



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.22184 of 2018

and

W.M.P (MD) .No.20106 of 2018

—

B.Selvakumar

... Petitioner

-Vs-

1.The Director General of Police,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Trichy Range,
Trichy.

3.The Superintendent of Police,
District Police Office,
Karur District.

4.The Deputy Superintendent of Police,
Kulithalai Sub Division,
Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order of dismissal from service passed by the third respondent in D.O.No.191/2017 C.No.A4/P.R.66/2015, dated 11.05.2017 and impugned orders of rejection passed by the second respondent in Na.Ka.No.P2/Me.Mu.28/17, dated 06.06.2017 and by the first respondent in Rc.No.026033/AP.IV(1) 2018, dated 03.08.2018 and quash the same and consequently direct the respondents to reinstate the petitioner in service with backwage and all attendant and consequential benefits within a time frame that may be stipulated by this Court.

For Petitioner : Mr.J.Sankarapandian

For Respondents : Mr.S.Dhayalan,
Government Advocate



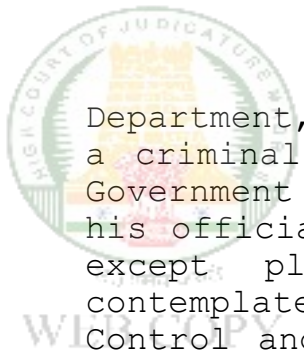
ORDER

The impugned orders respondents are sought to be quashed and consequently direct the respondents to reinstate the petitioner in service with backwage and all attendant and consequential benefits.

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2. The petitioner was appointed as Grade-II Police Constable on 01.03.2009 in Virudhunagar District and transferred to Karur District on 15.08.2013. According to the petitioner, there was a quarrel between him and his wife on 27.04.2015. His wife lodged a complaint before the All Women Police Station, Karur and a case was registered in Cr.No.9 of 2015 for the offences under Sections 323, 294(b), 498(A) and 406 of IPC r/w Section 4 of the Dowry Prohibition Act r/w 3(1)(r)(s) and 3(2)V(a) SC/ST (PoA) Amendment Ordinance, 2014. During the pendency of investigation of criminal case, the third respondent, by order dated 23.06.2015, suspended the petitioner from service. A charge memo, dated 13.08.2015, was issued to the petitioner. The third respondent appointed the fourth respondent as Enquiry Officer. In the enquiry, the petitioner's wife, her mother, her brother were not examined and they were removed as witnesses. The Enquiry Officer submitted a report on 25.07.2016 holding that the charges levelled against the petitioner were proved. The third respondent, vide his proceedings dated 31.03.2017 issued notice directing the petitioner to submit his explanation within fifteen days. The petitioner sought a week time to submit his explanation to the second show cause notice dated 31.03.2017, issued by the third respondent. But, the third respondent, without granting time, by the impugned order dated 11.05.2017 removed the petitioner from service. The petitioner filed an appeal to the second respondent and the same was rejected. The petitioner filed a Review Petition before the first respondent. During the pendency of the review petition, by the judgment dated 06.11.2017 the petitioner was acquitted by the Principal Sessions Judge, Karur, in S.C.No.72 of 2016, which was preferred on the complaint given by his wife. The petitioner sent the copy of the said judgment of the learned Principal Sessions Judge, Karur, to the first respondent. The first respondent without considering the said judgment, rejected the Review Petition. The present writ petition is filed challenging the orders of the respondents 1 to 3.

3. The learned counsel appearing for the petitioner contended that removing the petitioner's wife, her mother, her brother as witnesses in the domestic enquiry, is in violation of principles of natural justice and the Enquiry Officer ignored the fundamental principles to be followed in the domestic enquiry. The findings of the Enquiry Officer is not supported by any evidence. The enquiry officer has given findings purely on surmises and conjectures. The learned counsel for the petitioner further contended that the impugned order of the dismissal is invalid and in view of



Department, dated 22.02.1983. As per the said Government Order, if a criminal case is filed for a criminal offence committed by the Government servant, which is no way connected with the discharge of his official duties, there is no need to pursue Departmental action except placing the Government Servant under suspension as contemplated under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The departmental action can be taken only after disposal of the criminal case by the Court of law. The respondents 1 & 2 failed to exercise their discretionary power while appreciating the appeal and Review petition. Merely stating that they have gone through the findings and minutes in the appeal and review petition and agreed with the findings of the Enquiry Officer and the order of the third respondent, does not satisfy the requirements of considering the appellate jurisdiction and prayed for allowing the writ petition.

4. The learned counsel appearing for the petitioner relied on the following judgments:

(i) S. Suresh Kannan vs. The Director General of Police [W.P. (MD) No.18352 of 2018, dated 25.03.2019] wherein at paragraph 7 it has been held as follows:-

"7. Having heard to the submissions made on either side and also on going through the materials placed on record, this Court is of the view that the core issue that arose for institution of the departmental proceedings is only the family dispute and as such the punishment of postponement of next increment for a period of three years is excessive and disproportionate to the charges levelled against the petitioner. Hence, this Court, taking a lenient view, modifies the said punishment awarded to the petitioner to a cut in increment for a period of one year without cumulative effect. The petitioner is also permitted to approach the authority in respect of his prayer for regularisation of suspension period."

(ii) B. Prdmaiah vs. The Union of India Rep. by the Secretary [W.P.No.22574 of 2001, dated 12.12.2006] wherein at paragraph No.21, it has been held as follows:-

"21. As rightly pointed out by the learned counsel for the petitioner, even in the enquiry the Enquiry Officer proceeded with a point whether the constable B. Padmaiah demanded money from Ravichandran, Supervisor of Rajeshwari Contractors for supervising the grass loading in OTA area. In such circumstances, as rightly pointed out by the learned counsel for the petitioner in the light of the decision of the Supreme Court in Hardwari lals case (cited supra), non-examination of the material witness, viz., Ravichandran has prejudiced the petitioner. We are also satisfied that the infirmities pointed out would



undoubtedly amount to violation of principles of natural justice. Therefore, the impugned orders are liable to be set aside. The failure to examine the complainant whose complaint is the basis for the disciplinary action against the petitioner and the failure to provide an opportunity to the petitioner to test the veracity of the complaint made against him has resulted in the deprivation of right of the petitioner amounting to gross violation of principles of natural justice and thereby, making the entire disciplinary proceedings vitiated. In view of the specific statement of P.W.4 Dan Ram, who conducted the body search of the petitioner that no money was found in his pocket and he took canteen coupons from his pocket, the contrary conclusion arrived at by the Enquiry Officer and accepted by the disciplinary authority cannot be sustained. We are also satisfied that the failure to provide defence assistance to the petitioner is a violation of the provisions of Rule 34 of CISF Rules, besides the violation of the principles of natural justice. All these material and relevant aspects have not been properly considered by the appellate and revisional authorities."

(iii)V.Kanagasabapathy vs. The Deputy Inspector General of Police [W.P.No.4685 of 2006 dated 12.04.2006] wherein the relevant portions are extracted hereunder:-

"9.....An honourable acquittal would only mean an acquittal which is free from any doubt. In the case on hand, the judgment of the Sessions Court dated 2.11.1995 amply shows that after analysing the prosecution case, and the oral and documentary evidence, the learned Sessions Judge after finding that there is no acceptable material or evidence to connect the accused with the crime, acquitted him from the charges. The very same charges had been framed by the Department and at the time of passing of the final order by the disciplinary authority viz., on 24.1.2000, the judgment of the criminal court dated 2.11.1995 could very well be available before him. Unfortunately, the disciplinary authority has not taken it for consideration and not even made a reference of the judgment of the Criminal Court in its order."

10.Applying the proposition laid down in the above referred Division Bench decisions of this Court to the facts of this case, as the charge is one and the same in both the criminal case and in the departmental proceeding and in view of the fact that the criminal Court acquitted the petitioner on merits, it is not desirable on the part of the respondents to proceed with the departmental proceeding. Consequently, the impugned charge memo is



liable to be set aside in accordance with the decisions cited supra.

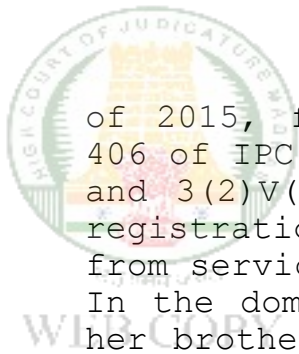
(iv) D.Dhinakaran vs. The Superintendent of Police [W.P.No.24113 of 2006 dated 04.04.2013], wherein at paragraph-17, it has been held as follows:-

"17.After the acquittal of the petitioner in the criminal case registered against him, based on the complaint given by is wife, there is no possibility to adduce further evidence in the departmental proceeding to establish the alleged delinquency. The departmental proceeding was initiated by the respondents only based on the criminal case registered on the complaint given by the wife of the petitioner which ended in hon'ble acquittal. On the aforesaid facts and circumstances, nothing survives against the petitioner, hence, he need not face the ordeal of the departmental proceeding. Therefore, this Court has no hesitation to quash the impugned department proceedings initiated against the petitioner, in view of the hon'ble acquittal recorded by the Judicial Magistrate in C.C.No.839 of 2005 which has admittedly reached finality."

5. The respondents filed counter affidavit. Mr.S.Dhayalan, learned Government Advocate appearing for the respondents contended that the petitioner promised to marry one Deepa, but cheated her and only when he was forced by elders, the petitioner married her. After the marriage, he assaulted her and criminal case was registered on the complaint given by his wife. The acquittal of the petitioner is not Honourable acquittal. He was acquitted as the prosecution has failed to prove the case. The petitioner was involved in another criminal case, but the respondents do not initiate the departmental proceedings, as the petitioner was already removed from service. Even after acquittal in the criminal case, the respondents have power to initiate and proceed with the departmental proceedings and impose punishment. As per G.O.Ms.No.124, Personnel and Administrative Reforms (Per.N) Department, dated 22.02.1983, there is no bar for the respondents to take departmental proceedings after disposal of the criminal case. The departmental proceeding was conducted in a fair and proper manner and the allegation that the findings of the Enquiry Officer is not supported by any evidence, is not correct and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

7. From the material on record, it is seen that in respect of some domestic dispute, the petitioner's wife gave a complaint to All Women Police Station, Karur and the case was registered in Cr.No.9



of 2015, for the offences under Sections 323, 294(b), 498(A) and 406 of IPC r/w Section 4 of the Dowry Prohibition Act r/w 3(1)(r)(s) and 3(2)V(a) SC/ST (PoA) Amendment Ordinance, 2014. Based on the registration of the said complaint, the petitioner was suspended from service on 23.06.2015 and charge memo was issued on 13.08.2015. In the domestic enquiry, the petitioner's wife, wife's mother and her brother were cited as witnesses. According to the petitioner, while he was cross-examining his wife, she pretended to be feeling giddy and sought for adjournment. Subsequently, the petitioner's wife, her mother, her brother did not attend the enquiry inspite of number of adjournments to enable them to attend the enquiry. Their names were removed from the witnesses. This statement was not denied by the respondents in the counter affidavit. The first charge is based on the complaint given by the petitioner's wife. The second charge is consequential to the first charge. The petitioner's wife is the complainant. The petitioner's wife, wife's brother and her mother are the only complainant witnesses to prove the said charges levelled against the petitioner.

8. The fourth respondent/enquiry officer without there being any evidence from the concerned persons, has given a finding that the charges levelled against the petitioner, were proved. The said finding is perverse and based on no evidence. The third respondent, by the impugned order dated 11.5.2017, dismissed the petitioner from service. The third respondent has not given any reason for dismissing the petitioner from service and the same is non-speaking order. The respondents 1 & 2 failed to consider various objections raised by the petitioner in the grounds of appeal, especially, the first respondent failed to consider the judgment dated 06.11.2017, in S.C.No.72 of 2016. The said criminal case is based on the complaint given by the petitioner's wife. The petitioner was acquitted in the said criminal case, as the prosecution failed to prove the charges levelled against the petitioner. The said acquittal is not by giving benefit of doubt, but on merits, as the prosecution failed to prove the charges levelled against the petitioner.

9. The contention of the learned Government Advocate that the acquittal of the petitioner is not Honourable acquittal, is not correct. It is no doubt true, even after acquittal of the Government Servant in a criminal case, it is open to the Department to take departmental proceedings against the Government Servant. But, in the departmental proceedings, the Department must prove the charges levelled against the Government Servant. Evidence must be let in to substantiate the charges levelled against the petitioner, even though strict proof as in the case of criminal case is not necessary to prove the charges. In the present case, there is no evidence before the Enquiry Officer, as the petitioner's wife, wife's brother and her mother failed to appear before the Enquiry Officer and give evidence to prove the charges levelled against the petitioner. As



reasons, dismissed the petitioner from service, which is invalid and illegal.

10. The charges Nos.3 & 4 are concerned, the contention of the learned counsel for the petitioner that, the respondents did not examine the doctor, who treated the petitioner and with regard to charge No.4, did not examine the Doctor, who issued certificate and erroneously came to the conclusion that the charge Nos.3 & 4 are proved has considerable force. In view of no evidence, the judgments relied on by the petitioner are squarely applicable to the facts of the present case.

11. For the above reason, the impugned orders of the respondents are set aside and the respondents are directed to reinstate the petitioner with backwages and attendant benefits within a period of two weeks from the date of receipt of a copy of this order.

12. In the result, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Director General of Police, Chennai-600 004.

2.The Deputy Inspector General of Police,
Trichy Range, Trichy.

3.The Superintendent of Police,
District Police Office, Karur District.

4.The Deputy Superintendent of Police,
Kulithalai Sub Division, Karur District.

+1 CC to M/s.J.SANKARA PANDIAN, Advocate (SR-99409[F] dated 19/11/2019)

+1 CC to M/s.GP (SR-99560[F] dated 19/11/2019)

W.P. (MD) No.22184 of 2018

18.11.2019

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