

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2018

Delivered on : 27.09.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.7836 & 7837 of 2013

A.Murali .. Petitioner in
WP 7836 of 2013

R.Elakkumanan .. Petitioner in
WP 7837 of 2013

versus

1. The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.
2. The Additional Director General of Police,
Law & Order, Chennai-4.
3. The Deputy Superintendent of Police,
Gummidipoondi Sub Division,
Gummidipoondi, Tiruvallur District. .. Respondents in
both Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned orders passed in PR Nos. 53/2011 & 54/2011 dt 12.5.12 and RC Nos. 131218/Con.I (2)/2012 & 131219/Con.I (2)/2012 dt 24.1.13 and quash the same and direct the respondents to reinstate the petitioners into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, SC
for M.Muthappan

For Respondents : Mr.J.Pothiraj, Spl.G.P.

COMMON ORDER

The petitioners have approached this Court, seeking the following relief:
"To issue of Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned orders passed in PR Nos. 53/2011 & 54/2011 dt. 12.5.12 and RC Nos. 131218/Con.I (2)/2012 & 131219/Con.I (2)/2012 dt 24.1.13 and quash the same and direct the respondents to reinstate the petitioners into service and grant him all consequential service and

monetary benefits."

2. Since the facts and circumstances vis-a-vis the issues involved in these Writ Petitions are common, they are taken up together and being disposed of by this common order.

3. Both the Writ Petitioners came to be removed on the basis of common charges framed against them. As far as the writ petitioner in W.P.No.7836 of 2013 is concerned, he was proceeded against criminally for alleged demand of illegal gratification and in regard to the petitioner in W.P.No.7837 of 2013, no criminal action was initiated against him, but only departmental action was set in motion for the same demand of illegal gratification. The petitioner in W.P.No.7836 of 2013, at the relevant time, was working as Grade II Police Constable, whereas the petitioner in W.P.No.7837 of 2013 was working as Sub Inspector of Police.

4. The common facts in regard to both the writ petitions are stated hereunder:

Both the writ petitioners were implicated in the criminal cases for the illegal demand of gratification from one Raju for preparing a charge sheet in a case entrusted to them. On the basis of the complaint, a trap was laid and the writ petitioners were allegedly caught red handed in the trap for accepting the illegal gratification. Thereafter, both the writ petitioners were arrested and remanded to judicial custody. Subsequently, criminal action was initiated only as against the writ petitioner A.Murali in W.P.No.7836 of 2013 and as regards the writ petitioner, namely, R.Elakkumanan, criminal action was dropped. Both the writ petitioners were issued with the charge memos on 6.3.2011 and 6.4.2011 respectively. The charges are relating to the same allegation of demanding illegal gratification. Both the writ petitioners were also suspended from service. Subsequently, departmental action was initiated against both the writ petitioners and proceeded simultaneously, notwithstanding the pendency of the criminal action initiated against one of the writ petitioners. On conclusion of the enquiry, a report was submitted holding the charge proved against both the writ petitioners. Further representation as against the report was submitted by the petitioner, however, having not satisfied with the representation, the Disciplinary Authority agreed with the findings of the Enquiry Officer and imposed a penalty of removal from service by order dated 12.5.2012 in respect of both the writ petitioners. As against that, an appeal was preferred on 12.5.2012 before the second respondent and by order dated 24.1.2013, the appeal came to be rejected. The orders passed by both the Disciplinary Authority and the Appellate Authority have been put to challenge in these writ petitions respectively.

5. Shri K.Venkataramani, learned Senior Counsel would submit that admittedly no material evidence was let in in the departmental enquiry in support of the allegation, but unfortunately, without any clinching material evidence, the Enquiry Officer had come to the conclusion that the charge was proved against both the writ petitioners. On the basis of flimsy finding by the Enquiry Officer, the Disciplinary Authority had imposed harsh penalty of removal from service. He would draw the attention of this Court to the order passed by the Disciplinary Authority and would submit that the Disciplinary Authority had not discussed the infirmities pointed out by the petitioners in their representation against the Enquiry Officer's report. The Disciplinary Authority has completely disagreed with the points raised by the petitioners, but mechanically accepted the findings, without due independent application of mind. According to the learned Senior Counsel, the same is the case of the Appellate Authority, who had dutifully accepted the penalty imposed by the Disciplinary Authority by accepting the reasons cited by the Disciplinary Authority blindly. The Appellate Authority also failed to deal with the issues and the points raised in the appeal in proper perspective and the Appellate Authority has merely rejected the appeal by non-speaking order which was not a valid dismissal of the appeal in terms of the disciplinary rules applicable to the police personnel.

6. The learned Senior Counsel would further submit that the criminal case initiated against the first writ petitioner A.Murali, had ended in acquittal vide judgment of the Criminal Court dated 17.5.2016

in SC No.21 of 2010 by the Chief Judicial Magistrate, Tiruvallur. According to the learned Senior Counsel, the acquittal was on the basis of no evidence and therefore, the same is honourable acquittal. He would draw the attention of this Court to the findings of the Criminal Court while passing the order of acquittal. He would submit that all the independent witnesses have turned hostile during trial and even the official witnesses had not deposed any evidence to establish the charge against the writ petitioners. He would therefore, submit that it is a clear case of no evidence and acquittal was therefore honourable and not on the basis of benefit of doubt.

7. The learned Senior Counsel would also submit that once the criminal Court had given a clean chit to the petitioner A.Murali, the entire substratum of departmental charges stood removed. In which event, the entire disciplinary action stood vitiated on that ground alone. No doubt that the Disciplinary Authority and the Appellate Authority had imposed the penalties of removal from service on the petitioners much earlier to the pronouncement of the judgment by the Criminal Court, nevertheless, the foundation of the charge having stood removed, namely, that there was no demand by the writ petitioner, A Murali, of any illegal gratification, the charges built on such allegation, cannot be sustained. In any event, the learned Senior Counsel would submit that the Disciplinary as well as Appellate Authorities have failed to take into consideration the lack of evidence even in the departmental enquiry as against the petitioners. Unfortunately, both the authorities have overlooked the lacunae in the findings of the Enquiry Officer and imposed the severe penalty of removal from the service on the petitioners.

8. Upon notice, J.Pothiraj, learned Special Govt.Pleader entered appearance and filed a counter affidavit. According to the learned Special Government Pleader, proper procedure had been followed while framing the charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 against the petitioners. According to the learned Special Government Pleader, there was enough material available in the departmental enquiry and on the basis of which, it was concluded that the charge was proved against the petitioners. According to the learned Special Government Pleader, the findings of the Enquiry Officer were not perverse as made out by the petitioners, but it was on the basis of solid evidence. The learned Special Government Pleader would further contend that both the Disciplinary as well as Appellate Authorities have passed speaking orders and they had referred to the evidence given by the prosecution witnesses in support of the charges. Therefore, the petitioners cannot validly contend that the orders passed by the authorities were non-speaking orders. Both the authorities have considered the nature of evidence and veracity of the statements made by the witnesses and only on being satisfied with the evidence against the petitioners, the punishment of removal was imposed on the petitioners. According to the learned Special Government Pleader in corruption cases, proper punishment is only removal from service and therefore, the said punishment cannot be construed as one of disproportionate to the gravity of the misconduct committed by the petitioners. Therefore, the Disciplinary Authority as well as the Appellate Authority had thought fit to impose the penalty of removal from service on the petitioners for the proved misconduct which cannot be faulted by this Court.

9. At this, the learned Senior Counsel would submit that once the basis of the charge was found to be not established by the Criminal Court after elaborate trial and the said criminal verdict had become final and admittedly, the departmental action proceeded on the same basis and the punishment imposed on the petitioners on conclusion of such departmental action, cannot be countenanced both on facts and in law. The learned Senior Counsel, in regard to consequence of the honourable acquittal by the Criminal Court would rely upon the following decisions of this Court, viz.,

a) Order in W.P.No.3257 of 2014 dated 30.8.2017, wherein, the learned Senior Counsel would draw the attention of this Court in regard to the observation made by the Division Bench of this Court which was incorporated in the order and for better understanding of the observation of the learned Division Bench, the same is extracted as under:

"9. Normally three concepts of evidence are taken into consideration before a judgment is rendered. They are on the (i) principle of evidence (ii) principle of no evidence and (iii) principle of insufficient evidence. As regard to the first principle, in the event the Court finds that there are enough evidence to prove the guilt, it convicts and imposes the punishment on the accused. Equally on the principle of no evidence, the Court acquitts an accused. For our purpose, the third principle would apply, where the Court is of the opinion that the evidence lacks sufficiency to hold that the prosecution has proved the offence "beyond shadow of doubt" or "beyond reasonable doubt". Here again sufficiency of evidence depends on the facts of the case and there may be cases where in the absence of any other evidence, the accused may be found guilty on the sole evidence of a witness which could be believed by the Court. Even in some cases, if one or more witnesses speak about the involvement of an accused, still the Court, may discard the evidence on various grounds including on the ground that their evidence cannot be believed etc. In such circumstances also, the Court may extend the benefit of doubt to an accused and consequently acquit him. Such acquittal is otherwise known as "acquittal of all blame".

"10. In the above backdrop, the next question that arises for consideration is as to what is honourable acquittal. The code of Criminal procedure does not define either the acquittal or honourable acquittal and for that matter, the benefit of doubt as well. It is the Court by its judgments and by applying the principles of innocence of the accused and the burden on the prosecution to prove the offence, recognised the principle of giving benefit of doubt to acquit the accused. In the absence of any definition in the code of criminal procedure it is very difficult to define what is the meaning of the words "honourable acquittal". Again it depends upon the facts and circumstances of each case. The Court could reasonably presume that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving the benefit of doubt, it may not amount to honourable acquittal on the other hand, if an accused is acquitted after full consideration of evidence because the prosecution witnesses are disbelieved and the prosecution has miserably failed to prove the charges it would amount to honourable acquittal. In the event the Court while acquitting an accused neither say that the case against him is false nor does it say that the accused has been acquitted on the ground of benefit of doubt, then the acquittal may be honourable acquittal or acquittal or all blame."

and thereafter, this Court proceeded to hold as under in paragraph 6, which reads as under:

"6. This Court has anxiously considered the rival submissions and perused the materials and pleadings placed on record. There is a considerable force on the contention put forth by the learned counsel appearing for the petitioner that the acquittal by the criminal Court can be safely considered as one of honourable acquittal. As this Court in paragraph No.21 of the judgment dated 23.08.2016 in W.A.No.418 of 2010 has concluded that though the evidence given by the prosecution cannot be relied upon, as the witnesses had same motive against the accused and moreover, the witnesses have also turned hostile and therefore, there was no evidence at all which can be relied upon for the purpose of establishing the guilt of the accused."

b) Order in W.P.No.20526 of 2012 dated 12.03.2018, wherein, the learned Senior Counsel would draw the attention of this Court to para 12, wherein, this Court, in respect of honourable acquittal of the petitioner therein, allowed the Writ Petition by quashing the disciplinary action, as found in paragraphs 12 and 13 as under:

"12. This Court has given its anxious consideration to the submissions made on behalf of the learned counsel for the petitioner as well as the respondents. Firstly, this Court has to see whether the charges are held proved in the departmental enquiry in the teeth of the clear finding given by the Criminal Court stating that the entire prosecution case was a cooked up story. Once the criminal finding has become final, the departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced in law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the departmental action in imposing the penalty for the same incident, is completely without any

justification. Therefore, this Court is of the considered view that the petitioner has to succeed on this ground alone. Even otherwise, when one side the criminal Court has given a clear acquittal viz., honourable acquittal to the petitioner, the Department cannot find the petitioner guilty of the same charges which was a subject matter of the criminal prosecution. Such action on the part of the respondents cannot be justified under any circumstances. Since this Court is of the view that the departmental action as proceeded against the petitioner is illegal and cannot be countenanced in law, it refrains from going into the issue of whether the penalty with cumulative effect can be imposed on the petitioner or not under the service rules.

"13. In view of the above said narrative and discussion, this Court set aside the impugned proceedings in No.V-15014/Rev/GS/SS/2010-85 dated 04.02.2011, proceedings No.V-11014/56/2006/L&R (SZ) 6460 dated 17.11.2006 and proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006. This Court is also of the considered view that the petitioner is entitled to be considered for promotion as Sub-Inspector of Police with effect from the date his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The respondents are directed to implement the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order." c) Common Order in W.P.Nos.34799 of 2013 & 27463 of 2016, dated 28.3.2018, wherein, this Court once again in similar circumstances, allowed the challenge made by the petitioners therein by making the following observation in paragraphs 15 to 17:

"15. As stated above that once the Criminal Court has given a clear acquittal on merits to the accused viz., the petitioner herein, it is not open to the department to proceed with the same set of charges, be that the departmental charges and take departmental action. Such action of the department will not be in the interest of good administration continuing the departmental action in the above said circumstances of the case is per se cannot be justified and countenanced.

"16. This Court is conscious of the fact that the disciplinary action is not to be trifled with during its pendency. However, as far as the present case on hand is concerned that the Criminal Court has given a clear finding of innocence of the petitioner's involvement in the charges framed against him. It is therefore not just and proper for the departmental action to continue and proceed against the petitioner. Therefore, this Court finds that the petitioner has made out a clear case for interfering with the departmental proceedings pending against him.

"17. For the above said reasons, the departmental enquiry pending in PR.No.8/2013, on the file of the first respondent dated 18.03.2013, is hereby quashed. During the course of the arguments, the learned counsel for the petitioner would submit that the petitioner had attained the age of superannuation on 31.03.2013. But, he was not allowed to retire in view of the pendency of the disciplinary action against him. In view of the quashment of the disciplinary action against the petitioner, there shall be a further direction to the first respondent to allow the petitioner to retire from service with all consequential benefits. In view of the present writ petition (W.P.No.27463 of 2016) being allowed, no orders are necessary in respect of the other writ petition in W.P.No.34799 of 2013, which challenges the proceedings of the first respondent dated 02.12.2013, ordering de novo enquiry. Therefore, the writ petition in W.P.No.34799 of 2013, is ordered to be closed. The first respondent is also directed to implement the order passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order."

Therefore, the learned Senior Counsel would submit that the present case of the petitioners falls within the four corners of the rulings of this Court in the aforesaid decisions.

10. This Court, upon perusing the materials and pleadings available on record and also the decisions cited supra, is of the considered view that there is considerable force in the contentions raised by the learned Senior Counsel in favour of the petitioners. De hors the fact that subsequently, the writ petitioner, A.Murali was acquitted honourably by the Criminal Court, which had become final, even in the departmental proceedings, the evidence which was let in appears to be not clinching in

establishing the allegation against the petitioners. In fact, as rightly contended by the learned Senior Counsel that the Disciplinary Authority did not appreciate the representation of the petitioners against the findings and he appeared to have completely disregarded the representation submitted by the petitioners and proceeded to accept the findings as it was. Further, the Appellate Authority has also failed to properly appreciate the grounds raised in the appeal and proceeded to confirm the view adopted by the Disciplinary Authority rather mechanically without due independent application of mind. This Court is, therefore, of the view that the orders passed by both the Disciplinary Authority as well as Appellate Authority are contrary to the Disciplinary Rules and the same are, therefore, unsustainable.

11. Even otherwise, the charges which were built on the complaint given by the complainant, who later had retracted his statement during the trial before the Criminal Court, the entire charges which was built on such edifice had to crumble down and in which event, the departmental action based on such complaint, would fail. As rightly contended by the learned Senior Counsel, the very substratum of the charges stood removed by the Hon'ble acquittal by the Criminal Court. In this regard, it is relevant to reproduce the findings of the Criminal Court rendered in favour of the writ petitioner, A.Murali as found in paragraphs 8 to 11, which are extracted as under:

"8. In respect of recovery of amount, also there is no reliable evidence available. The evidence of PW3 is not corroborating the case of the prosecution and his evidence is not corroborated by the evidence of PW9. Except PW3 and police witness, all independent witnesses have turned hostile, the another official witness T.Sundarrarajan has also not been examined as witness in this case. Even the evidence of PW4 Special Sub Inspector Mohammed Nabi is also not supporting the case of the prosecution. He has not even deposed anything about the occurrence taken place after his arrival to the occurrence place. In this case, the prosecution has failed to prove all the allegations levelled against the accused. In Ex.P18 complaint, the complainant has stated that he did not want to give bribe either to Grade I PC or to the S.I. Of Police. Further, in the complaint itself, the complainant has stated that when he complained about Gr.I.PC to the to the S.I of Police, the SI Elakkumanan had told him to act according to the words of the accused. Further, in the complaint itself, the complainant has stated to recommend to the S.I. To file charge sheet, the accused demanded a sum of Rs.2000/- as bribe. It means that the case was under investigation with the S.I of Police Elakkumanan and pending. In these circumstances, said S.I. Of Police Elakkumanan is neither shown as one of the accused nor examined as one of the witness. The complaint of this case was not given by the alleged affected party Kumar. In his evidence, PW2 has stated that the said Kumar is his friend, but in the complaint, the complainant has stated that the said Kumar is the junior paternal uncle's son of the complainant. No documentary evidence is filed to prove the relationship between the complainant and the said Kumar. The genuineness of the complaint itself is not proved.

9. The learned counsel appeared for the accused has cited a decision reported in 2012 (2) MLJ (crl.) page 459 in which it is held that when the demand of bribe made by the accused is not proved, order of conviction is not sustainable. Here, in the case on hand, the alleged demand made by the accused on 20.05.2009 is not proved by the prosecution. As per Ex.D1, the accused on 20.05.2009 was on special duty. There is no evidence filed to prove that he was at the police station at the time when PW2 came to the police station on 20.05.2009. in the above said circumstances, the above said decision is relevant to the facts of this case.

10. Though the explanation given by the accused is not proved, the prosecution has to prove its case first, then only it can ask the Court to draw its attention for application of section 20 of P.C. Act. The learned counsel appeared for the accused has cited a decision reported in 2010 (1) CTC Page 492 in which it is held that presumption to be drawn under section 20 is not inviolable, onus never shifts and is always on prosecution to discharge original onus and the Court is required to consider explanation offered by the accused, if any only on touchstone of preponderance of probability and

not on touchstone of proof beyond all reasonable doubt. Further, it is held that demand of illegal gratification is sine quo non for constitution of an offence under Act and all three ingredients viz. Demand, acceptance and recovery of amount of bribe have to be satisfied and the court has to arrive at a conclusion on consideration regarding even acceptance or bribe, an explanation given by accused is plausible, mere recovery of tainted money is not sufficient to hold accused guilty. In the case on hand, the prosecution failed to prove the demand of bribe. For acceptance of bribe, except the evidence of PW3 no other evidence is available. Further, the evidence of PW3 is contra to the evidence of PW9 and not corroborated by any other evidence and even the evidence of PW3 is not corroborating the case of the prosecution. In the above said circumstances, the above said decision is relevant to this case also. In discussions supra and in view of the facts and circumstances of the case, this Court comes to the conclusion that the prosecution has miserably failed to prove the charges levelled against the accused.

11. In the result, the accused is not found guilty of the offence u/s 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 and the accused is acquitted u/s 248(1) Cr.P.C."

12. From the above, it can be seen that there was absolutely no piece of evidence which was made available before the Criminal Court and all the independent witnesses have turned hostile. Even the official witnesses did not depose anything material in order to establish the charge against the accused, namely, one of the writ petitioners. Therefore, the learned Senior Counsel has rightly contended that the departmental charges cannot be taken to its logical end in view of the subsequent development. This Court is in agreement with the contentions put forth by the learned Senior Counsel appearing for the petitioners that the very foundation of departmental charge had been undone and therefore, the subsequent action by the Disciplinary Authority imposing the penalty of removal from service, cannot therefore, be sustained. The decisions relied upon by the learned Senior Counsel as cited supra, which squarely applicable to the facts of the present case as well and therefore, the petitioners are also entitled to the grant of the relief as prayed for by them in the present writ petitions.

13. Once the Criminal Court has come to the conclusion that there was no demand of illegal gratification by the first petitioner, A.Murali, the allegation as against the second petitioner as well cannot be sustained since the allegation against the second writ petitioner, R.Elakkumanan who was the Sub Inspector of Police that he was instrumental in making the other writ petitioner to demand illegal gratification. In any event, the finding of the Criminal Court in discharging the writ petitioner, A.Murali from the charges in its entirety is paramount factor to be considered for taking disciplinary action against the writ petitioner R.Elakkumanan, since the Criminal Court has given a clean chit to the writ petitioner, this Court does not find any justification for continuing the penalty of removal from service as against the petitioners. Although the judgment of the Criminal Court was rendered only in 2016 much after the impugned action taken against the petitioners, nevertheless, in view of the said development, it is imperative in law to revisit the penalty imposed on the basis of the charges which basis admittedly stood removed by the judgment of the Criminal Court.

14. For the above said reasons, this Court has no hesitation in allowing the writ petitions. Accordingly, the Writ Petitions are allowed and the impugned orders passed in PR Nos. 53/2011 & 54/2011 dated 12.5.12 and RC Nos. 131218/Con.I (2)/2012 & 131219/Con.I (2)/2012 dated 24.1.13 are hereby set aside. The respondents are directed to reinstate the petitioners in service with all attendant benefits. This direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs.

suk 27-09-2018

To

1. The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.

2. The Additional Director General of Police,
Law & Order, Chennai-4.

3. The Deputy Superintendent of Police,
Gummidipoondi Sub Division,
Gummidipoondi, Tiruvallur District.

V.PARTHIBAN, J.
suk

Pre delivery common order in
W.P.Nos.7836 & 7837 of 2013

27.09.2018