

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020
CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.17297 of 2007
[O.A.No.4116 of 2003]

P. Ramasamy,
S/o. Palaiah Nadar,
Ettencadu, Friday Market Post,
Kanniyakumari.

...Petitioner

Vs..

1. The Addl. Director General of Police,
Law and Order,
Chennai - 600 004.
2. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.

...Respondents

Prayer: Originally this petition has been filed as Original Application No.4116 of 2003 before the Tamil Nadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and re-numbered as W.P.No.17297 of 2007.

Petition filed praying to issue a writ of Certiorarified Mandamus to call for records relating to second respondent's order made in PR.No.66/97-C1/PR36/97 dated 12.07.2003 and R.C. No.210685/AP.II(1)/2003 dated 23.10.2003 on the file of the 1st Respondent respectively, to quash the same and consequently direct the respondents to extend all benefits in both service and monetary including backwages etc.

For Petitioner :Mr.L. Chandra Kumar
For Respondents 1 & 2 :Mr.A.Kumar, AAG.
assisted by
Mr.P. Chinnadurai, AGP

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O R D E R

The petitioner originally filed the application before the Tamil Nadu Administrative Tribunal at Chennai in O.A.No.4116 of 2003, subsequently, the said Administrative Tribunal was abolished and the said O.A., has been transferred to the file of this Court and re-numbered as W.P.No.17297 of 2007.

2. This writ petition is filed praying to issue a writ of Certiorarified Mandamus to call for records relating to second respondent's order made in PR.No.66/97-C1/PR36/97 dated 12.07.2003 and first respondent's order in R.C. No.210685/AP.II (1)/2003 dated 23.10.2003 and consequently direct the respondents to extend all benefits in both service and monetary including backwages etc.

3. The brief facts of the case are as follows:

(a) The petitioner was working as Sub-Inspector of Police, in Sathankulam Police Station, Thoothukudy District and during his service, he was levelled on the following charges:

(i) Reprehensible conduct in having screened the evidence and allowed the dead body concerned in Sathankulam P.S. Cr. No.447/96 u/s.498(A), 302 & 201 IC to be burnt on 19.11.1996.

(ii) Dereliction of duty in not registering a FIR on 19.11.1996 under appropriate Sections of law immediately on receipt of the information about the death of Chellapappa which was subsequently registered as Sathankulam Police Station.

(iii) Demanding and accepting illegal gratification of Rs.2,000/- from the accused party Thiru. Gnanaraj and others in Sathankulam Police Station, Cr. No.447/96 for doing favour to the accused.

(iv) Reprehensible conduct in having entered on Medical leave from 18.12.1996 without obtaining prior permission from the competent authority.

(b) After issuing the charge memo, the petitioner was sought for explanation for the charges. In view of the unsatisfactory and evasive explanation made by the petitioner for the aforesaid charges, Departmental proceedings was initiated against the petitioner. The Enquiry was conducted by the Enquiry Officer and enquiry report was submitted to the disciplinary authority. Based on the enquiry report, 2nd respondent/Deputy Inspector General of Police, passed an order of dismissal from service. Challenging the aforesaid order, the petitioner filed an appeal before the Appellate Authority in which the same was dismissed and charges against petitioner were confirmed by the appellate authority. Being aggrieved over the aforesaid orders, the petitioner filed an application in O.A. No.4116 of 2003 before the Tamil Nadu Administrative Tribunal, subsequently, the case has been transferred before this Court and re-numbered as W.P.No.17297 of 2007 since the Administrative Tribunal was abolished.

4. Learned counsel for the petitioner submits that the petitioner was not given proper opportunities to put forth his

defence and the explanation submitted by the petitioner was not fairly considered either by the Enquiry Officer or the Disciplinary authority or the Appellate Authority. On 03.12.1996 at 1700 hrs, one Alagesan S/o. Asirvatham who is the brother of the Chellapappa, appeared before the petitioner while he was working as Sub-Inspector of Police and in charge of the Sathankulam Police Station in the absence of the Inspector of Police, and presented a complaint stating that his sister Chellapappa was murdered by her husband Gnanaraj due to Dowry Harassment and the dead body was cremated. Soon, on receipt of information from him in this regard, the petitioner registered a case in Crime No.447 of 1996 for the offences punishable under Sections 498(A), 302 and 201 IPC at Sathankulam Police Station and the same was sent by express to the Inspector of Police and other superiors concerned through P.C. 1593. Prior to this, nobody made any complaint about this incident. Prior to this incident, there was no complaint and allegation against the petitioner. However, the petitioner was prosecuted by a Criminal case in Sessions Case No.346 of 2000 on the file of Additional District Sessions Judge/Fast Track Court No.1, Tuticorin by which order dated 25.11.2002, he was acquitted along with others listed out in the array accused. Even while the petitioner was acquitted from the charges as per the order of the Sessions Court dated 25.11.2002, the disciplinary authority proceeded with the enquiry and passed order of dismissal from service against the petitioner without considering the Judgment of acquittal of the Session Court. Further, during the enquiry, the petitioner was not given proper and adequate opportunities to put forth his explanation and his representation was not properly considered in accordance with law. In the appeal filed by the petitioner, the punishment order of dismissal from service was confirmed and dismissed the appeal, which is against the proposition of law. The dismissal from service is unsustainable even though the petitioner was acquitted from the identical charges levelled in the Criminal case. Hence, either the Disciplinary Authority or the Enquiry officer or the Appellate authority failed to appreciate the same and come to conclusion that petitioner is guilty of charges levelled against him and therefore, imposed punishment of dismissal from service which is shockingly disproportionate. The petitioner counsel submits that the orders of disciplinary authority and the appellate authority are liable to be set aside.

5. On the contrary, the learned Additional Advocate General assisted by the learned Additional Government Pleader would submit that insofar as the charges levelled against the petitioner, the enquiry officer was appointed and conducted enquiry by examining 3 witnesses and marked 5 documents. On 19.11.1996, the petitioner did not register the case when he was informed about the incident. Without proper investigation, the

petitioner allowed to cremate the dead body after receiving illegal gratification from the accused. Further, the petitioner went on medical leave without giving intimation and getting proper sanction from higher authorities. Such as, four counts of charges have been levelled against the petitioner. After scrutinizing oral and documentary evidence, the enquiry officer submitted the enquiry report before the Disciplinary Authority. Upon receipt of the enquiry report, the Disciplinary Authority sent show cause notice seeking for the explanation from the petitioner. In view of unsatisfactory and evasive explanation of the petitioner, based on the ground of the allegations reported by the enquiry officer, the Disciplinary Authority passed an order of dismissal from service against petitioner. The appellate authority also after perusing and examining all the findings of the enquiry officer, confirmed the dismissal order of the Disciplinary authority against the petitioner. It is further submitted that it is not acceptable to quash the dismissal order on the ground of the acquittal of the petitioner from the Criminal case. Further, the petitioner was not made honourable acquittal beyond any reasonable doubt and he was acquitted in the Criminal case during the trial, for not producing adequate oral and documentary evidence on the side of the prosecution. But, in this case, the Department has initiated a separate proceedings against the petitioner charging the aforesaid allegations. After duly appointing the enquiry officer to investigate the charges made against the petitioner, the enquiry officer conducted the oral enquiry by examining 3 witnesses and marked 5 documentary evidence in this regard. Upon receipt of the enquiry report and evasive explanation from the petitioner, the Disciplinary authority passed an order of dismissal of service against the petitioner. Therefore, acquittal in the Criminal case alone cannot be a ground to relieve from the charges levelled against the petitioner thereby extending all benefits in both service and monetary including backwages etc to the petitioner. In support of his contention, the learned Additional Advocate General has relied on the case of State of Rajasthan and Others Vs. Heem Singh reported in 2020 SCC Online SC 886 wherein it was held as follows:

40. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association Vs. Union of India, this Court held:

37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.

41. In *Inspector General of Police Vs. S. Samuthiram*, a two-judge Bench of this Court held that unless the accused has an "honorable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal". Noticing this, the Court observed:

"Honourable acquittal

24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI Vs. Bhopal Singh Panchal* [(1994) 1 SCC 541: 1994 SCC (L&S) 594: (1994) 26 ATC 619]. In that case, this Court has considered the impact of Regulation 46 (4) dealing with honourable acquittal by a criminal Court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the code of Criminal Procedure or the Penal Code, which are coined by Judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In *R.P. Kapur Vs. Union of India* [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam Vs. Raghava Rajgopalachari* [1992 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope Vs. Emperor* [ILR (1934) 61 Cal 168] which is as follows:

8. "The expression "honourably acquitted" is one which is unknown to Courts of justice. Apparently it is a form of order used in Courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the Government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charges. It is thus, clear that the effect of our Judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted". (Robert Stuart case [ILR (1934) 61 Cal 168], ILR pp.188-89)

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a Criminal Court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a Criminal Case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a Criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where person is acquitted for technical reasons or the prosecution giving up other witnesses since few of other witnesses turned hostile etc. In the case on hand, the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The Court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the Criminal Court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

In the aforesaid citations, it was made clear that the order of the dismissal can be passed even if the delinquent official had been acquitted of the criminal case. Further, during the enquiry, there is no evidence on the side of the petitioner to

prove his innocence. Hence, the Writ petition filed by the petitioner is not sustainable and liable to be dismissed.

6. Heard and perused the records.

7. Admittedly, the petitioner was working as a Sub Inspector of Police in Sathankulam Police Station during the year 1996. He was issued charge memo levelling three count of allegations concerned in Crime No.447 of 1996 and the fourth count of allegation regarding leave was taken without proper permission from his next superior officer after the alleged incident. The enquiry officer conducted the enquiry for the charges levelled against the petitioner. During the enquiry, three witnesses were examined and five documents were marked on the side of prosecution. However, on the side of the petitioner, no oral evidence was examined and documentary evidence was marked. On completion of the enquiry, the enquiry officer filed a report on 23.01.1998 before the Disciplinary authority. Subsequently, the Disciplinary authority/ The Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli, passed an order of punishment of dismissal from service on 12.07.2003. On appeal, the appellate authority/The Additional Director General of Police, passed an order dated 23.10.2003 confirming the order of the Disciplinary authority.

8. On a perusal of the entire records, it is seen that the complainants had approached the petitioner on 19.11.1996 with regard to the incident of murder which is said to have been taken place, but the petitioner did not register the case and demanded money of Rs.2,000/- to suppress the aforesaid incident and without proper permission, the leave was entered on the General Diary by the petitioner after the aforesaid incident being taken place. Though the petitioner was acquitted in the Criminal case, he was proceeded departmentally for the aforesaid charges. In the plea of the petitioner, no such person was approached the petitioner to register the case on 19.11.1996 and further he has stated that only on 03.12.1996 at 1700 hrs one Mr.Alagesam approached the petitioner and gave a complaint with regard to the incident of murder and immediately, a case in Crime No.447 of 1996 for the offences punishable under Sections 498(A), 302 and 201 IPC was registered against them. However, in the Departmental proceedings, it was stated that the witnesses have approached the petitioner on 19.11.1996, neither a case was registered nor examine any of the witnesses regarding the incident which is said to have taken place, in accordance with law. To substantiate the allegations against the petitioner, three witnesses were examined and five documents were marked on the side of the prosecution to prove charges levelled against the petitioner that on 19.11.1996, even though the witnesses have approached the petitioner, he did not take any steps to register the case in accordance with law and demanded money to suppress the incident. However, neither oral evidence nor

documentary evidence was let in on the side of the petitioner to disprove the allegation levelled against the petitioner. Hence, despite the petitioner was given proper and sufficient opportunities during the domestic enquiry, he was unable to prove his innocence by let in oral evidence and marking documentary evidence. Instead of making proper oral and documentary evidence to disprove his allegations, the petitioner has put forth his plea that as he was acquitted in the Criminal case, the charges alleged by the Disciplinary authority stands vitiated is not accepted and liable to be quashed. Though the criminal case was ended in acquittal against the petitioner, filing of the criminal case has nothing to do with the departmental proceedings. In this case, the department has initiated disciplinary proceedings against the petitioner for the aforesaid charges. From the oral and documentary evidence, the disciplinary authority found that the charges levelled against the petitioner were proved in the absence of evidence on the side of the petitioner and the appellate authority also confirmed the same.

9. In disciplinary enquiry the strict rules of Evidence Act have no application. The doctrine of proof beyond doubt has no application. Preponderance of probabilities from material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

10. In view of aforesaid observations and discussions, this court does not find any perversity in the order passed by the Disciplinary Authority and the Appellate Authority and there is no merit in the writ petition and accordingly, the writ petition is dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

lbm

To

1. The Addl. Director General of Police,
Law and Order,
Chennai - 600 004.

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

+1 Cc to The Government Pleader sr 38657.

+1 CC to Mr.L. Chandra Kumar, Advocate sr 38502.

W.P.No.17297 of 2007
[O.A.No.4116 of 2003]

CA (CO)
SP(20/01/2021)