



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.7148 of 2011

S.Udayakumar

.. Petitioner

Vs.

1. The Principal Secretary,
Government of Tamil Nadu, Secretariat,
Chennai.
2. The Additional Director General of Police,
Chennai.
3. The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.
4. The Deputy Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari calling for the records of the 1st respondent dated 12.10.2009 and G.O.(2D) No.411, dated 23.09.2005, confirming the order of the 2nd respondent, dated 20.02.2004, confirming the order of the 3rd respondent, dated 20.04.2001, quash the same.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.M.Jeya Kumar
Additional Government Pleader

ORDER

This writ petition is filed for issuance of writ of certiorari to quash the order of the first respondent dated 12.10.2009 and G.O.(2D) No.411, dated 23.09.2005, confirming the order of the 2nd respondent, dated 20.02.2004, confirming the order of the 3rd respondent, dated 20.04.2001.

2.The petitioner is a Head Constable. While he was working as a Grade II Police Constable in Bazar police station,



Ramanathapuram, a charge memo, dated 04.05.2000 was issued by the third respondent alleging that the petitioner prevented the Government official from performing the duties on 08.03.2000 during a free medical check up camp at Melakidaram village. The further misconduct was regarding the damages caused by the petitioner and others to the Government vehicle. Simultaneously, criminal case in crime No.33/2000 was registered for the offences under sections 147, 341, 353 of IPC and Section 3 of the TNPPDL Act. In the departmental proceedings, an Enquiry Officer was appointed. Two witnessess were examined to prove the delinquency. Though the petitioner was given full opportunity and filed a detailed explanation, the Enquiry Officer found the petitioner guilty of the charges. Thereafter, the Disciplinary Authority namely, the third respodnent passed an order on 23.04.2001 imposing the punishment of postponing increment for two years. The punishment was also confirmed by the Additional Director General of Police, Chennai (Second respondent) on 08.12.2004. Aggrieved by the order of second respondent confirming the order of third respondent, the petitioner filed a Mercy petition before the first respondent which was dismissed by the first respondent on 12.10.2009. Aggrieved by the order of first respondent confirming the order of respondents 2 and 3 the above writ petition is filed.

3.Learned counsel for the petitioner submitted that the petitioner was acquitted from the criminal case. It is stated that on the same set of charges, the criminal complaint which was taken on file as Sessions Case No.113 of 2002 ended in acquittal by order, dated 20.02.2004. Since the petitioner was acquitted, learned counsel for the petitioner submitted that the punishment imposed is impermissible, when the petitioner was acquitted in the criminal case which was initiated on the same set of charges and on the same materials. Learned counsel further submitted that the name of the petitioner was not found place in the original complaint and it was subsequently included. It is also suggested by the learned counsel for the petitioner that the whole proceedings was on account of the fact that the petitioner's wife happened to be a councillor and that the petitioner was involved at the pressure and influence of some third parties.

4.Learned counsel relied upon the judgment of Honourable Supreme Court in the case of **G.M.Tank Vs. State of Gurajat and another** reported in **2006 (3) CTC 494**. In similar circumstances, the Honourable Supreme Court observed that if the criminal court honourably acquitted the appellant, the charge memo based on same set of facts and the same materials cannot be permitted. Before the Supreme Court, it was observed that the acquittal of the appellant therein was held to be honourable and that Enquiry Officer has given a finding in favour of the appellant therein. In spite of acquittal and the report of Enquiry Officer, the departmental proceedings went on culminating in punishment of the appellant therein for all



serious misconduct. Para 21 to 25 of the judgment of Honourable Supreme Court are relevant and herein extracted below.

'21. Before the learned Judges, Paul Anthony's case (Supra) was relied on in regard to the above contentions. The learned Judges held that the decision in Paul Anthony's case (Supra) would not support the respondent therein because in Paul Anthony's case (Supra) the evidence led in the criminal case as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence and this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. The Bench further held as follows:

'..It is to be noted that in that case the finding by the Tribunal was arrived at in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the Criminal Court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion de hors the findings of the Criminal Court. But at this stage, it should be noted that it is not as if the Labour Court in the instant case was totally oblivious of the proceedings before the Criminal Court. The Labour Court has in fact perused the order of the Judicial Magistrate and the exhibits produced therein and come to an independent conclusion that the order of the Criminal Court has no bearing on the proceedings before it; which finding of the Labour Court, in our opinion, is justified.

22. In the case of Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Limited, Haldia & Ors., 2005 (7) SCC 764, this Court in paragraph 11 held as under:

'As far as acquittal of the appellant by a Criminal Court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a Criminal Court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender,



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the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings.

The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.'

23. This Court in the case of **Depot Manager, A.P. State Road Transport Corpn. Vs. Mohd. Yousuf Miya & Ors.**, 1997

(2) SCC 699, in paragraph 8 held as under:

"The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with



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departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

24.

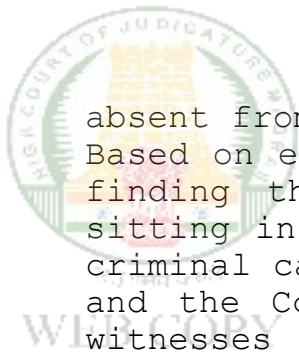
25. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got



subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages."

5. In the present case, the facts are slightly different. The petitioner and others against whom criminal prosecution was levelled were acquitted by giving benefit of doubt. From the reading of the judgment in Sessions case No.113 of 2002 it appears that there is no positive proof that the petitioner and others are liable to be prosecuted for the serious offences. Merely, because the petitioner was acquitted on the ground of benefit of doubt, it cannot be said that the petitioner was honourably acquitted. Hence, the judgment relied upon by the petitioner is not applicable.

6. The perusal of records clearly would show that there is no allegation of malafide in this case. There was nothing on record to suggest that a false complaint was given against the petitioner. The law is reiterated in several judgments that the acquittal in criminal case need not be taken for consideration in the departmental proceedings and punishment can be awarded even against the person who is acquitted from the criminal charges on any technical ground or on the ground of benefit of doubt. In this case, for want of evidence by examining all those who were named in the complaint, the petitioner was acquitted giving benefit of doubt. Certainly, it is not a honourable acquittal. In such circumstances, the contention of the petitioner is not accepted. The petitioner has not brought any independent witness to prove his alibi or by other material, to draw an inference that there was something behind the accusation against the petitioner. Malafide is not a ground raised by the petitioner during departmental proceedings or in the criminal proceedings. A single sentence found in the affidavit filed in support of the petition cannot be the sole basis to hold that the punishment is vitiated by any malafide. Having regard to the over all circumstances and the principles applied by the Honourable Supreme court and this Court in several judgments, the punishment cannot be interfered with merely because the petitioner was acquitted in the criminal case giving the benefit of doubt. In the departmental proceedings, the presence of petitioner at the time of incident was held proved. The fact that the petitioner was



absent from duty on the date of incident is established by evidence. Based on evidence and circumstances the Enquiry Officer has given a finding that the charges are proved beyond doubt. This Court sitting in writ jurisdiction cannot re-appreciate evidence. During criminal case, witnesses named in the charge sheet were not examined and the Court observed that non examination of several important witnesses is fatal. The incident was held proved in the departmental proceedings. For the proved charges, the punishment imposed is not major and only postponement of the increments. Hence, this Court has no valid ground to interfere with the order respondents 1 to 3.

7.As a result, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
Government of Tamil Nadu, Secretariat,
Chennai.
2. The Additional Director General of Police,
Chennai.
3. The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.
4. The Deputy Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

+1 CC to SPL.GP (SR-89023[F] dated 24/09/2019)

+1 CC to Mr.J.ANANDKUMAR, Advocate (SR-89072[F] dated 25/09/2019)

W.P. (MD) .No.7148 of 2011
23.09.2019

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