

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.471 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri S.Harinath Reddy, learned counsel for the appellant, and Ms.T.Bala Jayasree, learned Standing Counsel for the Railways. This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.1862 of 2009 dated 09.02.2017. The appellant herein is the petitioner in the Writ Petition, and is a Constable with the Railway Protection Force. On the ground that he attempted to outrage the modesty of a minor girl aged 14 years, whose family was residing next to his house, on 11.03.2005 and 13.03.2005, the appellant-writ petitioner was arrested and remanded to judicial custody. Subsequently, a charge sheet was filed in S.C.No.115 of 2005 on the file of the Principal Assistant Sessions Judge, Srikakulam. The appellant-writ petitioner was placed under suspension on 18.04.2005, and a charge memo was issued to him on 12.05.2005 framing four charges, which read thus:-

1. A criminal case for inducing and attempting to outrage the modesty of a minor girl by name D.Bruna Florence aged 14 years was registered against him by I Town local police of Srikakulam Town in Crime No.31/2005 U.S 366-A I.P.C.
2. He failed to inform the Administration of his arrest in Crime No.31/2005 U/s.366-A I.P.C. and thus deliberately concealed the facts of his arrest.
3. He indulged in an act of discreditable conduct involving Moral Turpitude by inducing and attempting to outrage the Modesty of a Minor girl by name D.Bruna Florence, D/o. Sri D.B.D.B. Kumar, R/o.Harijana Colony, Old Srikakulam Village, Srikakulam and threatening her family members with dire consequences, which amounts to serious misconduct unbecoming of a member of the force.

4. He did not turn up for return roll call for the 00.00 hrs. to 8.00 hrs. on 16.04.2005 as per the GD entry No.15 of 16.04.2005 of VSKP O/P and remained absent till 27.04.2005 in an unauthorised manner which shows his scant regard to his job and negligence on his part.

An enquiry officer was nominated. After an enquiry was conducted wherein 6 witnesses were examined and 14 exhibits were marked, the enquiry officer submitted his report on 08.09.2005 holding that all the charges levelled against the appellant-writ petitioner, were established. After the appellant-writ petitioner submitted his objections to the enquiry report on 31.10.2005, an order of punishment was passed, on 04/05.11.2005 by the disciplinary authority, reducing his scale of pay from Rs.3,500/- to Rs.3,050/-, i.e to the minimum of the scale of pay of Rs.3,050-4,540, for a period of two years with recurring effect.

In the order under appeal the Learned Single Judge noted that the 2nd respondent had held charge Nos.1 and 2 as proved; charge No.3 related to the appellant-writ petitioner's discreditable conduct of inducing and attempting to outrage the modesty of a minor girl, and threatening her family members with dire consequences; the plea of the appellant-writ petitioner, that the minor girl was mentally mature and was in love with him, was not tenable as she was a minor; the evidence of the girl's father, who was examined as P.W.2, was to the effect that there was an incident of kidnap of his daughter on 31.03.2005, keeping in mind the family's honour an amicable settlement was reached, and an apology letter was submitted by the petitioner; this was substantiated by other witnesses' evidence; the appellant-writ petitioner had disturbed the peace and tranquillity of the colony creating a nuisance in front of P.W.2's house, and threatening him and his family with dire consequences; 170 residents of the colony, where the appellant-writ petitioner resided, gave a complaint to the local police about his conduct;

charge No.3 was, therefore, established; charge No.4, which related to the appellant-writ petitioner's absence for return roll call on 16.04.2005 and his absence till 27.04.2005 unauthorisedly, was also established; his plea that he was kidnapped by unknown persons on 16.04.2005 was not accepted; the appeal preferred by the appellant-writ petitioner was rejected by the appellate authority by proceedings dated 16.12.2005; and his representation that he was acquitted by the Criminal Court on 20.07.2007, in Sessions Case No.115 of 2005, was also rejected on 26.05.2008 on the ground that it was time-barred.

The Learned Single Judge, thereafter, observed that the standard of proof in a criminal case is 'proof beyond reasonable doubt' which is different from the burden of proof in disciplinary proceedings where preponderance of probabilities is considered sufficient; the girl in question and her father had deposed in the criminal case in favour of the appellant-writ petitioner, obviously in view of the settlement between the parties, keeping in view the family's honour and that of the girl; the appellant-writ petitioner himself claimed that the minor girl was in love with him, and had produced certain letters allegedly written by her; the girl being a minor, this plea was rightly not accepted; it was proved in the disciplinary enquiry that the appellant-writ petitioner had threatened her family members with dire consequences; 170 members of the colony, where the appellant-writ petitioner resided, gave a complaint to the police about his conduct; this last event was not even the subject matter of the criminal case; moreover the unauthorised absence of the appellant-writ petitioner was also proved in the disciplinary proceedings; it could not, therefore, be said that the punishment imposed on the appellant-writ petitioner, by the respondents, was disproportionate to the proved act of misconduct; and it was not liable to be interfered with in proceedings under Article 226 of the Constitution of India.

Sri S.Harinath Reddy, learned counsel for the appellant-writ petitioner, would submit that the appellant-writ petitioner has been acquitted of the charges in the criminal case; as the charges levelled against the appellant-writ petitioner in the disciplinary proceedings are identical to those of which he was charged in the criminal case, the appellant's acquittal in the criminal case would require the order passed by the disciplinary authority to be set aside; even otherwise, the punishment imposed on the appellant-writ petitioner is shockingly disproportionate to the charges held established against him; and, as the future career of the appellant-writ petitioner is at stake, this Court should consider atleast modifying the punishment imposed on him.

We must express our inability to agree. The order of punishment, in the disciplinary proceedings, was imposed prior to the appellant-writ petitioner's acquittal by the Criminal Court. While the order of the disciplinary authority is dated 04/05.11.2005, the order of the appellate authority is dated 16.12.2005, both of which are long prior to the appellant-writ petitioner's acquittal in the criminal case on 20.07.2007. Prior conviction in the disciplinary proceedings would not necessitate being set aside on the basis of a subsequent acquittal in a criminal case. Even otherwise, as has been rightly observed by the Learned Single Judge in the order under appeal, the charge relating to the nuisance created by the appellant-writ petitioner in the colony for which 170 residents of the colony had given a complaint against him, and his unauthorised absence from duty, was not even the subject matter of the criminal proceedings.

In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous

Petitions pending, if any, shall also stand dismissed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

13th April, 2017
JSU

(DR. SHAMEEM AKTHER, J)



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