

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WRIT PETITION NO.12057 OF 2010

AND

M.P.NO.2 OF 2010

S.Ganapathy

.. Petitioner

Vs.

1. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
2. The Medical Superintendent,
Government Kilpauk Medical College Hospital,
Kilpauk, Chennai - 600 010.
3. The Government of Tamil Nadu
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai - 9. ... Respondents
(R3 impleaded as per order dated
16.12.2011 in M.P.No.1 of 2011)

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records in pursuant to the Impugned Order of reversion passed by the first respondent in proceeding Na.Ka.No.47976/C.Ma.P2(3)/2006, dated 25.04.2010, to quash the same and direct the respondents to allow the petitioner to continue in the post of Medical Record Technician with all attendant benefits.

For Petitioner : Mr.J.Pothi Raj

For Respondents: Mrs.M.E.Rani Selvam
Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records pursuant to the impugned order of reversion passed by the first respondent on 25.04.2010, to quash the same and to consequently,

direct the respondents to allow the petitioner to continue in the post of Medical Record Technician with all attendant benefits.

2. The facts in a nutshell are as under: It is the case of the petitioner that he was working as Medical Record Technician in the office of the second respondent. It is alleged that based on the criminal complaint given by his wife to the effect that the petitioner has illicit relationship with another woman, a case was registered in Crime No.3918 of 2006. It is stated that the petitioner was arrested and released on bail. Subsequent to the same, the petitioner was placed under suspension with effect from 24.06.2006 and reinstated on 17.11.2008.

3. It is averred that the criminal case ended in acquittal and the same is evident from the order dated 28.08.2009 passed by the learned IX Metropolitan Magistrate, Saidapet. It is claimed that even though the petitioner communicated the said order passed by the criminal court to the respondents, disciplinary proceedings were continued against him and the first respondent, by proceedings dated 25.04.2010, reverted the petitioner to the post of Assistant. Challenging the said order, the present writ petition is filed for the relief stated supra.

4. The learned counsel for the petitioner strenuously argued that:

- a) inasmuch as the petitioner has been acquitted in the criminal case, continuation of disciplinary proceedings on the same set of charges and awarding punishment of reversion is bad in the eye of law and said act is unsustainable;
- b) even though enquiry was conducted in the year 2007 in the disciplinary proceedings, no order was passed by the respondents and only after acquittal of the petitioner in the criminal case, the impugned order has been passed relying on the report of the Enquiry Officer, which has become baseless in view of the finding of the criminal court.

In support of the above said contentions, reliance was placed by the learned counsel on a series of decisions of this Court as well as the Supreme Court, which are dealt with in detail infra.

5. Per contra, the learned Additional Government Pleader in support of the order of reversion passed by the respondents submitted that the petitioner was arrested from the house of other woman at Chennai when he should have been in Puducherry for Medical Record Officer Training for which he was deputed and hence, it is a violation of Rule 19(2) of the Government Servants Conduct Rules and, therefore, the impugned order of reversion is justified.

6. She further submitted that the first respondent on scrutinizing the records and on being satisfied with the findings of the Enquiry Officer, imposed the punishment of reduction to a lower post of Assistant for a period of three years and, therefore, the same does not warrant interference of this Court.

7. I heard Mr.J.Pothi Raj, learned counsel appearing for the petitioner and Mrs.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents and perused the documents on record.

8. It is not in dispute that the basis for the entire cause of action is the complaint given by the petitioner's wife. It is also beyond any cavil that the criminal case, which was initiated on the same set of allegations, ended in acquittal. Therefore, it is apparent that a common thread runs through both the proceedings and the charges in both the proceedings are directly and substantially one and the same. Moreover, the petitioner has been acquitted by the criminal court and even after receiving the copy of the judgment passed by the criminal court, the impugned order of reversion was passed.

9. In such backdrop, let us analyse the case law on the point:

(i) The Hon'ble Supreme Court in M.Paul Anthony V. Bharat Gold Mines Ltd., (1999) 3 SCC 679, held as follows :

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of

the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

(emphasis supplied)

(ii) In yet another decision of the Hon'ble Supreme Court in G.M.Tank V. State of Gujarat and another, (2006) 5 SCC 446, it was held as follows:

"24. In this Case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved.

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."

(emphasis supplied)

(iii) In the case of District Revenue Officer v. R.Palanisamy, (2006) 1 MLJ 169, the Hon'ble Division Bench of this Court, after referring to a catena of decisions on this issue, held as under:

"Acquittal of the accused by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Revenue administration. The contention that since he was acquitted by a criminal Court, the department is completely debarred to proceed with the enquiry cannot be accepted. However, as observed in Capt. M. Paul Anthony v. Bharat Gold Mines, Ltd.[1999 (2) L.L.N 640], since the facts and the evidence in both the proceedings, viz., departmental proceedings and the criminal case were the same, without there being an iota of difference, the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable. In the case on hand, the facts and the evidence in both the proceedings, viz., departmental and criminal were the same and in view of acquittal of the criminal case on merits, we are of the view that the revenue administration is not justified in pursuing the departmental enquiry."

(emphasis supplied)

(iv) Likewise, in P.Ramasamy v. Government of Tamil Nadu, (2006) 1 MLJ 146, the Hon'ble Division Bench of this Court held as under:

"4. Inasmuch as the charges both in the departmental enquiry and in the criminal case are

one and the same, and the Criminal Court acquitted the accused on merits, we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused on merits is to be considered by the department before proceeding further. We are satisfied that inasmuch as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 2-11-95, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference."

(emphasis supplied)

10. The law enunciated in the decisions referred supra, in my considered opinion, squarely applies to the case on hand, as even in the case on hand the charges in the criminal proceedings and departmental proceedings are one and the same and the proceedings before the criminal court ended in acquittal. Since the facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the petitioner 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, in my considered opinion, be applicable in the instant case.

11. For the foregoing reasons, the writ petition is allowed and the impugned order proceeding Na.Ka.No.47976/C.Ma.P 2(3)/2006, dated 25.04.2010, is set aside and the respondents are directed to permit the petitioner to continue in the post of Medical Record Technician with all attendant benefits. No costs. Consequently, M.P.No.2 of 2011 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

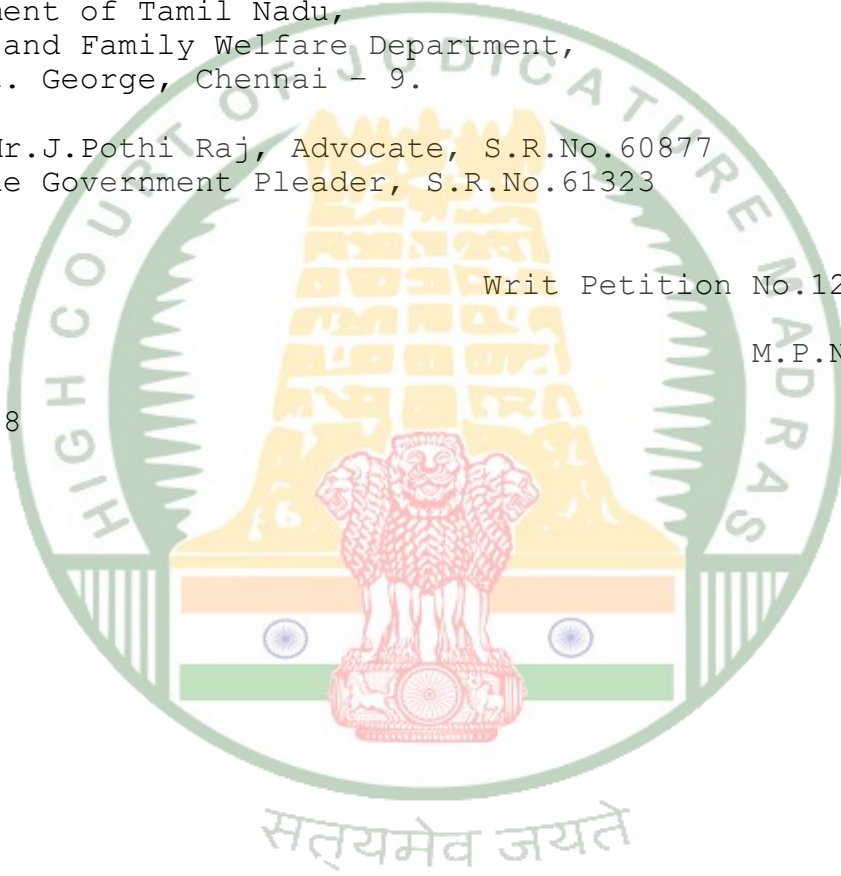
To

1. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
2. The Medical Superintendent,
Government Kilpauk Medical College Hospital,
Kilpauk, Chennai - 600 010.
3. The Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai - 9.

+2ccs to Mr.J.Pothi Raj, Advocate, S.R.No.60877
+1cc to the Government Pleader, S.R.No.61323

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and
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CS/03/01/18



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