs.-

1. The Superintendent of Police
Nagapattinam District
Nagapattinam.

2. The Deputy Inspector General of Police
Thanjavur Range
Thanjavur.

3. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore
Chennai-600 004. ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records of the respondents in connection with the impugned orders passed by them in PR No.45/2008 dated 19 March 2009, C.No.B2/AP20/2009 dated 9 July 2009 and RC No.225746/AP1(1)/2010 dated 10 February 2011 and quash the same.

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

For Respondents : Mr.P. Sanjay Gandhi
Addl. Govt. Pleader

ORDER

The petitioner challenges the order dated 19 March 2009 on the file of the disciplinary authority, the appellate order dated 9 July 2009 and the order dated 10 February 2011 on the file of Director General of Police converting the punishment of dismissal into one of

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compulsory retirement.

Background facts:

2. The petitioner entered police service as directly recruited Grade II Police Constable. He joined service on 24 September 1999. While the petitioner was serving as Driver attached to the office of Deputy Superintendent of Police, District Crime Record Bureau, Nagapattinam, he got involved in a criminal case. A case in crime No.518 of 2008 was registered by Velipalayam Police Station against him for offences under sections 379 and 427 I.P.C. The first respondent taking into account the serious misconduct issued a charge memo to the petitioner dated 8 November 2008. Thereafter enquiry was conducted. The petitioner failed to participate in the enquiry. The disciplinary authority forwarded a copy of the enquiry report and called upon the petitioner to submit his explanation. The petitioner submitted his response. The disciplinary authority having found that the petitioner committed a serious misconduct awarded the maximum punishment of dismissal from service. The said order was upheld by the appellate authority. Thereafter the petitioner filed a review petition. The Director General of Police concurred with the views expressed by the disciplinary authority. However taking into account the subsequent events, a lenient view was taken. The punishment was converted into one of compulsory retirement. Feeling aggrieved by the order passed by the third respondent, the petitioner has come up with this writ petition.

Defense:

3. The first respondent filed a detailed counter affidavit, wherein it was contended that the petitioner along with another policemen, visited Velipalayam New Bus Stand in a drunken mood and caused mental agony to one Ayyanar, who was standing at the new stand. The petitioner took money from him forcibly. The police registered a case. The petitioner failed to appear before the enquiry officer and as such, exparte enquiry was conducted. According to the first respondent, the punishment awarded was in commensurate with the charges and as such the impugned orders does not call for interference.

Rival Contentions:

4. The learned Senior Counsel for the petitioner contended that the petitioner was acquitted subsequently by the Criminal Court. Acquittal on the very same allegation was not taken note of by the third respondent. The learned Senior Counsel further contended that the petitioner was innocent and none of the witnesses have spoken against him before the criminal court. The learned Senior Counsel therefore wanted the respondents to exonerate the petitioner from criminal proceedings taking into account the judgment of acquittal.

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5. The learned Additional Government Pleader contended that the petitioner who was expected to preserve law and order took law into his hands and committed the crime. The first respondent was therefore right in imposing the maximum punishment. However the third respondent took a lenient view and passed an order of compulsory retirement, which is unassailable.

Analysis:

6. While the petitioner was serving as Driver in Armed Reserve, Nagapattinam attached to the Deputy Superintendent of Police, District Crime Record Bureau, Nagapattinam, he along with another armed reserved police by name Paramasivam visited Velipalayam New Bus Stand in a drunken mood. The petitioner and the other policemen committed atrocity and caused considerable difficulty to the de facto complainant Thiru Ayyanar. The police registered a case against the petitioner in Crime No.518 of 2008 on the basis of the complaint preferred by the de facto complainant to the effect that the petitioner grabbed his money besides causing him trouble physically and mentally. The disciplinary authority taking into account the criminal case registered against the petitioner initiated disciplinary proceedings. The petitioner was suspended from service on 8 October 2008. Thereafter a charge memo was issued to him on 8 November 2008. The disciplinary authority appointed an enquiry officer to conduct enquiry with notice to the petitioner. Even though the petitioner received notice, he failed to appear before the enquiry officer. The enquiry officer recorded the evidence of P.Ws.1 to 3 and arrived at a conclusion that the charges were proved. The disciplinary authority forwarded a copy of the enquiry report to the petitioner along with second show cause notice. The petitioner submitted his explanation. The disciplinary authority found that the charges were very serious in nature and the policemen assigned with the task of protecting citizens behaved like a criminal. The disciplinary authority therefore opined that the petitioner should be given maximum punishment. The disciplinary authority imposed the punishment of dismissal from service. The said order was unsuccessfully challenged before the appellate authority. Thereafter the petitioner filed a writ petition before this Court in W.P.No.21349 of 2010. This Court granted liberty to the petitioner to file a review petition before the third respondent. The third respondent considered the issue once again. The third respondent converted the punishment into one of compulsory retirement.

7. The petitioner now wanted to set aside the order passed by the authorities on the ground of his acquittal in C.C.No.193 of 2009 on the file of Judicial Magistrate No.II, Ngapattinam. The Criminal Court acquitted the petitioner by giving him benefit of doubt. Even though witnesses have not identified the petitioner before the Criminal Court, the fact remains that P.Ws.1 to 3 very clearly deposed against the petitioner before the enquiry officer. The

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petitioner, for reasons best known, failed to cross examine the witnesses. The records produced by the disciplinary authority clearly shows that sufficient opportunity was given to the petitioner to cross examine the witnesses. However for reasons best known, the petitioner failed to avail the said opportunity. The witnesses have given a very categorical statement that the petitioner committed a serious misconduct. This aspect was considered by the disciplinary authority and the same resulted in imposing the punishment of dismissal from service.

8. The third respondent while considering the mercy petition took into account the disposal of criminal case also. According to the third respondent, witnesses were very categorical on the involvement of the petitioner and the co-delinquent in the fracas that took place. According to the third respondent, acquittal in the criminal case does not have any bearing on the departmental enquiry viz., the standard of proof being different. The third respondent scanned the evidence once again and recorded a finding that the evidence available is sufficient to prove the offence. Even then, the third respondent has shown mercy by modifying the punishment into one of compulsory retirement.

9. The Supreme Court in Union of India v. Purushottam (2015) 1 Scale 1, held that acquittal of an employee by a criminal court would not automatically and conclusively impact departmental proceedings. The Supreme Court said that in order to avail the benefits of subsequent acquittal, the delinquent should prove that the Criminal Court has concluded that the accused is innocent and not merely arrived at a conclusion that he has not been proved to be guilty beyond reasonable doubt.

10. The petitioner was a member of a Disciplined force. He was expected to help the public. He was destined to maintain law and order. The petitioner himself became an aggressor, assaulted innocent man and grabbed his money. The de facto complainant and other witnesses tendered evidence against the petitioner. The evidence so tendered was considered by the disciplinary authority, the first appellate authority and the Head of the Department. The authorities have all arrived at a finding that the misconduct was proved.

11. The jurisdiction under Article 226 of the Constitution of India is not an appellate jurisdiction. The Court is not expected to eschew the evidence once again and to arrive at a different conclusion. The disciplinary authority imposed the punishment of dismissal from service. The appellate authority upheld the said punishment. The Director General of Police took a lenient view and modified the punishment. The modification of punishment itself was a concession. Such being the position, I do not find any reason to interfere in the matter.

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12. In the upshot, I dismiss the writ petition. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

Tr/

To:

1. The Superintendent of Police
   Nagapattinam District
   Nagapattinam.

2. The Deputy Inspector General of Police
   Thanjavur Range
   Thanjavur.

3. The Director General of Police
   Dr. Radhakrishnan Salai
   Mylapore
   Chennai-600 004.

1 cc to Mr. M.Muthappan,Advocate, SR.No.14646
1 cc to Government Pleader,Sr.No14769

W.P.No.14011 of 2011

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