

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-09-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.5478 of 2015

and

M.P.No.1 of 2015

K.Raghunathan

... Petitioner

Vs

1. The Regional Deputy Director
Survey and Land Records
Department
Chepauk, Chennai 600 005

2. The Assistant Director of Survey
and Land Records
District Collector's Office Compound
Sathuvachari, Vellore 9

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the second respondent in his proceedings in No.Na.Ka.A6/6355/2013 dated 6.2.2015, and quashing the same as illegal and consequently, directing the respondents 1 and 2 to treat the suspension period of the petitioner as a duty period and pay the back wages to the petitioner with all attendant benefits including arrear of pay and other emoluments to the petitioner.

For Petitioner : Dr.D.Simon

For Respondents : Mr.V.Subbiah
Special Government Pleader

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner would state that he while working as a Draftsman in the services of the second respondent, got involved in a criminal case registered by Katpadi Police Station, Vellore, in Crime No.503 of 2007 for the alleged commission of an offence under Section 420 IPC. The substratum of the allegation is that the Registrar In-charge of Vellore Institute of Technology (VIT) has preferred a

complaint marked as Ex.P1 in the criminal case, stating that he has received a complaint through e-mail stating that the petitioner/A-1 has demanded from one Praveen Upala of Nizamabad, a sum of Rs.1 lakh for getting admission for his son viz. Raghul, in M.S. Software Engineering and believing the same, Praveen Upala deposited a sum of Rs.15,000/- in the Savings Bank Account of the petitioner/A-1 and thereafter, when they contacted the petitioner/A-1, he did not respond.

3.It is further stated by the petitioner that he was also arrested and thereafter, was placed under suspension and the criminal case after investigation, has culminated in a charge sheet in Calendar Case No.67 of 2011, which was taken on file by the Court of Judicial Magistrate at Katpadi, and after a full-fledged trial, the petitioner was honourably acquitted vide judgment dated 18.10.2011, and no appeal has been preferred against the said judgment, and it has become final. The petitioner would further aver that he was also issued with a charge memo on 30.1.2008, on the very same set of allegations and has submitted his explanation and since it was not found satisfactory, Enquiry Officer was appointed, who has given his report dated 21.8.2008, stating that the charges framed against the petitioner, have not been proved. However, the second respondent-Disciplinary Authority imposed a punishment of postponement of increment for a period of one year with cumulative effect and the period of suspension between 2.9.2007 and 19.4.2012, subject to eligible leave, was directed to be treated as leave on loss of pay.

4.The petitioner would further state that he filed an appeal before the first respondent, who has remanded the matter to the second respondent with an observation to proceed with the matter further from the place, in which, the error was committed viz. the non-furnishing of the Enquiry Officer's report to the petitioner, and thereafter, to decide the issue, and based on the remand order, the report of the Enquiry Officer was furnished to the petitioner and he has also submitted his explanation and thereafter, the second Enquiry Officer was appointed, who submitted his report stating that the charges framed against the Delinquent Officer, have not been proved, and however, the second respondent did not agree with the findings of the Enquiry Officer and imposed a punishment of stoppage of increment for a period of six months with cumulative effect and treated the suspension period between 2.9.2007 and 19.4.2012, as leave on loss of pay barring the eligible leave period.

5.It is further averred by the petitioner that challenging the said order, he filed an appeal before the first respondent, who set aside the order of the Disciplinary Authority and once again, remanded the matter to the second respondent, and challenging the said order, the petitioner had filed W.P.No.10322 of 2014 and this Court dismissed the writ petition with an observation that it is for the second respondent therein to consider all the grounds

meticulously and to pass a fresh order, after affording an opportunity of hearing to the petitioner, and thereafter, the petitioner has submitted a representation dated 2.2.2015, to the second respondent and finally, the second respondent has passed the impugned order dated 6.2.2015, imposing a punishment of postponement of increment for a period of one year with cumulative effect and also treated the period of suspension between 2.9.2007 and 19.4.2012, as leave on loss of pay except the period in which, he has gone on medical leave, and challenging the legality of the said order, the petitioner has filed this writ petition.

6.The learned Counsel appearing for the petitioner, would submit that in the Departmental Proceedings, one person viz. the Official of the VIT University, alone has been cited as a witness and he too was not examined as a witness and therefore, the Enquiry Officer has reached a conclusion that the charges framed against the petitioner, have not been proved and however, the second respondent did not take into consideration the said aspect and proceeded to impose the order of punishment for the reason that the order of acquittal recorded by the trial Court, concerns only with the police/criminal charges and further that since the petitioner was detained for more than 48 hours and the news item with regard to his detention, also appeared in newspapers, there was loss of reputation to the Institution and therefore, imposed the order of punishment directed the period of suspension to be treated as not spent on duty and the said findings are perverse and unsustainable in law and on facts and prays for setting aside the order and conferment of all attendant benefits.

7.Per contra, Mr.V.Subbiah, learned Special Government Pleader, appearing for the respondents, would submit that the first respondent/Appellate Authority, on an earlier occasion, having found, the copy of the Enquiry Officer's report has not been furnished to the petitioner, has remanded the matter and the petitioner was furnished with the Enquiry Officer's report and thereafter, he has offered his explanation and taking into consideration the explanation, the second respondent/Disciplinary Authority has rightly reached the conclusion to impose the order of punishment with a further direction to treat the period of suspension as not spent on duty and would further contend that the scope of interference by this Court, in exercise of the jurisdiction under Article 226 of the Constitution of India, is very limited and prays for dismissal of this writ petition.

8.This Court has carefully considered the rival submissions and also perused the materials placed before it.

9.A perusal of the judgment dated 18.10.2011, passed by the Court of Judicial Magistrate, Katpadi in C.C.No.67/2011, would disclose that the complainant, who sent the e-mail to the concerned

institution, though cited as a witness, was not examined during the trial and the trial Court on appreciation of oral and documentary evidence, has rightly reached the conclusion to acquit the petitioner/ A-1 and passed an order of honourable acquittal. Neither the State preferred any appeal, nor the de-facto complainant preferred any revision, against the order of acquittal and therefore, it has become final.

10.A perusal of the charge memo would disclose that it is also on the very same set of allegations and it is very relevant to point out at this juncture, that only one person viz. the Official of the VIT University, was cited as a witness and he was not examined as a witness and therefore, the Enquiry Officer has rightly reached the conclusion that the charges framed against the petitioner, have not been proved. However, the second respondent has not accepted the findings of the Enquiry Officer and imposed the punishment of postponement of increment for a period of six months with cumulative effect and also treated the period of suspension as loss of pay and on appeal preferred by the petitioner, the matter was remanded by the first respondent for the reason that the copy of the Enquiry Officer's report has not been furnished and accordingly, it was furnished to him and he has also offered his explanation. The second respondent on consideration of the explanation, has passed the impugned order of punishment. A perusal of the impugned order would disclose that the second respondent has reached the conclusion that the order of acquittal concerns only with the police/criminal charges and will not bind the Disciplinary Authority and further held that since the petitioner has been detained for more than 48 hours and it was also published in newspapers, the said news item brought disrepute to the Government organisation.

11.Even the said finding is erroneous for the reason that the criminal prosecution as well as the Departmental Proceedings came into being on the very same set of allegations and that the petitioner was honourably acquitted in the criminal prosecution and therefore, it would have a bearing in respect of the Departmental Proceedings also. Insofar as the conclusion reached by the Disciplinary Authority, that the petitioner has been detained for 48 hours and it was also published in newspapers and thereby the reputation of the Institution has been brought down in the eye of the public, it is also unsustainable for the reason that the petitioner was arrested and remanded to judicial custody on 2.9.2007, and the Court of Judicial Magistrate No.III at Vellore, vide order dated 3.9.2007, made in C.M.P.No.2724 of 2007, has enlarged him on bail i.e., within 24 hours.

12.In the considered opinion of the Court, the above said reasons assigned by the second respondent, are on account of improper appreciation of the materials placed before him, and he has also failed to apply his mind while recording the said finding.

13.In the result, the writ petition is allowed and the impugned order dated 6.2.2015, passed by the second respondent, is set aside and the period of suspension of the petitioner between 2.9.2007 and 19.4.2012, is to be treated as a period spent on duty in the light of Rule 54B(1) of Fundamental Rules.

14.It is represented that the petitioner has also retired from service on 30.5.2015. The respondents are directed to confer the petitioner the terminal and other consequential benefits within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nsv

To:

1. The Regional Deputy Director
Survey and Land Records
Department
Chepauk, Chennai 600 005
2. The Assistant Director of Survey
and Land Records
District Collector's Office Compound
Sathuvachari, Vellore 9

+1cc to Dr.D.Simon, Advocate, S.R.No.50394

+1cc to the Government Pleader, S.R.No.50250

W.P.No.5478 of 2015

PA(CO)
CA(22/09/2015)

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