

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29-07-2016

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 31054 and 31055 of 2013

V. Natarajan

.. Petitioner in both the
Writ Petitions

Versus

1. State of Tamil Nadu
represented by its Secretary
Home Department
Fort St. George
Chennai - 600 009
 2. The Director General of Police
Tamil Nadu Police Head Quarters
Kamarajar Salai, Mylapore
Chennai - 600 004
 3. The Commissioner of Police
Greater Chennai
Egmore, Chennai - 600 008
 4. The Deputy Inspector General of Police
Thanjavur Range, Thanjavur
 5. The Deputy Commissioner of Police
Triplicane District, Chintadripet
Chennai - 600 002
- .. Respondents in both
the writ petitions

WP No. 31054 of 2013:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent made in Memorandum dated 25.09.2013 in Rc.No.6000/GS.II (1)/2013 for empanelling the candidates fit for appointment as Deputy Superintendent of Police (Cate.I) for the year 2012-2013 and quash the entry in respect of the petitioner in Serial No.61 in Annexure I to the Memorandum and consequently direct the respondents to pass necessary order in supplementing the reinstatement along with the benefits of grant of back wages, continuity of service and grant of probation and other all attendant benefits and to empanel the petitioner for the promotion in the next venue of promotion.

WP No. 31055 of 2013:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records of the third respondent made in R.C.No.13/PR1(2)/CPO/2003 dated 21.03.2003 and quash the same as illegal.

For Petitioner : Mr. C. Manishankar
in both the Writ Petitions

For Respondents : Mr. S.Gunasekaran
Addl. Government Pleader
in both the Writ Petitions

COMMON ORDER

The petitioner and the respondents in both the writ petitions are one and the same. The issue involved in these writ petitions are inter-connected. Therefore, both the writ petitions are taken up together for final disposal and are disposed of by this common order.

2. The petitioner was appointed as Sub Inspector of Police in the Tamil Nadu Police Subordinate Service in 1987 and on 21.08.2000 he was promoted as Inspector of Police. While the petitioner was working as Inspector of Police in Prohibition and Enforcement Wing, Triplicane, Chennai, on 03.12.2001, a case in Crime No. 6 of 2001 was registered against him by the Directorate of Vigilance and Anti Corruption for the alleged offence punishable under Section 7 of the Prevention of Corruption Act, 1998. The Criminal case came to be registered against the petitioner after a trap was allegedly laid against him. In connection with the registration of the criminal case, the petitioner was suspended from service with effect from 03.12.2001. Challenging the order of suspension dated 03.12.2003, the petitioner filed O.A. No. 1263 of 2002 before the Tamil Nadu Administrative Tribunal. The Tribunal granted interim stay of order of suspension dated 03.12.2001 on 22.10.2002. By virtue of the interim stay granted by the Tribunal, the order of suspension passed against the petitioner was revoked by an order dated 13.01.2003 and he was reinstated in service. Later, a charge memo dated 21.01.2003 was issued to the petitioner as contemplated under the provisions of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1957. A departmental proceedings also was initiated against the petitioner.

3. As far as the Criminal case is concerned, after trial, by a judgment dated 30.06.2004 passed in C.C. No. 16 of 2002 on the file of the learned VII Additional Sessions Judge, City Civil Court, Chennai, the petitioner was convicted for the

offence punishable under Section 7 of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for one year with a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment; convicted for the offence under Section 13 (1) (d) read with Section 13 (2) of the said Act and sentenced to undergo two years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo three months rigorous imprisonment. The sentences were ordered to run concurrently. Assailing the Judgment of conviction dated 30.06.2004, the petitioner filed Criminal Appeal No. 957 of 2004 and by a Judgment dated 12.12.2007, this Court reversed the Judgment of conviction and acquitted the petitioner.

4. In the meantime, a show cause notice dated 18.09.2004 was issued to the petitioner calling upon him to submit his explanation as to why a provisional conclusion be not arrived at by the respondents to dismiss him from service. Challenging the same, the petitioner filed WP No. 28886 of 2004 before this Court. On 08.10.2004, this Court dismissed the writ petition. Pursuant to the same, the petitioner was once again suspended from service on 24.09.2005. On 28.09.2005, a show cause notice was issued to the petitioner calling upon him to submit explanation to the show cause notice sent to him on 18.09.2004 without any further delay. As the petitioner did not submit any explanation, an order dated 09.10.2005 was passed dismissing him from service.

5. On 24.03.2008, the petitioner sent a representation dated 29.03.2008 to the second respondent by citing the judgment dated 12.12.2007 passed by this Court in Criminal Appeal No. 957 of 2004 and sought for restoration of service along with back wages. By considering such representation dated 24.03.2008 of the petitioner, an order dated 31.10.2008 was passed by the fourth respondent on 31.10.2008 reinstating the petitioner in service without any reference to payment of back wages. It is the vehement contention of the petitioner that even though charge memo dated 21.01.2003 was issued to him, the petitioner was reinstated in service on 31.10.2008 without any reference to the departmental proceedings initiated against him. In other words, the department has not reserved their right to proceed against the petitioner separately pursuant to the charge memo dated 21.01.2003. Therefore, the petitioner merely continued in his service without any back wages or further promotion. While so, on 25.09.2003, the second respondent issued a Memorandum to empanel those who are working as Inspector of Police for promotion to the post of Deputy Superintendent of Police. Even though the name of the petitioner was included in the memorandum of dated 25.09.2003, in the remarks column as against the petitioner, it was stated that "the petitioner is a probationer and charges under Rule 3 (b) are pending against him in PR No. 13 of 2003". Challenging the same, the petitioner has come

forward with the first writ petition, being WP No. 31054 of 2013. In the subsequent writ petition in WP No. 31055 of 2013, the petitioner has chosen to challenge the charge memo dated 21.01.2003 issued to him inasmuch as no further departmental proceedings have been initiated against him for the past ten years from the date on which it was issued.

6. The learned counsel appearing for the petitioner would vehemently contend that the petitioner was acquitted by this Court by judgment dated 12.12.2007 passed in Criminal Appeal No. 957 of 2004. Pursuant to the same, the petitioner was reinstated in service on 31.10.2008 and from that date, the petitioner is in continuous service. It is specifically contended by the learned counsel for the petitioner that in the order dated 31.10.2008, the department has not reserved their right to proceed against the petitioner with the departmental proceedings or there was no reference that the order of reinstatement is passed without prejudice to the departmental proceedings already pending against him. While so, it is deemed that the petitioner is in continuous service and at any stretch of imagination, he cannot be construed as a probationer for any purpose. When once the criminal case filed against the petitioner ended in acquittal and he was also reinstated in service, the petitioner is entitled to all consequential service and monetary benefits and he cannot be deprived of the same. Even otherwise, the departmental proceedings and the criminal proceedings are on the same set of facts, while so, when the petitioner was acquitted in the criminal proceedings, the department cannot be permitted to conduct the departmental proceedings on the same set of facts. The learned counsel for petitioner would contend that when there is no bar or embargo for the petitioner to get promoted, the remarks made in the memorandum dated 25.09.2013 as though the petitioner is a probationer is untenable.

7. As regards the charge memo issued to the petitioner on 21.01.2003, the learned counsel for the petitioner would contend that the petitioner was reinstated in service on 31.10.2008 without making any reference as to the right of the department to proceed against him any further. After reinstatement on 31.10.2008, the petitioner is working in the department for the past more than seven years. Even though the charge memo was issued on 21.01.2003, the department did not proceed further with the departmental enquiry. Therefore, the learned counsel for the petitioner would submit that the department has no legal right to proceed against the petitioner further on the basis of the charge memo dated 21.01.2003 and therefore he prayed for allowing both the writ petitions.

8. In order to fortify his submissions, the learned counsel for the petitioner relied on the decision of the

Honourable Supreme Court in (G.M. Tank vs. State of Gujarat and another) reported in (2006) 3 CTC 494 wherein it was held that when the departmental proceedings as well as the criminal proceedings are based on the same set of facts and by relying on the same witnesses, the acquittal order passed in the criminal proceedings will prevail over and it would be unjust to proceed against the delinquent departmentally and to dismiss him from service.

9. The learned counsel appearing for the petitioner also relied on the decision of the Honourable Supreme Court in the case of (Prafulla Chandra Mohapatra vs. State of Orissa and others) reported in 1993 Supp (1) Supreme Court Cases 564 wherein it was held that when there is an inordinate delay in proceeding with the departmental proceedings against the delinquent, it shall be construed that the department has lost their right to proceed against the petitioner departmentally.

11. The learned Special Government Pleader appearing for the respondents would oppose the writ petitions by relying on the counter affidavit filed on behalf of the respondents. According to the learned Special Government Pleader, the departmental enquiry initiated against the petitioner could not be completed due to the fact that the petitioner did not cooperate with the completion of such enquiry. It is further stated that earlier, the petitioner was dismissed from service on 09.10.2005 against which he has filed WP No. 30220 of 2005 and obtained an interim stay on 17.09.2005 with the result, the departmental proceedings were kept in abeyance. Further, the petitioner was reinstated only on the basis of the judgment of acquittal passed by this Court in Criminal Appeal No. 957 of 2004 dated 12.12.2007. By citing the Judgment of acquittal dated 12.12.2007, the petitioner withdrew WP No. 30220 of 2015 filed by him and thereafter the enquiry officer appointed by the Department namely the Deputy Commissioner of Police, Triplicane District was directed to complete the oral enquiry and to send a minute against the petitioner. At this stage, the petitioner has filed the present writ petition and an order of interim stay was passed on 18.11.2013. According to the learned Special Government Pleader, the right of the department to conduct disciplinary proceedings on the basis of charge memo dated 21.01.2003 cannot be curtailed by reason of the reinstatement of the petitioner in service. The reinstatement of the petitioner has nothing to do with the departmental proceedings initiated against him which relate to gross dereliction of duty and for having contravened the provisions of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The learned Special Government Pleader would therefore contend that the petitioner has to subject himself to the disciplinary proceedings in which the charges levelled against him will be dealt with notwithstanding his conviction in the criminal

proceedings. When there was no specific order passed by the Department that the charges levelled against the petitioner are dropped, it is futile on the part of the petitioner to contend that the department has no right to proceed further with the disciplinary proceedings. In such view of the matter, the learned Special Government Pleader prayed for dismissal of the writ petitions.

12. I heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents. I had perused the materials placed on record. The petitioner claims that he is entitled for being promoted to the post of Deputy Superintendent of Police and the order dated 25.09.2013 of the second respondent treating him as probationer is unsustainable. It is also claimed by the petitioner that the charge memo dated 21.01.2003 issued to him has no force of law and based on the same, at this stage, disciplinary proceedings cannot be conducted against him.

13. With this background, it is necessary to appreciate the factual matrix involved in these writ petitions. Admittedly, a criminal case was registered against the petitioner on 03.12.2001 in Crime No. 6 of 2001 for the alleged offence punishable under Section 7 of the Prevention of Corruption Act, 1998 by the Directorate of Vigilance and Anti Corruption. In connection with the registration of the criminal case, the petitioner was suspended from service with effect from 03.12.2001. Challenging the order of suspension dated 03.12.2001, the petitioner filed O.A. No. 1263 of 2002 before the Tamil Nadu Administrative Tribunal and obtained an interim stay of suspension on 22.10.2002. By virtue of the interim stay granted by the Tribunal, the order of suspension passed against the petitioner was revoked on 13.01.2003 and he was reinstated in service. Later, a charge memo dated 21.01.2003 was issued to the petitioner based on which, admittedly, departmental proceedings has not been initiated till date.

14. In the Criminal case registered against the petitioner, the petitioner was convicted by a judgment dated 30.06.2004 passed in C.C. No. 16 of 2002 on the file of the learned VII Additional Sessions Judge, City Civil Court, Chennai. As against the same, the petitioner has successfully preferred a Criminal Appeal before this Court and by judgment dated 12.12.2007 in Criminal Appeal No. 957 of 2004, this Court overturned the Judgment of conviction passed against the petitioner and acquitted him. On the strength of order of acquittal, the petitioner sent a representation dated 29.03.2008 to the second respondent and sought for restoration of service along with back wages. The fourth respondent, having regard to the acquittal of the petitioner in the Criminal case, passed an order dated 31.10.2008 reinstating him in service.

15. The main contention urged on behalf of the petitioner is that while reinstating the petitioner on 31.10.2008, the department has not reserved their right to proceed with the departmental proceedings against the petitioner. In other words, the department has not passed the order of reinstatement without prejudice to their right to proceed against the petitioner departmentally. In order to appreciate this contention, it is necessary to look into the order dated 31.10.2008 passed by the fourth respondent reinstating the petitioner in service. The order dated 31.10.2008 reads as follows:-

"In pursuance of the orders of Hon'ble High Court of Chennai in its verdict ordered in Criminal Appeal No. 957 of 2004, filed by Tr.V. Natarajan, Ex-Inspector of Police, formerly of Nagapattinam District who was dismissed earlier in the year 2005, vide this office order issued in Rc.No.B1/13048 dated 09.10.2005 for having arrested in Chennai City V & AC Cr.No.06/2001-AC/CC 11 U/sec. 7 of PC Act, 1988 on a trap for demanding and accepting the bribe is set aside by the Hon'ble High Court in C.A. 957/2004 dated 12.12.2007. However, the same was intimated to Director, V&AC, Chennai requesting if any appeal against the judgment is preferred by the authority concerned against the judgment in Criminal Appeal ordered by the Hon'ble High Court of Chennai. Accordingly, Directorate of Vigilance and Anti Corruption, Chennai also issued orders in its confidential letter in RC No.107/01/POL/CC 2 dated 29.08.2008 stating that Directorate has not preferred any appeal (SLP) on the Judgment and given a direction to that effect, order of the High Court of Chennai can be complied with.

2. In the circumstances, Tr. V. Natarajan, Inspector of Police, formerly of Nagapattinam District, is re-instated in service and directed to report before office of the undersigned for further postings."

16. Thus, it is evident from the order reinstating the petitioner that the department has not reserved their right to proceed against the petitioner departmentally. It was merely stated that on the basis of the judgment of acquittal passed by this Court, an opinion was obtained from the defacto complainant namely the Directorate of Vigilance and Anti Corruption to ascertain as to whether any appeal has been preferred against the order of acquittal passed by this Court and it was replied that no such appeal has been preferred. There is nothing to

indicate that such reinstatement has been ordered without prejudice to the right of the department to proceed further with the departmental enquiry. Even other wise, there is an enormous delay in even conducting the departmental proceedings against the petitioner. In such view of the matter, I hold that when the department did not reserve their right to proceed against the petitioner and reinstated him in service, it is not open for them to conduct the disciplinary proceedings especially after long lapse of time. In fact, the petitioner was acquitted by the Criminal Court on 12.12.2007 and the petitioner was thereafter reinstated on 31.10.2008. It is also an admitted fact that the departmental proceedings as well as the criminal proceedings initiated against the petitioner are in respect of the same set of facts. While so, as held by the Honourable Supreme Court in (G.M. Tank vs. State of Gujarat and another) reported in (2006) 3 CTC 494, relied on by the learned counsel for the petitioner, the acquittal order passed in the criminal proceedings will prevail over the departmental proceedings. Useful reference can be made to the decision of the Honourable Supreme Court in Para Nos. 17 and 25, which reads as follows:-

"17. It is thus seen that this is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The respondent failed to prove the charges leveled against the appellant. It is not in dispute that the appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the appellant. In fact, the respondent did not produce any evidence in support of and/or about the alleged charges levelled against the appellant.. Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

25. 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 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. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages."

17. Thus, it is evident that when the departmental proceedings and criminal proceedings are based on same set of facts, the judgment of acquittal passed in the criminal proceedings will prevail over the former and it would be unfair and unjust to subject the delinquent to face the departmental proceedings on the same set of facts.

18. The Honourable Supreme Court, in the decision rendered in the off-quoted case in (Capt. M. Paul Anthony vs. Bharat Gold Mines Limited and another) reported in (1999) 3 Supreme Court Cases 679 wherein it was held that the scope of departmental proceedings and the criminal proceedings are entirely different and they can be continued independently. However, if both the proceedings are based on the same set of facts which were sought to be proved by the same witnesses and when the Court had

already acquitted the appellant by rejecting the case of the prosecution, the findings rendered in the departmental proceedings will have no force of law.

19. In the present case, the petitioner was acquitted by this Court in the criminal proceedings. As far as the departmental proceedings are concerned, even though it was alleged that the petitioner did not cooperate with the departmental proceedings, there was nothing to show the progress of the departmental proceedings or as to at which stage it stands. Merely because an enquiry officer was appointed, it would not amount to conducting a departmental proceedings. Even though the petitioner was reinstated on 31.10.2008, after his reinstatement, there was nothing to show that the department initiated any steps to conduct the enquiry. In fact, in the order of reinstatement dated 31.10.2008, the department has not reserved their right to proceed with the departmental enquiry. Therefore, when the petitioner has been reinstated in service on 31.10.2008, he is entitled to all consequential benefits including promotion. Thus, the order, which is impugned in WP No. 31054 of 2013 is legally not sustainable. In the said order, the petitioner was treated as a probationer without any reason. The remarks that the petitioner is a probationer is unwarranted especially when he is working from 31.10.2008 upon his reinstatement.

20. As far as the relief prayed for in WP No. 31055 of 2013 is concerned, the charge memo was issued on 21.01.2003, but till this date, the departmental proceedings has not been initiated against the petitioner. Rather, the petitioner was reinstated in service on 31.10.2008 without reserving any right to proceed the petitioner with departmental enquiry. In any event, there is a delay of 13 years in commencing or concluding the departmental proceedings as on date. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (Prafulla Chandra Mohapatra vs. State of Orissa and others) 1993 Supp (1) Supreme Court Cases 564 wherein it was observed that having allowed the delinquent to continue in service, the department is not justified in restarting the disciplinary proceedings at the verge of his retirement. In that case, in para No.18, it was held as follows:-

"9. In the facts of the present case the incident relates to May, 1973. The disciplinary proceedings were initiated on 7.10.1974 but were not continued presumably in view of the criminal case started against the appellant and the co-accused Anil Chandra Patnaik. It is important to note that so far as the appellant is concerned, he was acquitted by the Sessions Judge himself by order dated 11.5.1979 and an application for leave to appeal filed by the

State Government under Section 378 Cr.P.C. was rejected by the High Court by order dated 9.10.1979. Thereafter no action was taken to restart the disciplinary proceedings, on the other hand the appellant was reinstated in service by order dated 18.4.1980, and the entire period during which he remained under suspension or dismissal was ordered to be treated as on duty. Not only that the appellant was retired from service upon attaining the age of superannuation on 31.1.1981. The Government subsequently took a decision of restarting the disciplinary proceedings by an order passed on 20.4.1981. In our view it was not proper for the Government to restart the disciplinary proceedings being influenced by any observations recorded by the High Court in the case relating to the co-accused Anil Chandra Patnaik. It may be noted that so far as the present appellant is concerned he was acquitted by the Sessions Court and the special leave application was also dismissed by the High Court. We are also not convinced with the stand taken on behalf of the State Government that the acquittal of the appellant by the Sessions Court was merely on a technical ground of want of proper sanction. A perusal of the Judgment of the Sessions Court shows that the acquittal of the appellant was based both on merits as well as on the want of sanction. The Sessions Judge clearly recorded a finding that there was no evidence to hold that the amount was transferred to the iron chest under double lock and, therefore, it should be held that there was no evidence to prove that the appellant Nizarat Officer Shri P.C. Mohapatra (appellant before us) was either entrusted with the aforesaid amount or had dominion over it. Be that as it may the Government having once allowed the appellant to be reinstated in service on 18.4.1980 and having allowed him to continue in service till his attaining the age of superannuation on 31.1.1981. There was no justification to restart the disciplinary proceedings on 20th April, 1981. It may also be noted that more than 11 years have elapsed to the retirement of the appellant and it would not be proper in the interest of justice to restart the disciplinary proceedings for an event of May, 1973 for which the appellant has already been acquitted in the criminal case right upto the High Court."

21. In the present case, the charge memo has been issued on 21.01.2003 and the petitioner was reinstated in service on 31.10.2008. In the order reinstating the petitioner, the

department has not reserved their right to proceed against the petitioner departmentally. Therefore, at this stage, the department is not justified in contending that the petitioner has to be proceed with departmentally especially when the criminal case filed against the petitioner ended in acquittal.

22. For all the above reasons, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

After pronouncing the order in the above writ petitions today, the learned counsel for the petitioner sought for a direction to the respondents to implement the order passed today within a time frame, as the petitioner is going to retire within nine months. Hence, the concerned authority is directed to implement the order within a period of three months from the date of receipt of copy of this order.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Secretry to Govt.
State of Tamil Nadu
Home Department
Fort St. George Chennai - 600 009
 2. The Director General of Police
Tamil Nadu Police Head Quarters
Kamarajar Salai, Mylapore
Chennai - 600 004
 3. The Commissioner of Police
Greater Chennai, Egmore, Chennai - 600 008
 4. The Deputy Inspector General of Police
Thanjavur Range, Thanjavur
 5. The Deputy Commissioner of Police
Triplicane District, Chintadripet, Chennai - 600 002
- + 1 cc to Mr.C.Manishankar, Advocate SR 43412
+ 1 cc to Government Pleader SR 43302

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W.P.Nos.31054 and 31055 of 2013