



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.A(MD)No.1020 of 2017

and

C.M.P. (MD)No.6998 of 2017

R.Udhayakumar

.. Appellant

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.

3.The Superintendent of Police,
Dindigul,
Dindigul District.

4.The Deputy Superintendent of Police,
Kodaikkanal Range,
Kodaikkanal,
Dindigul District.

.. Respondents

PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order passed by Honourable Mr. Justice S.S.Sundar made in W.P.(MD) No.21172 of 2014 dated 07.06.2017.

Prayer in WP(MD). 21172/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, , calling for the records pertaining to the order passed by the 3rd respondent dated 05.08.2011 in proceedings No. D.O. No. 722 /2011 (C.No. F 1/ PR 01/2009 under Rukle 3(b)) and order passed by the 2nd Respondnet dated 30.03.2012 in Proceedings NO. AP 04/A2/2012 and order passed by the first respondent dated 24.10.2014 vide proceedings in R.C No. 218135/AP 2 (3) /2012 and quash the same and consequently
<https://hservices.ecourts.gov.in/hservices/>
service and regularize his services from the date of dismissal



till the date of reinstatement with salary and with all monetary benefits and other attendant benefits .

WEB COPY

For Appellant

:Mr.T.Lajapathi Roy

JUDGMENT

[JUDGMENT of the Court was made by G.R.SWAMINATHAN, J.]

The unsuccessful writ petitioner is an appeal, challenging the order dated 07.06.2017 made in W.P.(MD)No.21172 of 2014. The appellant herein was working as Grade-II Police Constable and he was posted to Armed Reserved Police at Dindigul. He was posted as Personal Security Officer for one Mr.R.P.Raja in the year 2008 on 12.11.2008. When he reported for duty, the said R.P.Raja informed the appellant that he was not well and that he may go and come the next day for duty. It is alleged that after leaving the residence of the said R.P.Raja, the appellant along with his friend namely, Balasubramanian, went to a nearby TASMAR Wines Bar and picked up quarrel with one Narayanamurthy and two others. In the scuffle that ensued, the appellant had taken out his M.M.pistol and fired at the said Narayanamurthy and caused him injury. This led to registration of an F.I.R against him in Crime No.926/2008 for an offence under Sections 341, 307 of I.P.C and r/w Sec 27 of the Indian Arms Act. The appellant was found guilty under the Indian Arms Act vide judgment dated 14.03.2012 in S.C.NO.18/2010 by the Principal Assistant Sessions Court, Dindigul. He was fully acquitted on appeal by the appellate court by judgment dated 14.06.2012 in C.A.No.31/2012. In the meanwhile, he was removed from service by the order dated 05.08.2011 by the third respondent herein. He filed an appeal before the second respondent and the second respondent also dismissed the appeal, by his order dated 30.03.2012. A Mercy petition was filed before the first respondent. The first respondent declined to interfere and confirmed the punishment by his order dated 24.10.2014. Questioning the same, the appellant herein filed W.P.(MD) No.21172 of 2014. The learned Single Judge dismissed the writ petition by an order dated 07.06.2017. Aggrieved by the same, the present writ appeal has been filed.

2.Heard the learned counsel appearing for the appellant and perused the records carefully.

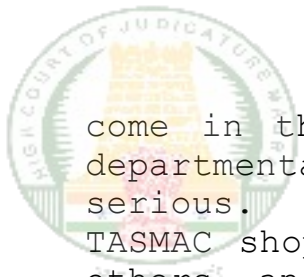


3.The learned counsel appearing for the appellant would contend that the order passed by the appellate authority is absolutely cryptic. While this is true, it cannot be said that the first respondent, who is the head of the Police Force, has passed a very detailed order on 24.10.2014. The order passed by the disciplinary authority as well as the appellate authority would merge with the order passed by the first respondent on 24.10.2014.

4.The first respondent went into the facts and after due application of mind, dismissed the review petition filed by the appellant herein. The first respondent took note of the fact that the appellant was away from his duty place during his duty hours. This is actually admitted by the appellant himself. The appellant would submit by way of defence that the person for whom he was required to give protection had asked him to go away and that he went away. After Thiru.Raja for whom, the appellant was posted as Personal Security Officer informed the appellant that his services were not required on that particular day, the appellant ought to have reported back at the Station. Admittedly, the appellant failed to do so. Therefore, there is no doubt that charge No.1, framed against the appellant stood proved. This aspect of the matter is specifically dealt with by the first respondent herein.

5.The learned counsel appearing for the appellant would contend that though the appellant was found guilty under the Indian Arms Act alone by the trial Court, he was completely acquitted by the appellate court. Placing reliance on a decision of the Honourable Supreme Court in *G.M.Tank Vs. State of Gujarat and others* reported in (2006) 5 Supreme Court Case 446, the learned counsel would contend that it is not open to the departmental authority to come to a contrary conclusion.

6.This contention of the appellant cannot be accepted, in view of the recent decision of the Honourable Supreme Court in *Baljinder Pal Kaur Vs. State of Punjab and Others* reported in (2016) 1 Supreme Court Cases 671. The appellant did not secure honourable acquittal since the principal witnesses had turned hostile. The complainant Mr.Narayanamurthy deposed before the trial Court that neither he nor the appellant herein fired the pistol. He would depose that the pistol fired on its own. From this, one could come to the conclusion that the appellant had won over the main prosecution witnesses. Therefore, the acquittal founded on such a testimony cannot



come in the way of the employer to deal with the delinquent departmentally. In the present case, the allegation is very serious. The appellant is said to have consumed liquor in a TASMAC shop that too during duty hours, picked up quarrel with others and fired from his pistol. Merely because, the appellant was acquitted in the criminal trial, it is not necessary that the enquiry officer should also exonerate the delinquent. This is because the standard of proof in Criminal proceedings is proof beyond any reasonable doubt. On the other hand, the findings of the enquiry officer could be based on "some evidence". The standards of proof are different. Therefore, no exception could be taken to the fact that in the departmental proceedings, the appellant was found guilty, even though the Criminal Court acquitted him of the charges.

7. The learned Single judge has dealt with the matter at great length. He had gone into the entire facts and also applied the relevant legal principles. Only after an elaborate discussion, the learned Single Judge came to the conclusion that the writ petition is liable to be dismissed. We concur with the reasons assigned by the learned Single Judge for dismissing the writ petition. There is no merit in this writ appeal. Accordingly, it stands dismissed. No costs. Consequently, C.M.P. (MD) No. 6998 of 2017 is dismissed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub-Assistant Registrar

To

1. The Director General of Police,
Dr. Radhakrishnan Salai, Mylapore, Chennai-600 004.
 2. The Deputy Inspector General of Police,
Dindigul Range, Dindigul.
 3. The Superintendent of Police, Dindigul,
Dindigul District.
 4. The Deputy Superintendent of Police,
Kodaikkanal Range, Kodaikkanal, Dindigul District.
- +One cc to Mr. T. Lajapathi Roy, Advocate, SR.No.70336
vs/vsg
RL/6C/4P/MR/KKR/SAR3/4/9/2017

JUDGMENT MADE IN

W.A (MD) No. 1020 of 2017

and

C.M.P. (MD) No. 6998 of 2017

03.08.2017