

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.7508 of 2009

M.Babu

.. Petitioner

-vs-

1.The Director General of Police,
Tamil Nadu, Chennai.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai, Egmore, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in PR.No.84/29679/PRII(1)/ 2006 dated 28.09.2006 and the consequential order passed by the first respondent in proceedings C.No.217896/AP3(3)/2006, dated 09.06.2007 and quash the same and direct the respondents to reinstate the petitioner in service with all continuity of service, monetary and pension benefits along with back wages.

For Petitioner :: Mrs.R.Thenmozhi Shiva Perumal

For Respondents :: Mr.S.Gunasekaran,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order of removal from service. According to the petitioner, though he was originally convicted by the Lower Court, the Appellate Court has allowed the appeal, but unfortunately, he was removed from service based upon the departmental enquiry.

2.The learned Additional Government Pleader appearing for the respondents brought two things into fore. The first one is that though the petitioner filed an application in O.A.No.1219 of 2001 before the Tamil Nadu State Administrative Tribunal, the same was withdrawn on 19.03.2001 without any liberty. Subsequently a writ petition has been filed before this Court challenging the very same order. Therefore, the learned

Additional Government Pleader submits that the filing of the subsequent writ petition is hit by the principles of res judicata. Secondly, it is not an acquittal by the Appellate Authority in so far as the first accused/ the petitioner herein is concerned. The Appellate Authority has confirmed the conviction but only modified the punishment to one that of a fine. Therefore, he would submit that the petitioner was not acquitted by the Appellate Court and that the Appellate Court has only reduced the punishment. Therefore, he submits that a person working in Police Service who has been convicted for an offence by the Lower Court and the said conviction has been confirmed by the Appellate Court, deserves removal of service and the same is fair, reasonable and correct.

3. Heard the learned counsel on either side and perused the materials available on record.

4. On a careful perusal of the records, this Court is of the view that the writ petition has to be dismissed summarily. Earlier, the petitioner filed an application in O.A.No.1219 of 2001 before the Tamil Nadu State Administrative Tribunal and the same was withdrawn without any liberty. Further it is seen that even though he was convicted by the Lower Court, the appellate Court has only allowed the appeal partly, and it is not an acquittal. The Appellate Court confirmed the conviction and the sentence alone has been modified to one that of a fine of Rs.10,000/-. Being a Police Constable, he has to maintain discipline in his profession. Having convicted by the Lower Court for an offence, and the said conviction has been confirmed by the Appellate Court, the petitioner cannot be allowed to continue in service.

5. In view of foregoing reasons, the writ petition is dismissed. No costs.

KM

s/d-

Assistant Registrar (CS-VII)

True Copy

Sub-Assistant Registrar

To

1. The Director General of Police, Tamil Nadu, Chennai.

2. The Commissioner of Police, Office of the Commissioner of Police, Greater Chennai, Egmore, Chennai.

+ 1 cc to M/s.R.Thenmozhi Shiva Perumal, Advocate SR 45731

+ 1 cc to Govt.Pleader SR 45935

rp(co)

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