

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.8998 OF 2017

ORDER: (per SK,J)

The prayer of the petitioner in this case, seemingly innocuous,
reads as under:

‘For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon’ble Court may be pleased to issue an Order or a Direction or a Writ more in the nature of Writ of Mandamus by declaring the action of the respondents 1 to 3 herein in not considering the representation of the petitioner herein dt. 24.9.2017 seeking reinstatement of him to the post of Senior Assistant in the Prisons Department as autocratic, arbitrary, illegal, ultravires and against to the principles of natural justice and consequently direct the respondents 1 to 3 herein to reinstate the petitioner herein into the service basing on the judgment dt.10.12.2015 in C.C.No.504/2011 passed by the V Additional Judicial First Class Magistrate Court, East Godavari District at Rajahmundry in the interests of justice and pass such other order or orders as this Hon’ble Court deems fit and proper under the circumstances of the case.’

It is however an admitted fact that aggrieved by his dismissal from service *vide* proceedings dated 18.08.2003 which was confirmed in appeal *vide* proceedings dated 08.12.2003 and in revision *vide* order dated 15.02.2005, the petitioner filed O.A.No.1905 of 2005 before the Andhra Pradesh Administrative Tribunal, Hyderabad. The said O.A. was dismissed by order dated 30.11.2006 and the same was accepted by the petitioner without protest. In effect, the said order attained finality. However, on the strength of his acquittal in C.C.No.504 of 2011 by the learned V Additional Judicial First Class Magistrate, Rajahmundry, East Godavari District, *vide* judgment dated 10.12.2015, the petitioner now seeks reopening of the matter upon consideration of his representation dated 24.09.2017. However, it may be noted that while dismissing O.A.No.1905 of 2005 *vide* its order dated 30.11.2006, the Tribunal observed as under:

‘After examining the records, it is found that the charged officer has accepted the wrong entry in the records of the cash book and that the Cash book was not maintained properly. Therefore, the Enquiry

Officer has found that the applicant is responsible for the variation in physical balance of the cash book and held that he has intentionally misappropriated Government money.

In view of the acceptance of the applicant himself with respect to the irregularity in maintaining of the account, which has led to the misappropriation of the Government money, I am not inclined to interfere with the impugned orders of punishment and hence, the O.A. is dismissed accordingly. No costs.'

In the light of these findings against the petitioner which have attained finality, it is not open to the petitioner to seek reopening of the matter only on the strength of his acquittal in criminal proceedings.

Trite to state, the burden of proof required in criminal proceedings would rank higher than the requisite burden of proof in disciplinary proceedings. Therefore, the acquittal of the petitioner in criminal proceedings may not have bearing to the extent of warranting reopening of the matter by setting aside the departmental action taken against him. This Court must also note that though the acquittal of the petitioner was in December, 2015, he deemed it appropriate to make a representation only on 24.09.2017. This delay on his part puts it beyond the pale of doubt that the petitioner is only grasping at straws to reopen a settled matter.

The writ petition is therefore devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:06.11.2018

GJ