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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ORDER RESERVED ON:22.11.2016
ORDER PRONOUNCED ON:03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.27 of 2013

and

M.P. (MD) .No.1 of 2013

1. Director of Technical Education,
Chennai-25.

2. The Principal,
Government Engineering College,
Tirunelveli. ... Appellants/Respondents

Vs

A. John Antony doss ... Respondent /Writ Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 18.09.2012 made in W.P. (MD).No.7684 of 2011.

Prayer in WP(MD). 7684/2011:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue order, direction or Writ order in the nature of appropriate Writ in particular, a Writ of Certiorari calling for the records connected with the impugned order of dismissal passed by the 2nd respondent in his proceedings No.4068/E2/05 dated:13.06.2005 and confirmed by the 1st respondent and the contents of the same was communicated by the 2nd respondent by his order dated 12.02.2010 in proceedings No.3529/E2/06 and the consequential order of the 2nd respondent in his proceedings 3529/E2/06 and consequential order of the 2nd respondent in his proceedings 3529/E2/2006, dated 28.03.2011 and quash the



reinstate the petitioner with continuity of service with all other monetary and other service benefits.

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For Appellants : Mr. AK. Baskarapandian
Special Government Pleader

For Respondent : Mr. R. Rengaramanujam

JUDGMENT

[Judgment of the Court was delivered by
J. NISHA BANU, J.]

This Writ Appeal has been filed against the order dated 18.09.2012 made in W.P.(MD).No.7684 of 2011, whereby, the learned Judge directed the appellants herein to reinstate the respondent with all consequential benefits within the time specified therein. Aggrieved over the same, the appellants are before this Court.

2. The short facts, leading to filing of this Writ Appeal, are as follows:-

2.1. By consent, this Writ Appeal is taken up for final disposal. The respondent herein is the Writ Petitioner in W.P(MD).No.7684 of 2011 and the appellants herein are the respondents in the Writ Petition. For the sake of convenience, the parties are referred to as per the rank in the Writ Petition.

2.2. The Writ Petitioner was appointed on compassionate ground as Gardener by the second respondent and his services were regularised on 03.07.1986 and he had also completed his probation on 02.07.1987. Subsequently, he was appointed as Watchman in the time scale of pay and he had also got selection grade on 22.04.1997. He was involved in a road accident on 21.08.2003 in which his cycle and motor cycle of the Principal was involved. At the instance of the second respondent, a criminal case was registered against the petitioner at Perumalpuram Police Station, Tirunelveli in Cr.No.1301 of 2003 for offences under Sections 341 and 427 IPC and it was tried in S.C.No.392 of 2003 under Sections 341, 307 and 427 IPC. The Chief Judicial Magistrate, Tirunelveli by judgment, dated 10.02.2005



convicted the petitioner in respect of the offences under Sections 341, 323 and 427 IPC and imposed a fine of Rs.500/- in default one week simple imprisonment for the offence under Section 341 IPC; sentenced to undergo one year rigorous imprisonment and imposed a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment for the offence under Section 323 IPC and imposed a fine of Rs.500/- in default to undergo one month simple imprisonment for the offence under Section 427 IPC. As soon as the order of the criminal Court made available, the second respondent by an order, dated 13.06.2005 removed the petitioner from service on the strength of the conviction. The petitioner preferred an appeal against his conviction before the Sessions Court in CrI.A.No.53 of 2005. By the judgment, dated 27.04.2006, the learned Judge, Tirunelveli, confirmed the finding rendered by the trial Court. However, let off the petitioner under the provisions of Probation of Offenders Act, after getting good conduct by entering the jail for three years, in terms of Section 4(1) of the Probation of Offenders Act. On the strength of the above order, the petitioner preferred an appeal to the second respondent and brought to his notice about his subsequent release by the provisions of the Probation of Offenders Act. The petitioner also filed an appeal to the first respondent, namely, the Director of Technical Education, Chennai, who in turn sought for a report of the State Government. The State Government by communication, dated 17.10.2007 rejected the request and recorded as follows in the said communication;

"I am directed to invite attention to your letter cited and to inform you that the Appellate Court has upheld the findings of the lower Court regarding conviction and as the conviction of the individual has not been set aside and it still persists the Government is not bound to reinstate the individual in service as the removal of the individual from service itself is ordered based on the conviction ordered by the Court of Assistant Sessions Judge and Chief Judicial Magistrate."

2.3. The orders of the first and the second respondents were challenged in W.P(MD).No.4893 of 2010 and after elaborate discussion and by placing reliance



upon the judgments reported in *Union of India Vs Tulsiram Patel* reported in (1985) 3 SCC 398, held that the impugned orders came to be passed on the strength of the conviction and judgment of the trial Court and the impugned order of the second respondent on advise from the state Government came to be passed on the strength of the appellate Court order. The State Government by letter dated 17.10.2007 had communicated to the first respondent therein and the first respondent based on the communication from the Government gave a correct decision that release under the probation of offenders Act also amount to conviction, but there was no discussion, whether the appellate authority had applied his mind in respect of the proportionality of the punishment met out by the petitioner. Consequently, the impugned orders were set aside and the matter was remanded for fresh disposal to the second respondent to draw a conclusion on the basis of the judgment obtained by the petitioner in the criminal Court in C.C.No.53 of 2005 dated 27.04.2006 and gave liberty to the petitioner that if he was still aggrieved about any adverse order passed by the second respondent, there was time enough for him to approach this Court after exhausting all remedies available under law.

2.4. Based on the orders passed by this Court in W.P(MD).No.4839 of 2010, the petitioner gave a representation to the second respondent requesting them to reinstate him into service. The second respondent herein had passed an order dated 28.03.2011, wherein, it has been stated that though the allegations were not in respect of conduct Rules 20 and 21, but, his earlier conduct has not been good and by stating the various incidents which had taken place at that point of time, while the petitioner was in service and also holding that the petitioner did not regret for his activities, the second respondent confirmed the order of dismissal passed on 13.06.2005 which was challenged in W.P(MD).No.7684 of 2011.

3. The Writ petitioner contended that the respondents failed to consider the spirit of the Probation of Offenders Act, 1958 and Section 12 of the Probation of Offenders Act which clearly stipulates the removal of disqualification attaching to conviction,



"Removal of disqualification attaching to conviction -

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law"

and therefore, as per the above provision, the petitioner ought not to have been removed from service and the conviction was not a disqualification as he was released under the provisions of the Probation of offenders Act, 1958. It was further stated that it is a settled principles of law that once any person is released under Probation of Offenders Act, he should not suffer any disqualification as held by the Hon'ble Supreme Court and in number of cases and this Hon'ble High Court and therefore the non-consideration of the order of dismissal in the light of section 12 of the probation of Offenders Act is highly arbitrary and therefore, it is illegal and liable to be set aside.

4. Per contra, the respondents filed a counter affidavit in W.P(MD).No.7684 of 2011 by stating that the reason which led to the conviction was analysed by the Committee and the observations were recorded and the petitioner did not regret for any of his acts and therefore, dismissal order was passed and it does not warrant any interference from this Court.

5. On scanning the materials placed before the learned Judge, eventually, this Court, vide its order, dated 18.09.2012 made in W.P(MD).No.7684 of 2011 found that the dismissal order cannot be sustained as it violates Section 12 of the Probation of Offenders Act. For arriving such conclusion, the learned Judge had relied upon the Judgment of the Apex Court, reported in *Shankar Dass Vs. Union of India and another, 1985 (2) SC 358*, wherein, it has been held as follows:-

"4.Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or 4 shall not suffer disqualification" attaching to a conviction

of an offence under such law. The order of



dismissal from service consequent upon a conviction is not a 'disqualification' within the meaning of Section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "disqualification for voting" contain provisions which disqualify persons convicted of certain charges from being member of Legislatures or from voting at elections to Legislatures. That is the sense in which the word "disqualification" is used in Section 12 of of the Probation of Offenders Act. Therefore, it is not possible to accept the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned single Judge of the Delhi High Court"

6. At this juncture, the respondents specifically emphasise that the conduct of the petitioner was taken into consideration, who did not place any regret for his previous acts and therefore, he prays for appropriate orders.

7. The respondent would stoutly deny the statement of the respondents and reiterating that the order of the learned Single Judge stating that the order under challenge does not warrant any interference at the hands of this Court.

8. In a case reported in (2007) 1 MLJ 445, **J. Anandharaj Vs. District Collector, Virdhunagar and another**, it was held that there was no bar for a person for continuance in public employment if the petitioner therein was released on Probation of Offenders Act and good conduct under Section 4(1) of Act of 1958 and set aside the order of termination therein.

8.1. In a case reported in 2000 (IV) CTC 409, **P. Subramanian Vs. Joint Registrar of Co-operative Societies**, in paragraph No.15, it has been held as follows:-

"Though Section 12 of the Probation of Offenders Act does not preclude the department from taking action again his misconduct leading



to the offence or his conviction thereon as per law and as observed by Their Lordships in *Divisional Personnel Officer v. T. R. Challappan*, AIR 1975 SC 2216, the conviction of a delinquent employee simpliciter without anything more will not result in his automatic dismissal or removal from service. Added to this, the learned Sessions Judge in order to protect his services, released him under Section 3 of the Probation of Offenders Act. In the light of the above factual and legal position referred to above, the impugned proceedings of the first respondent dated 13.3.98 is quashed and the respondents are directed to reinstate the petitioner in service with all service benefits and without salary and other monetary benefits for the period in which he was not in service"

8.2. In a case reported in **(2009) 6 MLJ 8, S. Parbaharan Vs Thalavi Commandant**, this Court had dealt with the scope of releasing of the petitioner therein under Section 5 of the Probation of Offenders Act, wherein, in paragraph No.15, it has been held as follows:-

" 15. Looking at a person, with a closed mind incarcerate, for the rest of his life in securing employment in State or Central service, although he had worked in a paramilitary force, would defeat the very object of the Act. When the makers of law viz., legislature have enacted a specific laudable reformative legislation and the menders of law, the Court of competent jurisdiction with a view to rehabilitate the petitioner, has released him under the Probation of Offenders Act, the executive, who is bound to give effect to the law and order of the Court, cannot punish a young offender indefinitely by denying his right to seek employment. The contention of the petitioner that he had disclosed the fact of involvement in Criminal case and the subsequent order of the learned Judicial Magistrate in the application submitted before the selection authorities has not been disputed by the respondent. Therefore, the reasons adduced by the respondents for cancellation of appointment, cannot be



countenanced"

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9. From the above judgments, it is very clear that if a person found guilty and dealt with Section 3 or Section 4 of the Act, shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. It is seen that in the earlier round of litigations this Court has clearly held that the petitioner ought to have given an opportunity and without considering the spirit which the order was passed, the respondents confirmed the dismissal order by relying upon certain irregularities committed by the respondent herein which cannot be accepted for the simple reason that the respondent was dismissed from service only based on the conviction passed by the Criminal Court. The provisions and the intention of the legislators in passing the Probation of Offenders Act, 1958 and Section 12 of the said Act was totally overlooked and the long services of the petitioner was not taken into consideration. The reasons assigned in coming to the conclusion are all matters which has been previously decided where serious punishment were not inflicted on the respondent. In the present case on hand, it is seen that in the disciplinary proceedings, a charge memo followed by enquiry has been initiated and without following the principles of natural justice, the respondent/writ petitioner was removed from service. The respondents taking note of the judgment cited supra in **Union of India Vs Tulsiram Patel** reported in **(1985) 3 SCC 398**, ought to have given lesser punishment by considering his length of service. It is either for the Court to substitute the punishment or to remand the matter to the authority to pass fresh orders, but, in the case on hand, already in the previous round of litigation, it was remanded and due to long pendency of the cases, in our considered opinion, the ends of justice would be met, if the punishment is modified to that of postponement of increments for two years without cumulative effect instead of dismissing the respondent from service.

10. Therefore, we confirm the order of the learned Judge dated 18.09.2012 made in W.P.(MD).No.7684 of 2011 to the extent of setting aside the order of dismissal passed against the Writ petitioner. However, while reinstating him into service, a punishment of postponement of increments for two years without



cumulative effect can be awarded to him.

11. This Writ Appeal is partly allowed with the said observations. Such exercise shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To:

1. Director of Technical Education,
Chennai-25.

2. The Principal,
Government Engineering College,
Tirunelveli.

SSM

KK-RR-ME-20.01.2017-9P-3C

W.A(MD) .No.27 of 2013
03.01.2017