IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

C O R A M
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P.Nos.1820 & 22848 of 2012

P.Arumugam
S/o. Palaniappan,
Police Constable, Grade-I No.1779,
Control Room,
Salem City Police, Salem. ... Petitioner in both the petitions

Vs

1. The Inspector General and
Commissioner of Police,
Salem City Police, Salem.
2. The Deputy Commissioner of Police,
Law & Order,
Salem City Police, Salem. ... Respondents in W.P.No.1820 of 2012

1. The Commissioner of Police,
Salem City Police,
Salem.
2. The Deputy Commissioner of Police,
Law & Order,
Salem City Police, Salem.
... Respondents in W.P.No.22848 of 2012

Prayer in W.P.No.1820 of 2012: Petition filed under article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders in (1) P.R.No.44/H1/2009, dated 24.11.2010 of the second respondent and (2) Pro.C.No.Appl.14/H1/2010, dated 28.04.2011 of the first respondent, to quash the same and to issue consequential directions to the respondents to regularise the period of suspension from 15.06.2009 to 28.12.2009 as 'duty period' for all purposes with all consequential benefits.

Prayer in W.P.No.22848 of 2012: Petition filed under article 226 of the Constitution of India, calling for the records of the 1st and 2nd respondents relating to (1) Proceedings C.No.Appl.01/H1/2012, dated 10.03.2012 and (2) PR No.44/H1/2010, order dated 30.12.2011 in respectively, to quash the same and to issue consequential directions to the respondents to regularize the period of suspension from

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14.07.2010 to 10.03.2011 as 'duty' for all purposes and disburse consequential benefits with interest on arrears.

For Petitioner : M/s.M.Ravi
(in both the petitions)
For Respondents : Mr.K.S.Suresh, G.A.
(in both the petitions)

O R D E R

The petitioner has filed these Petitions to quash the orders of the respondents and to issue consequential directions to the respondents to regularize the periods of suspension as 'duty' for all purposes and disburse consequential benefits with interest on arrears.

2. The petitioner in these Writ Petitions challenges the orders of punishment. When the petitioner was working as a Police Constable in Salem, two criminal cases were filed against him in Crime Nos.617 of 2010 for offences u/s. 341, 294 (b) IPC and 4(i) (j) of Tamil Nadu Prohibition Act and 944 of 2009 for offence under Sections 341, 323, 294(b) IPC. After investigation charge sheets were laid against him and he was prosecuted for the above offences.

3. The allegation against the petitioner is that in an inebriated mood, he scolded the defacto complainant and also wrongfully restrained him. The petitioner was issued with charge memos and after providing ample opportunity, the enquiry officer found that the charges against the petitioner were proved. Based on the enquiry report, the petitioner was imposed with punishment of penalty of reduction of pay by two stages for two years with cumulative effect and also postponement of increment for one year with cumulative effect. The appellate authority confirmed the orders of punishment. Challenging the same, the present Writ Petitions have been filed.

4. The learned counsel for the petitioner vehemently argued that on the same set of charges, criminal cases were registered against him, and the learned Magistrate found that the charges were not proved, however, without any supporting documentary evidence, the enquiry officer has given the said findings. Hence, the punishment may be set aside.

5. Per contra, the learned Government Advocate would contend that the standard of proof of departmental proceedings and criminal proceedings are totally different and in criminal cases, charges have to be proved beyond reasonable doubt, but in the departmental proceedings preponderance of probabilities and that the disciplinary authority and the appellate authority gave findings on evidence, which need not be disturbed by this Court.

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6. In the case on hand, punishment imposed on the petitioner is sought to be set aside mainly on the ground that the petitioner was acquitted in the criminal proceedings initiated on the same set of charges. As rightly contended by the learned Government Advocate, the standard of proof in respect of the criminal case and the departmental proceedings are totally different.

7. In this context, it is useful to refer the decision of the Hon'ble Supreme Court reported in 1972 (4) SCC 618 (Union of India vs. Sardar Bhadur) and the relevant portion of the said judgment is extracted hereunder:

> "15. ..... A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvaased before the High Court (see State of Andhra Pradesh v.S. Sree Rama Rao) [AIR 1963 SC 1723 : (1964) 3 SCR 25 at 33 : (1964) 2 LLJ 150] . No doubt there was no separate finding on the question whether Nand Kumar was a person likely to have official dealings with the respondent by the Inquiring Officer or the President. But we think that such a finding was implied when they said that Charge No. 3 has been proved. The only question was whether the proved facts of the case would warrant such an inference. Tested in the light of the standard of proof necessary to enter a finding of this nature, we are satisfied that on the material facts proved the inference and the implied finding that Nand Kumar was a person likely to have official dealings with the respondent were reasonable."

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> "19. Now it is settled by the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra [AIR 1963 SC 779 : 1963 Supp (1) SCR 648 at 666 : (1963) 1 Lab LJ 239] that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed

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with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

8. It is not the case of the petitioner that he was not provided with an opportunity in the departmental proceedings and no evidence was let in in support of the charges, but it is contended that there is no supporting documentary evidence to establish the charges against him. From the perusal of the records, it is evident that in the departmental proceedings, the petitioner was given opportunity and based on the evidence, the enquiry officer held that the charges against the petitioner were proved. Merely, because the petitioner was acquitted in the criminal cases, punishment imposed against the petitioner cannot be set aside.

9. In that view of the matter, I do not find any merit in these Writ Petitions. Accordingly, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pvs

To
1. The Inspector General and Commissioner of Police,
Salem City Police,
Salem.

2. The Deputy Commissioner of Police,
Law & Order,

Salem City Police, Salem.
3. The Commissioner of Police,
Salem City Police,
Salem.

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+2cc to Mr.M.Ravi, Advocate, S.R.No.72235 & 72235

+2cc to the Government Pleader, S.R.No.72408 &72411

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KAN(CO)
GSP(23/11/2018)

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