

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

Coram

The Honourable Mr. Justice HULUVADI G.RAMESH

and

The Honourable Mr. Justice V.PARTHIBAN

W.A. No.1165 of 2016

C.M.P.No.14958 of 2016

1. The Director General of Police,
Chennai-4.

2. The Joint Commissioner of Police,
North Range, Chennai.

3. The Deputy Commissioner of Police,
Washermanpet,
Chennai City.

... Appellants

Vs.

Ivarkula Raja

... Respondent

Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order dated 25.3.2013 passed in W.P.No.8752 of 2007 by the learned single Judge of this Court.

WP 8752/2007

Writ petition filed under article 226 of the constitution of India to issue a writ of certiorari mandamus calling for the records records pertaining proceedings in C.No.132691/AP3(3)/2006 dt 5.12.2006 passed by the 1st respondent the proceedings in Rc.No.PR.N(2) /App.13/2006 dt 29.6.2006 passed by the 2nd respondent and the final order passed by the 3rd respondent in P.R.No.43/P.R.N.(2)/2005 dt 19.4.2006 and quash the same and direct the respondents to reinstate the petitioner in service and award all consequential benefits including service and monetary.

For Appellant

: Mr. K.Venkataramani,
Addl.Advocate General
assisted by
Mr.P.S.Sivashanmugasundaram,
Spl.G.P.

For Respondents

: Mr.T.K.S.Bharathy Anandraj

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This Writ Appeal has been directed against the order of the learned single Judge passed in W.P.No.8752 of 2007, dated 25.3.2007, in and by which, the proceedings, dated 19.4.2006 passed by the 3rd appellant herein, removing the respondent herein from service, came to be set aside and consequently, directed the appellants to reinstate the respondent in service with all consequential benefits.

2. The respondent herein was recruited as Gr.II Police Constable on 25.10.1993. While he was working as such in H1 Washermenpet L&O Police Station, he came to be suspended with effect from 12.8.2004, on the charge that he left the Headquarters on 21.09.1999 at 20.00 hours without getting prior permission from his superior and that he committed another delinquency along with three others, that on 21.09.1999 he went along with others to house of one Chandralingam and robbed gold jewels, VCR, etc. worth Rs.90,000/- and escaped in a car and thereby, involved in the criminal case registered in Cr.No.214 of 1999 under Section 392 IPC on the file of E8, Kelambakkam Police Station.

3. Pursuant to the said charge, a detailed enquiry was conducted, wherein, it was held that the charge was proved. Based on the same, the Deputy Commissioner of Police awarded the punishment of removal from service on 24.4.2006. The petitioner has preferred an appeal to the Joint Commissioner of Police, who also considered and confirmed the same and consequently, a review also came to be dismissed by the Director General of Police on 10.7.2006. Aggrieved by the same, the respondent has approached this Court by way of writ petition.

4. According to the respondent, he was not involved in the so-called crime and that after full fledged trial, the criminal case which was registered against him, ended with acquittal and as regards the departmental enquiry, no evidence to substantiate the allegations in the charge memo, was let in and there was absolutely no clinching evidence either oral or documentary available on record to prove the charge against the respondent, however, the without appreciating the evidence in proper perspective, the third respondent passed orders on 24.4.2006, removing the respondent from service and also the respondents 1 and 2 without application of mind, arbitrarily rejected the appeal and review, which is against the principles of natural justice.

5. The learned Judge, after adverting to the submissions of the parties and on consideration of the entire material available on record, came to the conclusion that it was admitted fact by the Department that the respondent was arrested near Ayyanavaram Bus stand on 30.09.199 at 2.30 p.m., which will disprove the allegation that the respondent had left the Headquarters and that the defacto complainant, who was said to have got back the properties alleged to have been stolen, was not examined as a witness and further the stolen properties were not produced or marked as material objects, it was doubtful whether the respondent could have been robbed of the said articles. The learned Judge also found that the statements of the departmental witnesses 2 and 3 would no way helpful to prove the charges made against the respondent since they do not implicate him in the alleged commission of the criminal offence or even leaving the Headquarters without the permission of the superiors. Having observed so, the learned Judge set aside the impugned proceedings of the appellants removing the respondent from service. Challenging the same, the Department has come forward with the present appeal.

6. Heard the learned Additional Advocate General for the appellants and the learned counsel for the respondent.

7. Learned Additional Advocate General, assailing the order of the learned Judge, would contend that the very conduct of the respondent having involved in a criminal case of robbery and that already, he was imposed with the punishment of stoppage of two increments without cumulative effect having been proved the charge of bigamy, will not give a clean chit in favour of the respondent so that a lenient view should be taken and that the punishment of removal from service can be set aside. The learned Judge, although considered the acquittal of the respondent of robbery charge in criminal case, however, not considered the evidence available in the departmental enquiry, which categorically proved the charges. He also reiterated the contention that acquittal in the criminal case was not honorary, which would not automatically exonerate the delinquent from the departmental proceedings wherein, the delinquency against the respondent was proved by preponderance of probabilities. Therefore, he would submit that the disciplinary authority has rightly passed the order of removal from service, which was rightly confirmed by the appellate authority and also revisional authority, which required no interference. Therefore, the learned Advocate General sought for setting aside the order of the learned Judge.

8. Mrs.T.K.S.Bharathy Anandraj, learned counsel appearing for the respondent would vehemently contend that absolutely, no interference is required as regards the order of the learned

Judge since having considered the entire material available on record, the learned Judge has categorically held that there was no clinching evidence available to substantiate the charges levelled against the respondent. She would point out that no documentary evidence was let in to prove that the respondent had left the Headquarters without prior permission of the superior and that the stolen properties which were said to have been recovered from the respondent and others were not either produced nor marked as material objects and further the attestors of the alleged confession statements and the seizure mahazars were also not examined. She has further pointed out that when admittedly, the respondent was arrested near Ayyanavaram bus stand at the relevant point of time in connection with the criminal case, it could not held that the respondent had left the Headquarters. The learned counsel further submitted that having undergone the punishment of removal from service for no fault, he faced extreme derogation before the society and the department and it is very difficulty to run the family since he is alone the bread-winner and that the punishment of removal is too harsh and shockingly disproportionate to the charges levelled against the respondent. Therefore, she sought for dismissal of the writ appeal.

9. In the light of the arguments advanced, the points that would arise for consideration are, i) whether the learned Judge has rightly set aside the order of removal of the respondent from service? and ii) whether the punishment of removal from service inflicted against the respondent needs interference or modification?

10. It is pertinent to note that on earlier occasion, departmental proceedings were initiated against the respondent for the charge of bigamy, which was also proved and pursuant to which, he was imposed with punishment of stoppage of two increments without cumulative effect. As regards the present charge is concerned, it was alleged that he had left the Head Quarters on 21.09.1999 without prior permission of his superiors and went to Sathangkuppam within the jurisdiction of E-8, Kelambakkam Police Station and committed robbery of gold jewels, V.C.R. Watch, Dollar and Bank Account books, worth Rs.90,000/- along with others, which resulted in registering a criminal case in Cr.No.214 of 1999 for an offence under Section 392 IPC, which led to his arrest and remand and during the course of investigation, the stolen properties were recovered and he was released on bail after having been lodged in Central Prison, Cuddalore as an under trial prisoner, and such acts becoming of a member of a disciplined police force.

11. Though the respondent was acquitted of the charge of robbery by the learned Judicial Magistrate, it is pertinent to note that it was because of the prosecution failed to prove its case beyond all reasonable doubt and it is settled law that

acquittal in criminal case would not be an impediment to proceed against the delinquent departmentally. It is not in dispute that the petitioner was involved in criminal case and charged with major offence. Though, he consistently pleaded that he was innocent and not committed any offence, it is pertinent to note that no where he had stated nor taken as defence that he was falsely implicated due to animosity or grudge by anyone or the department and further he had not even suggested to the witnesses that he was falsely implicated with ill-motive and further there was nothing demonstrated by the respondent as to why the department had to intentionally grind axe against the respondent.

12. The respondent was a Gr.II Police Constable, discharging duties as such in police force. Already, he was indulged in the commission of bigamy and was dealt with departmentally and penalized with stoppage of two increments without cumulative effect. Instead of minding his ways, again he was found indulged in the undesirable activities that too in the commission of graver misconduct, 'robbery' which, in our view, amounted to unbecoming of a Govt.Servant. In fact, having considered the material available on record, the 3rd appellant, Deputy Commissioner of Police, by impugned proceedings, dated 24.4.2006, has categorically held as under:

".... Moreover, his conduct as a police, now is questionable. As a member of the disciplined police force, he should set an example to others. As he, himself a robber, the police image among the public was tarnished. I also agreed with the findings of the minute drawing officer. Hence, I have come to the conclusion that a discipline force need a discipline police. I awarded the punishment of removal from service from the date of receipt of this order".

13. The appellate authority, Joint Commissioner of Police, North Zone, 2nd appellant herein, while confirming the above, held as under:

"... Though the delinquent was released from the charge in the criminal case, it is only due to the benefit of doubt given to him and not honourable acquittal. In the departmental enquiry, the preponderance of probability is enough to decide the case. Thus the delinquency of the above said police constable is proved in the departmental enquiry beyond any doubt. The punishment is also just and not excessive. Hence, I do not want to interfere with the punishment. The appeal is considered and rejected."

14. The Revisional Authority, Director General of Police, 1st appellant herein also, has held as under:

"... Further, the thrust of the charge is the fact of involvement in a robbery case. The Court has gone to the question of whether the petitioner (along with others) has committed the crime. PW.1, the Inspector of Police has clearly referred to the confession of the petitioner, following which, properties were recovered. This is sufficient to hold the charge proved. The delinquency is serious in nature and the punishment is commensurate. There is no case for leniency. The petition is dismissed."

15. The gravity of the offence must necessarily be measured with the nature of the offence. The respondent was a member of a disciplined force holding the rank of Police Constable. We entirely agree with the findings of the above authorities that charge is serious in nature, being committed by a member of a disciplined force, who deserved stringent punishment. To instill the confidence of the public in the establishment, the only appropriate punishment in such cases is dismissal from service, which has been correctly awarded. In such circumstances, we are of the view that the lenient view, if taken, would amount to clear favoritism to him and send a wrong signal to the other members of the Department where maintaining of 'absolute integrity' is the main motto that whatever wrong they would do, could be let off.

16. Having regard to the above, we are of the view that the order of the learned single Judge is liable to be set aside. Though we are not inclined to interfere with the punishment imposed on the respondent, considering consistent plea of the learned counsel appearing for the respondent the respondent had put in considerable period of service and the family of the respondent, which is entirely dependent upon him, would be at stake, we feel it appropriate to modify the impugned punishment of removal from service into 'compulsory retirement' from the date of the impugned order, dated 24.4.2006 of the 3rd respondent so that the family of the respondent would survive on proportionate pensionary benefits, for which, the respondent is entitled to pursuant to the compulsory retirement. Accordingly, we hereby modify the impugned order of punishment of removal from service into 'compulsory retirement'.

17. In the light of the above, the Writ Appeal is partly allowed on the above terms. The appellant authorities are directed to carry out the exercise as indicated above and conclude the same, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, CMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

TO

1. THE DIRECTOR GENERAL OF POLICE
CHENNAI 4

2. THE JOINT COMMISSIONER OF POLICE
NORTH RANGE, CHENNAI

3. THE DEPUTY COMMISSIONER OF POLICE
WASHERMANPET CHENNAI 8

+1cc to Mr.T.K.S BHARATHY ANANDRAJ, Advocate, S.R.No.65579

+1cc to the Government Pleader, S.R.No.65822

W.A.No.1168 of 2016

CO(SK)
CP 02/01/2017

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