

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM

THE HON'BLE Mr.JUSTICE V.PARTHIBAN

W.P.No.22804 of 2012

R.Ganasekaran

... Petitioner

Vs.

1.The Superintendent of Police,
Erode District, Erode.

2.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore. ... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondents 1 and 2 in connection with the impugned orders passed in PR No.J1/5/2007 dated 22.02.2012 and RC No.D2/AP11/2012 dated 15.06.2012 and quash the same.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.K.Venkatramani, learned Senior Counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner was recruited as Grade-II Police Constable in the District Armed Reserve, Erode District on 17.11.1988. He was transferred to Taluk Police Establishment in the year 1998. He was subsequently upgraded as Grade-I Police Constable in the year 1999 and upgraded as Head Constable in the year 2004. According to the petitioner, he has received 47 rewards for his meritorious service and had not come to adverse notice while discharging his official duties. While he was serving as Head Constable the petitioner was issued with a charge memo on 10.01.2007 under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules. The following three charges were framed

against the petitioner:

"i) Highly reprehensible criminal conduct of demanding dowry and used to beat his wife Kalaichelvi and subsequently murdered his wife in the old police line hut D No.397;

ii) Highly reprehensible conduct by involving in Perundurai PS Crime No.391/2008 u/s.498(A), 306 IPC altered to Sec.498(A), 302 and 201 IPC by subjecting his wife Kalaichelvi to cruelty by beating her and created a scene as if she committed suicide by hanging in the police hut D397 allotted to him on 29.09.2006;

iii) Highly reprehensible criminal conduct by causing nuisance, annoyance and disturbance to the police families residing in the police quarters, thereby tarnished the image of the police force. "

3. The petitioner was simultaneously implicated in the Criminal case charging for causing the death of his wife. As far as the departmental Charge memo is concerned, the petitioner had submitted his explanation. Not satisfied with the explanation, an enquiry was conducted and on conclusion of the enquiry a report was submitted holding the charges proved.

4. On the basis of the enquiry report, the 1st respondent by his proceedings dated 22.02.2012 dismissed the petitioner from service. Against which the statutory appeal was preferred by the petitioner against the 1st respondent on 06.03.2012. The appellate authority, the 2nd respondent herein, after consideration of the appeal, rejected the same as devoid of merits by his proceedings dated 15.06.2012. Against the orders passed by the respondents, the present Writ Petition has been filed.

5. In the meanwhile, the criminal case which was initiated against the petitioner ended in an acquittal by the trial Court by order dated 20.09.2007. Thereafter, on the opinion of the Public Prosecutor, High Court, the Government did not prefer an appeal against the acquittal and to that effect the Government order was also issued on 07.02.2008.

6. However, aggrieved by non-filing of appeal by the prosecution the defacto complainant viz., the father of the deceased/wife of the petitioner filed a criminal revision before this Court in CrI.R.C.No.12 of 2008. This Court has gone into the merits of the revision petition and rejected the revision petition by the order dated 27.08.2010.

7. The learned Senior Counsel Mr.K.Venkatramani, would at the out set submit that the dismissal of the petitioner for the charges which were ultimately held to be not proved by the Court cannot be sustained in law. According to the learned Senior Counsel, the first two departmental charges are in relation to the criminal proceedings and since the criminal proceedings ended in acquittal and no further appeal was filed, the charges as framed in the Departmental action cannot said to be proved.

8. The learned Senior Counsel would also draw the attention of this Court to the order passed by the High Court in CrI.R.C.No.12 of 2008, wherein, this Court has by the order dated 27.08.2010 dismissed the revision petition, by making certain strong observations in favour of the petitioner herein. The learned Senior Counsel would draw the attention of this Court to paragraphs 27 and 28 of the order in the revision petition of this Court which have been produced, which reads as follows:

"27. Further from the available ocular evidence and other materials, this court feels that it is more suggestive if is a case of suicide, though the accused had denied his presence in materials and according to the prosecution it was only the accused who had cut the saree and brought down the deceased who was hanging. From the photos and observation mahazar, it could be seen the saree which was used for hanging had been cur into tow pieces. If the accused had strangulated the deceased, after strangulation, in order to show it is a case of suicide, he would not have cut the saree into two pieces.

28. Regarding the charge under Section 498-A IPC, this Court does not want to reappraise the evidence. The accused and the deceased lived as husband and wife for more than 10 years. "

9. He would therefore, submit that once the High Court has held that there was no evidence at all in implicating the petitioner from the serious charges of causing death of his wife and for demanding dowry, the only charge which can be sustained is the third charge. As regards the 3rd charge is concerned, the misconduct is only causing annoyance to the neighbours and such charges alone cannot attract the extreme punishment of dismissal from service.

10. According to the learned Senior Counsel, there was no dereliction of duty on the part of the petitioner and the conduct outside the discharge of duties, that too in the nature of minor misconduct of causing annoyance and nuisance cannot entail extreme penalty of dismissal from service.

11. According to the learned Senior Counsel, the petitioner had rendered meritorious service and for such minor misconduct he cannot be inflicted with most severe punishment under the Service Rules. In substance he would assail the proportionality of the punishment imposed on the petitioner. In view of the acquittal by the Criminal Court, which acquittal has become final and this Court in the revision petition has made certain strong observations in favour of the petitioner, that being the case, the order of dismissal from service is absolutely without any justification and the same has to be interfered with.

12. Upon notice Mr.T.M.Pappiah, learned Special Government Pleader entered appearance and filed a detailed counter. The learned Special Government Pleader appearing for the respondents would submit that the first two charges framed against the petitioner are very serious in nature and in the departmental enquiry, the factum of drunken behaviour of the petitioner was fully established.

13. He would also submit that due to torture by the petitioner, his wife has committed suicide and therefore, he would submit that the reason of acquittal of the petitioner cannot be a material fact for exonerating him from the departmental charges.

14. The department has taken into consideration the conduct of the petitioner towards his family and also towards the other Police families in the neighbourhood and after having been satisfied about the deviant conduct of the petitioner, the punishment of dismissal from the service is made. The punishment of dismissal from service is a proper punishment, since retention of such person in uniform service is not in public interest and if such behaviour of the petitioner is condoned, it will only send wrong signal to the public at large.

15. According to the learned Special Government Pleader, the standard of proof is rather different in the departmental action and the petitioner was acquitted only on the basis of conclusion of the trial Court that the charges were not proved beyond reasonable doubt. That conclusion need not be imported into the conclusion in the departmental action, as standard of proof in the departmental action is less rigorous.

16. This Court has given its anxious consideration to the rival submissions of the learned Senior Counsel appearing for the petitioner and also the learned Special Government Pleader, perused the relevant materials and pleadings placed on record.

17. The first two charges framed in the departmental action are covered by the criminal case launched against the petitioner

and once the petitioner is acquitted of the charges and the same having become final, this Court does not see on what basis the enquiry officer has come to the conclusion about the guilt of the petitioner in regard to the said charges.

18. This Court, in the Criminal Revision has endorsed the conclusion arrived at by the trial Court and made strong observations that there was no material what so ever to establish the charges against the petitioner. That being the case, for the very incident which formed the basis of the first two charges, the enquiry report holding the charges proved is questionable and therefore the impugned action based on such enquiry report cannot be countenanced in law and on facts.

19. Moreover, it has to be seen that both the respondents viz., the Disciplinary Authority and the Appellate Authority have not taken into consideration the acquittal by the Criminal Court and also dismissal of the revision petition by this Court, while imposing the extreme penalty of dismissal from service.

20. As rightly contended by the learned Senior Counsel for the petitioner that if the first two charges are not really proved before the Criminal Court, what remains is the 3rd charge and proving of the 3rd charge alone cannot entail severe action on the part of the authority that is dismissal of service of the petitioner.

21. Though, this Court is of the view that there was some material available in establishing the fact that the petitioner was an alcoholic and consuming alcohol quite often and indulges in frequent quarrel with his family members and others nearby. However, such misconduct alone does not warrant the extreme punishment of dismissal from service.

22. However, at the same time, this Court has also considered the fact that the conduct of the petitioner cannot be condoned and the petitioner should not be allowed to wear uniform again as that would affect the disciplined morale of the Police force.

23. Therefore, this Court is not inclined to pass any order reinstating the petitioner in service as argued by the learned Senior Counsel for the petitioner. However, this Court is of the considered view that the ends of justice would be met, the petitioner could be compulsorily retired from service with effect from the date of dismissal from service and that would protect the interest of the department in not having a person like him any more in service.

24. At the same time, the petitioner having obtained the order of acquittal in his favour, the benefit of doubt to be

extended to him, although the charges were held proved against him in departmental action. Therefore, the extreme punishment of dismissal from service is not an appropriate punishment in the circumstances of the case.

25. In the above circumstances this Court set aside the orders passed by the 1st and 2nd respondents in PR NO.J1/5/2007 dated 22.02.2012 and RC No. D2/AP11/2012 dated 15.06.2012 and the punishment of dismissal from service is substituted as one of compulsory retirement from the service from the date on which the petitioner was dismissed from service.

26. The 1st respondent is directed to pass orders to that effect and the petitioner is also entitled to all other benefits on compulsory retirement. The 1st respondent is directed to pass appropriate orders as indicated above within a period of eight (8) weeks from the date of receipt of a copy of this order.

27. With the above directions, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dsa

To

- 1.The Superintendent of Police,
Erode District, Erode.
- 2.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.

+1 cc to the Govt Pleader High Court Madras
sr 11779

+2 ccs to Mr.M.Muthappan Advocate sr 12011

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gp(co)

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