

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2016

DELIVERED ON : 22.12.2016

C O R A M

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.16676 of 2014
and
W.P.No.1 of 2015

R.Gopinath ... Petitioner

Vs.

1.The Director General of Police,
Chennai - 600 004.

2.The Commissioner of Police,
Chennai - 600 008.

3.The Deputy Commissioner of Police,
Armed Reserve,
Chennai.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned passed by the third respondent herein in his proceedings in P.R.No.215/P.R.3(1)/99 dated 11.05.2000 and the order passed by the first respondent herein in his proceedings in Na.Ka.No.181788/Me.Mu.3(2)/2011, dated 03.4.2014 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with all consequential service and monetary benefits.

For petitioner ... Mr.G.Bala and Daisy

For Respondents ... Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

This writ petition has been filed challenging the order passed by the third respondent herein in his proceedings in P.R.No.215/P.R.3(1)/99 dated 11.05.2000 and the order passed by the first respondent herein in his proceedings in Na.Ka.No.181788/Me.Mu.3(2)/2011, dated 03.04.2014 and for a consequential direction to the respondents herein to reinstate the petitioner into service with all consequential service and

monetary benefits.

2.It is stated in the petition that the petitioner herein joined the Police service as Grade II Constable on 16.06.1993. He had received about 8 rewards for his service. While so, on 06.11.1998, he was placed under suspension for having involved in a criminal case in Crime No.194 of 1998 under Section 392 IPC at Sathangadu Police Station. Based on the same facts and circumstances for which the criminal case was registered, a charge memo was issued by the respondents herein on 24.04.1999 against the petitioner in P.R.No.215 of 1999. During the pendency of the enquiry, the petitioner had submitted a petition before the disciplinary authority to defer the disciplinary proceedings till the completion of the criminal case. But, without even considering the petitioner's request, the enquiry was completed and the enquiry officer submitted his report on 22.06.1999 holding the charge as proved. Even thereafter, the petitioner again requested the disciplinary authority to defer the disciplinary proceedings till the completion of the criminal case. But, on the contrary, further enquiry was conducted in which the complainant Mr.Mahaveer Jain was examined as PW3. Though the complainant has denied the allegation made against the petitioner in the enquiry, the enquiry officer strangely held the charge as proved again in his subsequent report dated 12.01.2000.

3.It is further stated in the petition that based on the said perverse findings of the enquiry Officer, the petitioner was removed from service on 11.05.2000. Aggrieved by the said order of removal, the petitioner filed O.A.No.3687 of 2000 before the Tamil Nadu Administrative Tribunal. The respondents also filed their counter affidavit stating that after the acquittal, if the petitioner approaches the appellate/competent authority, his claim for reinstatement would be considered. While so, due to abolition of the Administrative Tribunal, the said original application was transferred to this Court and renumbered as W.P.No.40905 of 2006. On 03.02.2009, the petitioner withdrew the said writ petition on the belief that his claim for reinstatement would be considered positively by the department, after getting acquittal in the criminal case.

4. It is also stated in the petition that the petitioner was convicted in the criminal case by the trial Court and subsequently, as against the conviction, he preferred an appeal in C.A.No.56 of 2007. On 27.08.2008, the appellate Court allowed the said appeal and set aside the conviction and sentence imposed by the trial Court. On such acquittal, the petitioner preferred an appeal to the first respondent on 24.02.2009. Since no order was passed on the petitioner's claim for reinstatement, the petitioner again approached this Court in W.P.No.3055 of 2014 seeking a direction to the respondent to reinstate him in service by considering his representation dated 22.01.2013. On 04.02.2014, this Court

disposed of the said writ petition directing the first respondent herein to pass orders on the petitioner's representation. On 03.04.2014 the first respondent has passed the consequential impugned order rejecting the claim of the petitioner for reinstatement without proper application of mind. Aggrieved by the same, the present writ petition has been filed by the petitioner for the aforesaid relief.

5. When the matter was taken up for consideration, the learned counsel for the petitioner made a detailed argument by advertng to the averments made in the affidavit filed in support of the petition. It is a specific submission of the learned counsel for the petitioner that the disciplinary proceedings was initiated against him on the allegation that he was involved in a criminal case in Crime No.194 of 1998. Though the trial Court convicted the petitioner in the said criminal case, ultimately, in the appeal in CrI.A.No.56 of 2007 he was acquitted by the appellate Court. In fact, in the said appeal a specific finding was rendered by the appellate Court that the case was falsely foisted against the petitioner. When that be so, as admitted by the respondents in the counter affidavit to O.A.No.3687 of 2000, they ought to have considered the claim of the petitioner positively, but they simply rejected the claim of the petitioner without assigning any valid reasons. Thus, he sought for quashing of the impugned orders and for a consequential direction to reinstate him in service.

6. Countering the submission made by the learned counsel for the petitioner, the learned counsel appearing for the respondents by filing a detailed counter affidavit submitted that the petitioner was transferred from TSP to City AR and he joined duty on 12.11.1997 and he absented from duty without any leave or permission from 14.06.1998 and his absence continued for more than 21 days. As per P.S.O.88(1) (new No.95(1)), he was treated as one who has deserted. The petitioner was taken back to duty on 02.11.1998, since he had appeared before the DC.AR and requested to take him for duty on 07.08.1998. On 02.11.1998 a report was received that the petitioner, during his desertion period, was involved in a criminal case of Robbery and a case was registered on 29.06.1998 in Crime No.194 of 1998 on the file of Sathangadu Police Station and that during the course of investigation, he was arrested along with another person and on his confession, the robbed properties were seized under a cover of mahazar.

7. The learned counsel for the respondents would further submit that on receipt of the report, the petitioner was placed under suspension on 06.11.1998 and a charge memo was issued against him on 26.04.1999. After completion of the enquiry, the disciplinary authority dismissed him from service. Aggrieved by the same, the petitioner, without availing an opportunity of appeal before the appellate authority, filed O.A.No.3687 of 2000 before the Administrative

Tribunal and subsequently, withdrew the same. On acquittal of the petitioner from the criminal case, he had filed a mercy petition before the Director General of Police and the same was disposed of rejecting the claim of the petitioner for reinstatement.

8. The learned counsel appearing for the respondents would further submit since the criminal Court arrives at a decision based on the evidence put forth before the Court under the Indian Evidence Act, it requires strict proof for proving the charge beyond reasonable doubts. Whereas the disciplinary proceedings requires only preponderance of probability and hence, the punishment imposed on the petitioner is valid and the impugned orders need not be interfered with.

9. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record. Admittedly, the petitioner herein was suspended by the respondents on 06.11.1998 for having been involved in the criminal case and for the very same reason, the disciplinary proceedings was also initiated against the petitioner. As the facts involved and allegations made in both the criminal case as well as the disciplinary proceedings were one and the same, the petitioner submitted representations requesting the respondents to defer the disciplinary proceedings till the completion of the criminal case. But, the respondents without considering the same, proceeded with the departmental enquiry and dismissed the petitioner from service. Challenging the said order, the petitioner preferred an application in O.A.No.3687 of 2001 before the Tamil Nadu Administrative Tribunal and the same was, subsequently, transferred to this Court and renumbered as W.P.No.40905 of 2006.

10. While so, the respondents in their counter affidavit, has stated in paragraph No.19 that "if the applicant acquitted in the Court of law, he can prefer an appeal before the appellate/competent authority for taking him back to duty." Based on the said statement, it is stated that the petitioner withdrew the said Writ petition. Subsequently, though the petitioner was convicted by the trial Court, ultimately, he was acquitted by the appellate Court. The appellate Court has rendered a specific finding in C.A.No.56 of 2007 in paragraph No.19 as follows:

"Due to urge and pressure the charge sheet has been filed by the respondent Police without arresting the real accused, unnecessarily implicated these accused and filed charge sheet and hence there is no corroboration of witnesses in their evidence where as PW1, 2, 5 and 9 examinations are highly contradictory which has been elucidated at the time of cross examination by the defence discloses that this case is totally a false case. Further, no procuring of the real

properties robbed except the said motor vehicle and except ingot, the prosecution has not produced any descriptive jewels."

Based on the acquittal from the criminal case and based on the statement made by the respondents in their counter affidavit in O.A.No.3687 of 2001, the petitioner made an appeal to the first respondent requesting to reinstate him from service. But, the same was rejected by the first respondent by the impugned order dated 03.04.2014.

11. The main contention of the learned counsel for the respondents is that so far as the criminal case is concerned, it needs a strict proof, whereas the disciplinary proceedings requires only preponderance of probability and hence the petitioner's claim for reinstatement cannot be considered. This Court is of the view that this submission of the learned counsel for the respondents cannot be accepted. When the petitioner has been acquitted from the criminal case, which was the sole foundation for the initiation of the disciplinary proceedings, the first respondent cannot reject the claim of the petitioner for reinstatement. Further more, as stated supra, the first appellate Court has rendered a specific finding that a false case has been foisted against the petitioner, against which the State has not preferred any further appeal before the High Court and therefore, the said decision has become final.

12. Apart from that, the complainant, who appeared before the enquiry officer, denied the involvement of the petitioner in the occurrence. Even then, the enquiry officer, the disciplinary authority and the first respondent herein have held that the charges against the petitioner are proved. Although the charges in a departmental proceedings are not required to be proved beyond all reasonable doubts, we cannot lose sight of the fact that the disciplinary authority, after analysing the entire materials, must arrive at a conclusion that there had been a preponderance of probability to prove the charges. While doing so, the disciplinary authority cannot take into consideration any irrelevant fact and it cannot refuse to consider the relevant fact and further, it cannot shift the burden of proof. It cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Here in this case, the first respondent in the impugned order itself admitted that the complainant has turned hostile. But, without considering the said fact, on the basis of mere surmises and conjectures, the 1st respondent rejected the claim of the petitioner for reinstatement.

13. Further more, when there is a specific finding by the first appellate Court that a false case has been foisted against the petitioner and the said decision has become final, as no further appeal is filed by the State against that judgment, the first respondent cannot simply reject the claim of the petitioner. Hence, the submission of the learned

counsel for the respondents that the preponderance of probability does not require any proof cannot be accepted, considering the facts and circumstances of this case.

14. In view of the above, this Writ petition is allowed and the impugned orders are set aside and the respondents are directed to reinstate the petitioner in service with all service and monetary benefits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gcg

To

1.The Director General of Police,
Chennai - 600 004.

2.The Commissioner of Police,
Chennai - 600 008.

3.The Deputy Commissioner of Police,
Armed Reserve,
Chennai.

+1cc to M/s.G.Bala & Daisy, Advocate sr.75928

+1cc to The Government Pleader sr.76278

सत्यमेव जयते
Pre-delivery Order made in
Writ Petition No.16676 of 2014

gmi (co)
ss (20/01/2017)

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