

THE HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17969 of 2000

ORDER:

This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with order, dated 22.06.2000, and quash the same.

2. Heard Sri P.B. Vijaya Kumar, learned counsel for the petitioners and Sri P. Harinath Gupta, learned Standing Counsel for the 1st respondent.

3. The writ petition was filed by the 1st petitioner. During pendency of the writ petition, the 1st petitioner died and his legal representatives were brought on record. It is the case of the 1st petitioner that he joined as a Security Guard in the 1st respondent Devasthanam on 15.09.1979 and while he was working as a Security Guard during 1996, it has been alleged that he has involved in the theft of iron rods weighing 3,250 kgs., worth Rs.46,000/- from the DPW stores. A case in FIR No.81 of 1996 was registered on 26.10.1996 at CCS, Tirupathi. Thereafter, the 1st petitioner was placed under suspension and a regular departmental enquiry was conducted by issuing a charge memo on 24.11.1997. The 1st petitioner submitted his explanation denying the said charges. Not satisfied with the said explanation, the disciplinary authority has appointed an enquiry officer.

4. The 1st petitioner has submitted a representation to the Disciplinary Authority to stay the departmental enquiry till the criminal proceedings are finalized. But, the same was not accepted. In those set of circumstances, the 1st petitioner has filed W.P. No.9981 of 1998 seeking to keep the departmental enquiry in abeyance till the criminal

proceedings are finalized. The said writ petition was dismissed. The enquiry was adjourned on several occasions to enable the 1st petitioner to participate in the enquiry. But, the 1st petitioner has not participated in the enquiry. Then the Enquiry Officer has submitted a report holding that the charge is proved. Basing upon the enquiry report, the Disciplinary Authority imposed a punishment of dismissal on the 1st petitioner vide proceedings dated 22.06.2000. Challenging the same, the present writ petition is filed.

5. It is contended by the learned counsel for the petitioners that the 1st petitioner was acquitted in the criminal case i.e. CC No.497 of 1998 by the II Additional Judicial Magistrate of First Class, Tirupathi vide judgment, dated 11.01.2002, and therefore, the 1st petitioner is entitled for reinstatement consequent upon the acquittal in the criminal case. Learned counsel relied upon a judgment of the Supreme Court reported in G.M. Tank v. State of Gujarat¹ and contends that the 1st petitioner should be reinstated into service. It is also brought to the notice of this Court by the learned counsel for the petitioners that the 1st petitioner died on 09.10.2016 and that his legal representatives were brought on record vide orders, dated 10.11.2017. He further contends that the stigma of dismissal on the deceased petitioner should be set aside and that all the benefits to which the deceased petitioner was entitled should be passed on to the legal representatives of the deceased petitioner.

6. Sri P. Harinath Gupta, learned Standing Counsel for the 1st respondent contends that mere acquittal in a criminal case would not make the 1st petitioner eligible for automatic reinstatement into service and that the scope of domestic enquiry and criminal case are quite

¹ 2006 (5) Supreme Court Cases 446

different, and in a criminal case the entire burden to prove the guilt of the accused lies on the prosecution, whereas in the departmental enquiry it is for the charged officer to prove that he is innocent. So, mere acquittal in a criminal case would not entitle the charged officer to be reinstated automatically and hence, no interference is called for in this case by this Court as the Disciplinary Authority has rightly imposed the punishment of dismissal for the proven misconduct of the 1st petitioner. Learned counsel relies on two decisions of the Supreme Court reported in *State of West Bengal and others v. Sankar Ghosh*² and *Deputy Inspector General of Police and another v. S. Samuthiram*³.

7. I have considered the rival submissions made by the parties. The deceased petitioner was acquitted in the criminal case i.e. CC No.497 of 1998 vide order, dated 11.01.2002 by giving benefit of doubt. In the judgment relied upon by the counsel for the petitioners in *G.M. Tank's case* (1 supra), the accused therein was given a clean acquittal and in those set of circumstances, the Supreme Court had granted relief. But, in the present case, the 1st petitioner was acquitted by criminal Court by giving benefit of doubt and he has also not participated in the enquiry to prove his innocence. The respondents had no other option except to proceed with the enquiry based on the material available with it. The 1st petitioner was not bothered to appear before the enquiry officer and defend himself. In the absence of any pleading as to lacuna in respect of principles of natural justice or proportionality, it becomes difficult for this Court to interfere in the disciplinary cases. Learned counsel for the petitioners relies upon the acquittal of the 1st petitioner in the criminal case, and pleads that the 1st petitioner may

² 2014 (3) Supreme Court Cases 610

³ 2013 (1) Supreme Court Cases

be reinstated. I am afraid to accept such a contention. The writ petition is devoid of merits and hence, the same is liable to be dismissed.

8. The Writ Petition is dismissed. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

ABHINAND KUMAR SHAVILI, J

December 07, 2017
KTL

