



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

W.P. (MD) No.10682 of 2017
and
W.M.P. (MD) No.8153 of 2017

P.Suresh

... Petitioner

Vs.

1.The Director General of Police,
O/o Director General of Police,
Mylapore, Chennai.

2.The Deputy Inspector General of Police,
O/o the Deputy Inspector General of Police,
Tirunelveli,
Tirunelveli District.

3.The Superintendent of Police,
O/o the Superintendent of Police,
Korampallam, Thoothukudi,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorarified Mandamus, call for the records passed by the 3rd respondent herein D.O.No.865/2015/C.No.F1/P.R.138/14, dated 23.06.2015, the consequential Appeal Rejection Order passed by the 2nd Respondent herein in Na.Ka.No.C4/Ma.Mu.72/2015 dated 01.09.2015 and the Review Rejection Order passed in R.C.No.70104/AP2 (1)/ 2016 by the dated 16/01/2017 by the 1st Respondent and quash the same and consequentially direct the Respondents herein to reinstate the Petitioner in service with all consequential monetary and service benefits.

For Petitioner

:Mr.A.Thiruvadikumar

For Respondents

:Mr.N.S.Karthikeyan

Additional Government Pleader

ORDER

This Writ Petition has been filed, challenging the order passed by the third respondent / Disciplinary Authority, dated 23.06.2015, and order passed by the Appellate Authority, namely the first respondent, dated 01.09.2015 and the order passed by the first respondent, dated 16.01.2017, rejecting the review petition filed by the petitioner.



2. The brief facts that are necessary for the purpose of disposing of the above Writ Petition are as follows:

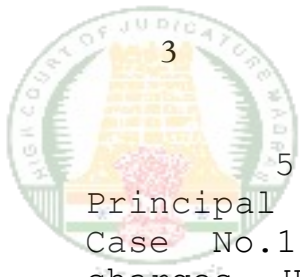
2.1. The petitioner was appointed in service as a Grade-II Police Constable, on 01.03.2009. Thereafter, he was transferred to Armed Reserve Police, Tuticorin, in the year 2011. Subsequently, he was given posting in the Thermal Nagar Police Station as Grade-II Police Constable. While he was in service, he was given a charge memo on 26.11.2014, and the charges against the petitioner are as follows:

(i) On 13.11.2014, the petitioner cause damage to a bus belonging to State Transport Corporation, bearing No. TN 63 N-1222, by throwing a stone and there by caused injury to a girl, by name Vinodha. The petitioner was therefore responsible for registration of a criminal case in Cr.No.520 of 2014 under Section 3 of TNPPDL Act and Sections 324, 353, 294(b) and 506 (i) of IPC. The conduct of the petitioner being in service in the police department, which is a law enforcement agency, is a serious and grave misconduct.

(ii) The petitioner who was supposed to be on duty during night on 13.07.2014, absented himself and did not report. Hence he is guilty of unauthorized absence. The conduct of the petitioner is therefore an irresponsible misconduct.

3. The Disciplinary Authority proceeded with disciplinary proceedings by appointing an Enquiry Officer. The petitioner was placed under suspension, pending disciplinary proceedings by an order dated 17.03.2015. However this order of suspension was subsequently revoked on 17.03.2015.

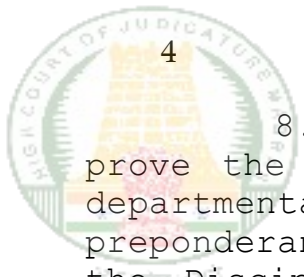
4. Pursuant to the appointment of an Enquiry Officer, a detailed enquiry was conducted by the Enquiry Officer. 14 witnesses, were examined, by the department to prove the charges against the petitioner and the enquiry report was submitted on 22.04.2015, finding the petitioner guilty of all the charges. After the enquiry report was duly served on the petitioner along with the show cause notice by the third respondent and after getting further explanation from the petitioner, the Disciplinary Authority, namely, the third respondent passed an order removing the petitioner from service by proceedings dated 23.06.2015. As against the order of removal from service, the petitioner preferred an appeal before the second respondent, on 25.08.2015 and the second respondent passed an order on 01.09.2015, rejecting the appeal preferred by the petitioner. It was thereafter, the petitioner filed a review petition, before the first respondent, and the same was also dismissed by the first respondent, on 16.01.2017. The above Writ Petition is filed challenging the order of the first respondent confirming the order of punishment imposed by the third respondent as confirmed by the appellate authority.



5. Pursuant to the registration of the criminal case, the Principal District Judge, Tuticorin, conducted a trial in Session Case No.156 of 2016, and acquitted the petitioner from all charges. Hence one of the ground, that was raised by the learned counsel for the petitioner was by relying upon the judgment of Principal District Court, dated 08.12.2016, passed in Sc.No.156 of 2016. In the case on hand, the charges against the petitioner are held proved by the Enquiry Officer, after examining 14 witness. The report of the Enquiry Officer is based on evidence. The petitioner was given full opportunity during the enquiry and he participated in the enquiry and cross examined the witnesses. Though the petitioner denied the incident on 13.07.2014, on the basis of evidence of witnesses and other circumstances, the Enquiry Officer came to a definite conclusion that the charges against the petitioner are proved. The petitioner also was given further opportunity to give his further explanation to the enquiry report. After considering the charges, enquiry report and the petitioner's further explanation the Disciplinary Authority accepting the enquiry report, passed an order removing the petitioner from service. The Appellate Authority, namely the second respondent also considered the findings of the Enquiry Officer and the petitioner's explanation apart from other grounds raised in the appeal. After an independent application of mind, the Appellate Authority has confirmed the order of third respondent. The first respondent also confirmed the order of the Disciplinary Authority as well as the Appellate Authority, by a speaking order.

6. The power of judicial review is not similar to an adjudication of case on merits as an Appellate Authority. This Court in exercise of power under Article 226 of Constitution of India, does not act as an Appellate Authority. This Court can exercise within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Once, the decision of the Disciplinary Authority is within the confines of reasonableness, it is no part of this Court function to look further into its merits. This Court will not normally interfere with the findings of facts based on legal evidence.

7. As pointed out earlier the main submission of the learned Counsel for the petitioner, is by relying upon the order passed by the Principal District Judge, Tuticorin in SC.No.156 of 2016, wherein, the petitioner was acquitted from the criminal case. The reading of this judgment gives an indication that the acquittal is not a honorary acquittal. The petitioner was acquitted in the criminal case only on the ground that the petitioner is entitled to the benefit of doubt and that the offence on which he is alleged to have been committed by the petitioner was not proved beyond reasonable doubt.



8. The law is well settled that the standard of proof to prove the commission of criminal offence is high and as far as departmental proceedings are concerned, the findings can be on preponderance of probabilities. The law is also well settled that the Disciplinary proceedings on similar set of charges can be confirmed despite acquittal in a criminal case. Hence the main submission of the learned Counsel for the petitioner cannot be accepted.

9. In the present case, the charges against the petitioner are serious. The petitioner who is employed as a Grade-II Police Constable, is expected to behave responsibly in public, even when he is not in duty. In this case, the petitioner is found guilty of charges for causing damages to a State Transport Corporation bus, and caused injury to a small minor girl. A Government servant who commits misconduct in public place for his personnel ends against the interest of the Government and public, must be dealt with appropriately and no lenience need to be shown. The misconduct proved against the petitioner is an act is prejudicial to public order.

10. In the present case, domestic enquiry was conducted in a proper manner and there is no denial of opportunity to the petitioner. The findings of the Enquiry Officer are based on evidence. The punishment imposed cannot be taken as one disproportionate to the proof of misconduct against the petitioner. No *malafides* alleged in this case against the Enquiry Officer or against anyone, who has given evidence against the petitioner about his misconduct. This is not a case, where the findings of the misconduct were based on mere suspicion. It is alleged by the petitioner that the petitioner was not identified by the victim, and there are other circumstances which are not considered by the Enquiry Officer. It is well settled that strict rules of evidence are not applicable in a domestic enquiry. In a departmental proceedings, the Disciplinary Authority is expected to render findings on preponderance of probabilities and not on proof beyond reasonable doubt. Going by the enquiry report, this Court is also convinced that the findings are unassailable. No attempt was made by the learned counsel for petitioner to show that the findings of enquiry officer is either perverse or based on no evidence. No other legal infirmity is pointed out by the learned Counsel for the petitioner.

11. This Court find no merits in this Writ Petition. Hence the same is dismissed. No Costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(Records)

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To

WEB COPY

1.The Director General of Police,
O/o Director General of Police,
Mylapore, Chennai.

2.The Deputy Inspector General of Police,
O/o the Deputy Inspector General of Police,
Tirunelveli,
Tirunelveli District.

3.The Superintendent of Police,
O/o the Superintendent of Police,
Korampallam, Thoothukudi,
Thoothukudi District.

+One cc to Mr.A.Thiruvadikumar, Advocate, SR.No.59612

+One cc to The Special Government Pleader, SR.No.59414

TA/CMR

RL/6C/5P/KP/SAR1/3/7/2017

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