



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.16445 of 2018

WEB COPY

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... Petitioner

-Vs-

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai-1.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Deputy Commissioner of Police,
Law and Order, Madurai City.

4.The Inspector of Police,
Thilakarthedal Police Station,
Madurai.

... Respondents

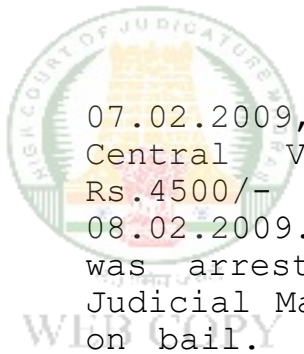
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in proceedings Rc.No.109328/AP.2(3)/2017, dated 08.02.2018 confirming the order of the second respondent in C.No.D1 (1) Appeal-01/2017 dated 03.05.2017, modifying the order of the third respondent in proceedings D(1)/Tha.Pa.No.91/2009, Rule 3(b) dated 28.01.2017 and to quash the same, consequently, directing the respondents to reinstate the petitioner with continuity of service and back wages and with all other attendant benefits.

For Petitioner : Mr.D.Venkatesh
For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader.

ORDER

The order of the first respondent dated 08.02.2018 is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondents to reinstate the petitioner with continuity of service and back wages and with all other attendant benefits.

2.According to the petitioner, while he was working as Head Constable in Law and Order in the Thilakarthedal Police Station, Madurai, based on the complaint given by one Hyder Ali on



07.02.2009, alleging that the petitioner has assaulted him in Central Vegetable Market, Madurai and extorted a sum of Rs.4500/- from the said Hyder Ali, a case was registered on 08.02.2009. Based on the First Information Report, the petitioner was arrested and remanded to judicial custody by the learned Judicial Magistrate No.2, Madurai and subsequently, he was released on bail. The petitioner was placed under suspension and charge memo, dated 13.11.2009, containing three charges, was issued. The petitioner has submitted his explanation. Not being satisfied with the explanation submitted by the petitioner, the third respondent has ordered for domestic enquiry. The enquiry officer, after concluding the enquiry, has filed report on 30.06.2010, holding that charges levelled against the petitioner were proved. The petitioner filed W.P.(MD)No.11178 of 2010 forbearing the third respondent herein / second respondent therein from proceeding further in the domestic enquiry and from passing final order in the disciplinary proceedings, till the disposal of the criminal case. This Court, by the order dated 27.08.2010, has allowed the said Writ Petition.

3.By the judgment dated 09.09.2016, made in S.C.No.47 of 2010, the Chief Judicial Magistrate has acquitted the petitioner and another person, holding that the charges are not proved beyond reasonable doubt. The third respondent has issued second show cause notice to the petitioner. The petitioner has submitted his explanation. The third respondent, by the order dated 28.01.2017, has dismissed the petitioner from service. On appeal, the second respondent, by the order dated 03.05.2017, has modified the punishment of dismissal from service as compulsory retirement. The review filed by the petitioner before the first respondent was rejected. Against the said three orders passed by the respondents 1 to 3, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that the charges levelled against the petitioner in criminal case and disciplinary proceedings are one and the same. When the petitioner was acquitted in the criminal case, the respondents ought to have taken into consideration the said acquittal and exonerated the petitioner from the charges. The second respondent, having held that the evidence of P.W.1 / defacto complainant lacks truthfulness and creates doubt, ought to have allowed the appeal and set aside the order of the third respondent. The respondents 1 and 2 failed to see that not only P.W.1 / defacto complainant and other private witnesses denied the incident, but deposed that they did not know the petitioner and they signed in the blank papers. The first respondent has failed to properly appreciate the said fact and relied on the judgments reported in **(2006) 1 M.L.J.146 (P.Ramasamy Vs. Government of Tamil Nadu and others), CDJ 2013 MHC 2594 (P.Sakthivelayuthasamy Vs. The Commandant), 2013 (1) CWC 344 (N.Ramakrishnan Vs. The Deputy Inspector General of Police, Tirunelveli), (2006) 2 M.L.J. 489 (V.Kanagasabapathy Vs. Deputy**



Inspector General of Police and another), Dilip Bhuyan Vs. Central Coalfields Limited and others dated 16.01.2014.

5.The respondents have filed counter affidavit and denied all the averments. The learned Special Government Pleader appearing for the respondents submitted that even after acquittal in the criminal case, the department can proceed with the disciplinary proceedings and impose punishment. The standard of proof in criminal case is different from the standard of proof in disciplinary proceedings. In the criminal case, strict proof is necessary to prove the charges beyond reasonable doubt, whereas, in the domestic enquiry, the enquiry officer can hold the charges levelled against the delinquent employee are proved on preponderance and probabilities of evidence. The witnesses were examined in the domestic enquiry immediately within one year. In the criminal case, they were examined after 8 years and in the meanwhile, witnesses would have been won over by the petitioner. The respondents have passed the order based on the materials on record and the punishment imposed on the petitioner is proportionate to the proven charges. The judgments relied on by the petitioner are not applicable to the facts of the present case and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the materials available on record carefully.

7.The issue is whether after acquittal in the criminal case, the authorities can impose punishment in the disciplinary proceedings or not. It is well settled that the criminal proceedings and disciplinary proceedings are independent of each other and both can be proceeded with simultaneously. It is also well settled that even after the conclusion of the criminal case, it is open to the authorities to initiate disciplinary proceedings and impose punishment on its employee. At the same time, the contention of the learned counsel appearing for the petitioner that the authorities must take into consideration the acquittal in the criminal case is well founded. The judgments relied on by the learned counsel appearing for the petitioner, substantiate this proposition of law.

8.From the materials on record, it is seen that the witnesses were examined in the domestic enquiry in the year 2010 and they deposed against the petitioner and domestic enquiry was concluded on 30.06.2010, and the enquiry officer submitted his report. In view of the order dated 27.08.2010 in W.P.(MD)No.11178 of 2010 filed by the petitioner, the third respondent did not pass any final orders, till the disposal of the criminal case. After the judgment dated 09.09.2016, made in S.C.No.47 of 2010 on the file of the Chief Judicial Magistrate, the third respondent has issued show cause notice and the petitioner has submitted his explanation, wherein he



has mentioned about the evidence of P.W.1 / defacto complainant and acquittal in the criminal case by the Chief Judicial Magistrate, holding that the charges levelled against the petitioner were not proved beyond reasonable doubt. In spite of such statement made by the petitioner in the explanation, enclosing the copy of the judgment dated 09.09.2016, made in S.C.No.47 of 2010, the third respondent, except stating that before enquiry witnesses deposed in respect of the charges, did not even consider the judgment and has not given any reason for not considering the judgment of the learned Chief Judicial Magistrate in S.C.No.47 of 2016, dated 09.09.2016.

9.The second respondent in the appeal dated 04.05.2017, came to the conclusion that the evidence of P.W.1 / defacto complainant is contradictory and his evidence is doubtful. In spite of coming to the said conclusion, the second respondent instead of setting aside the order of the dismissal, has erroneously modified the punishment as compulsory retirement. Once the evidence of P.W.1 / defacto complainant is disbelieved and the evidence of P.Ws.1 to 9 before the Lower Court is that they signed in the blank papers and they did not know the petitioner, the second respondent erred in not exonerating the petitioner. Similarly, the first respondent, in the review, has not appreciated the facts in proper perspective. In view of the fact that the evidence of P.W.1 / defacto complainant is disbelieved by the second respondent, the order of compulsory retirement is liable to be set aside and hereby set aside.

10.In the result, this Writ Petition stands allowed as prayed for. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai-1.
- 2.The Commissioner of Police,
Madurai City, Madurai.
- 3.The Deputy Commissioner of Police,
Law and Order, Madurai City.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Inspector of Police,
Thilakarthedal Police Station,
Madurai.

+1 CC to Mr.D.VENKATESH, Advocate (SR-97429[F] dated 11/11/2019)

+1 CC to SPL GP (SR-97740[F] dated 12/11/2019)

W.P.(MD) No.16445 of 2018

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