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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.6123 of 2011

and

M.P. (MD) .No.1 of 2011

Pandi

... Petitioner

Vs.

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

2.The Superintendent of Police,
Madurai District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents especially the punishment of reduction in time scale of pay by one stage for one year without cumulative effect order issued by the respondent No.2 in pursuant to his proceedings viz., final order made in C.No.F1/PR.41/2000 u/r 3 (b) dated 04.06.2009, as confirmed by respondent No.1 in pursuant to his proceedings made in C.No.A2(2)/7630/AP.136/09, dated 04.08.2009 and quash the same as illegal and invalid and consequently, direct the respondents to restore the petitioner's scale with all increments besides disbursing the amount reduced from the petitioner's regular scale and the attendant terminal benefits.

For Petitioner : Mr.K.Sureshkumar

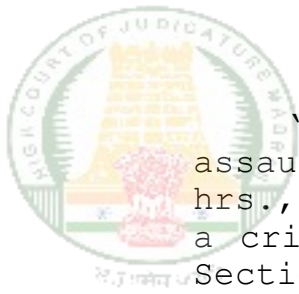
For R1 & R2 : Mr.M.Muthu

Additional Government Pleader

ORDER

This writ petition is filed seeking to quash the order of the second respondent dated 04.06.2009 made in C.No.F1/PR.41/2000 under Rule 3(b) of TNPSS (D&A) Rules 1955, as confirmed by first respondent dated 04.08.2009 and consequently, direct the respondents to restore the petitioner's scale with all increments, besides disbursing the amount reduced from the petitioner's regular scale and the attendant terminal benefits.

2.The petitioner has joined the service in the year 1972 as Grade-II Police Constable and he was promoted as Head Constable in the year 1998. The petitioner has rendered 36 years of unblemished service, except for the incident in question. He attained the age of superannuation in the year 2006. The petitioner was charged u/r 3 (b) of TNPSS (D&A) Rules 1955, in Punishment Roll No.41/2000, which are extracted hereunder:



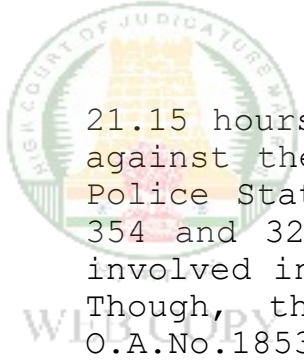
"i) Reprehensible and indisciplinary conduct in having assaulted one Meenakshi, W/o. Perumal, A. Pudupatti at 19.00 hrs., on 20.07.2000 and thereby involved as an accused in a criminal case in Alanganallur P.S. Cr.No.282/2000 under Section 354 IPC and thereby violated conduct Rules of the Police Force.

ii) Indisciplinary conduct and violation of rules of the Police Force in not reporting back for duty at Samayanallur P.S., after completion of Court work, for which, the petitioner proceeded on 20.07.2000 and attacked one Meenakshi with big spoon and tore her jacket and reporting back for duty at 21.15 hrs., falsely stating that the petitioner performed Court duty on that day."

3. According to the petitioner, there was a rival between the family members of the petitioner and his neighbour one Meenakshi and the petitioner has been falsely implicated in this case. A case and counter case was filed and the complaint lodged by the mother-in-law of the petitioner against the said Meenakshi was closed as 'Mistake of fact', whereas, the complaint given by the said Meenakshi was taken up and a case has been registered in Crime No.185 of 2000 by the Alanganallur Police Station. Thereafter, the learned Judicial Magistrate, Vadipatti, has taken up the case and acquitted the petitioner in C.C.No.200 of 2008. When the Criminal case has ended in acquittal for the same set of facts, it is not a fair on the part of the respondent to proceed with the charge under departmental proceedings against him and impose the punishment of stoppage of one increment with cumulative effect. Thereafter, the Disciplinary Authority has passed an order dated 04.06.2009, which was confirmed by the appellate authority on 04.08.2009 in C.No.A2(2)/7630/AP 136/09. Aggrieved by which, the petitioner has filed the present writ petition.

4. The case of the petitioner is that when the criminal case got ended in acquittal, the departmental enquiry has been proceeded with and no preliminary enquiry was conducted as mandated in the Police Standing Order 80(2) V-I. Even though three witnesses were examined in the departmental enquiry, the said Meenakshi was not examined and in view of the non-examination of the said complainant in the departmental enquiry, the entire enquiry has got to be vitiated. Since the punishment was imposed on the petitioner by the disciplinary authority as confirmed by the appellate authority, without any material basis, as required under law the same has to be interfered with.

5. The respondents have filed a counter affidavit, wherein it has been stated that the petitioner has caused injury to one Meenakshi, who is residing at A. Pudhupatti, by using "Iron Dosa Tuner" and molested her and outraged her modesty by tearing her blouse. The petitioner's wife and his mother-in-law had also beaten the said Meenakshi with hands and also pushed her on the ground at 19.30 hours and thereafter, the petitioner reported for duty at



21.15 hours. Pursuant to the complaint lodged by the said Meenakshi against the petitioner, a case has been registered by Alanganallur Police Station in Crime No.282 of 2000 for offences under Sections 354 and 324 IPC, on 20.07.2000 at 21.30 hours. The petitioner got involved in a serious offence and that charge sheet was laid on him. Though, the petitioner did not file any explanation, he filed O.A.No.1853 of 2001, before the Tamil Nadu Administrative Tribunal, against the departmental action and the respondent was prevented from proceeding further departmentally, till the disposal of the criminal case. Thereafter, the said criminal case ended in acquittal and no appeal was preferred. Thereafter, the petitioner wanted departmental proceedings to be proceeded with. After the completion of departmental enquiry, the Authority came to a conclusion that the charges were proved. It is true that the said Meenakshi was not examined, as she turned hostile in the Criminal Court. It is not necessary that the complainant has got to be examined. He further submitted that there is a circumstantial evidence to prove the guilty and the respondents were constrained to impose punishment. Yardstick applicable to the criminal case is different one from that of departmental proceedings. Hence, he prayed that the impugned order imposing lesser punishment need not be interfere with.

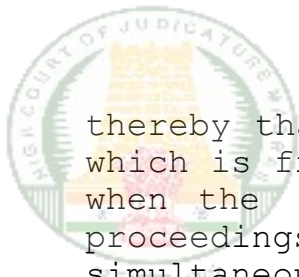
6.It is the stand of the petitioner is that when both the charges in the criminal proceedings and the departmental proceedings are one and the same, both the proceedings cannot be allowed to be continued. In view of the judgment of this Court, the punishment imposed by the respondents has got to be interfered with.

7.Heard both sides.

8.It is not in dispute that the petitioner has joined the service in the year 1972 and later, he was promoted as Head Constable in the year 1998. There was an allegation levelled against the petitioner that the petitioner caused injury to one Meenakshi by using "Iron Dosa Tuner"(Thosai Karandi) and molested her for which, charges were framed. It is also not in dispute that the petitioner has approached the Tribunal and obtained an order of stay of the departmental proceedings. The complainant turned hostile before the criminal Court. Since the complainant turned hostile, the petitioner was acquitted and it is not a honorable acquittal.

9.In catena of judgments this Court has categorically held that both the criminal and departmental proceedings can go on in respect of the charges levelled against the petitioner. However, if the criminal Court acquitted some person on the same charge stating that the charges had not been proved, then it is open to the Department to proceed with the departmental enquiry irrespective of the said acquittal.

10.It is a settled law that the acquittal from the criminal proceedings, <https://hcservices.ecourts.gov.in/hcservices/> is not a honourable one, then it is always open to the department to proceed with the departmental proceedings meaning



thereby that an Honourable acquittal would only mean, an acquittal, which is free from any doubt and arguments. The Court also held that when the charges relating to the criminal case and departmental proceedings are one and the same, the respondents can proceed with simultaneously.

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11. Even if the criminal proceedings ended in acquittal on merits, it is open to the respondents to proceed with the departmental proceedings. Insofar as the domestic enquiry is concerned, charges are established based on the principles of preponderance of probability, whereas in the criminal proceedings, the guilt should be proved beyond reasonable doubt. It is well settled that the disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity.

12. In the present case on hand, the petitioner is acquitted and it is not a honourable one, but it is on the ground that the witness has turned hostile before the criminal Court. With regard to the contention that the complainant was not examined, the Apex Court in a decision reported in (1977) 2 Supreme Court Cases 491 (State of Haryana and another v. Rattan Singh), has held as follows " it is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act, need not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that the departmental authorities should be careful in evaluating such material in coming to a conclusion about the guilt of person".

13. Since the charges have been proved beyond reasonable doubt in the departmental enquiry on the basis of preponderance of possibility, this Court is of the view that the punishment imposed on the petitioner is a minor one and it cannot be interfered with by this Court and this Court cannot substitute its view to that of the Disciplinary Authority, when the findings are not perverse.

14. In the result, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

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



2.The Superintendent of Police,
Madurai District.

+1CC to Mr.K.Suresh Kumar, Advocate, SR.No.79063

+1CC to the Special Government Pleader SR.No. 79093

W.P. (MD) No.6123 of 2011
16.08.2018

NS

ES/PM/SAR 3/05.12.2018/5P/5C