

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

W.P.No.3766 of 2014

R.Nagarajan

... Petitioner

Vs

1.The Divisional Security Commissioner,
Railway Protection Force,
New General Office/Annex,
Chennai 600 003.

2.The Deputy Chief Commissioner
Railway Protection Force,
Moore Marker Complex
Chennai 600 003.

3.The Chief Security Commissioner
Railway Protection Force,
Moore Marker Complex,
Southern Railway
Chennai 600 003.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorarified Mandamus calling for the records of the respondents ending with the order of dismissal of the petitioner dated 17.05.2001 as confirmed by the 3rd respondent in this proceedings dated 20.06.2003 and quash the same and also directing the respondents to reinstate the petitioner into services with all back wages, continuity in service and all attendant benefits.

For Petitioner :Mr.V.Bhiman

For Respondents :Mr.Vijay Anand
for R1 to R3

O R D E R

The Writ Petitioner, while serving as a Head Constable in the year 1994, his wife namely Shanthi had started the business in the name and style of Shanthi Electronics and during the course of her business, she issued cheques for security purpose and the same was misused by the third parties. Thus the respondents have framed charges against the writ petitioner and consequently the services of the writ petitioner was dismissed by the respondents on 20.05.2001 and challenging the aforesaid order of dismissal from service, the writ petitioner had filed an appeal before the Appellate Authority and the same was dismissed on 10.07.2002 and again he preferred an appeal before the Chief Security Commissioner and the same was dismissed on 20.06.2003, holding that the aforesaid appeal was filed with inordinate delay. Thereafter, the writ petitioner has filed Writ Petition in W.P.No.504 of 2005 before this Court and the same was dismissed and assailing the aforesaid order of dismissal, the writ petitioner preferred an appeal in W.A.No.570 of 2007 and the same was dismissed on 05.03.2008 itself and the Writ Petitioner preferred an appeal before the Hon'ble Supreme Court of India and the same was dismissed and again he filed Review Petition (C).No.465 of 2009 and the same was dismissed on 08.04.2009 and the aforesaid department proceedings has reached its finality and subsequently a Criminal Case in Cr.No.739/1999 before the learned Chief Metropolitan Magistrate against the petitioner was ended in acquittal vide order dated 05.07.2002, by holding that the aforesaid complaint is mistake of fact. Therefore, the Writ Petitioner has filed the present Writ Petition before this Court to quash the order of dismissal and the confirmation order dated 20.06.2003 and also directing the respondents to reinstate the petitioner into service with all back wages, continuity in service and all attendant benefits.

2. The learned counsel appearing for the petitioner had stated that the departmental proceedings was initiated by the respondents and the punishment of dismissal from service was imposed against the petitioner and the said punishment order became final and subsequently, the Criminal Case in Cr.NO.739 of 1999, came before the learned Chief Metropolitan Magistrate and the said complaint was closed as mistake of fact and therefore, the petitioner is having legal right to claim for a reconsideration of the punishment of dismissal order passed by the Department.

3. The learned counsel appearing for the respondents has made a plea that the said contention raised by the learned counsel for the petitioner is misconceived and the same cannot be entertained by challenging the said dismissal order passed by the respondent Department, after confirming the said order by

this Court in W.P.No.504 of 2005 and the Hon'ble Supreme Court of India in W.A.No.570 of 2007 and therefore, the petitioner cannot have any legal right to claim for reconsideration of the punishment, based on the closure of the Criminal Case as mistake of fact.

4. In such circumstances, it is relevant to extract paragraph no.26 of the decision rendered by the Patna High Court in the case of Chandra Shekhar Azad Vs. The State of Bihar (Civil Writ Jurisdiction Case No.15626 of 2019):

26. Learned Senior Counsel has relied upon the judgment of the Hon'ble Apex Court in the case of Ishwar Dutt Vs. Land Acquisition Collector and another reported in 2005 (7) SCC 190 to submit that in the facts of the present case the State respondents would be stopped from giving any different consideration to the petitioners. Paragraph 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 29 are reproduced hereunder for a ready reference:

18. In the reference Court or for that matter the High Court exercising its appellate jurisdiction under Section 54 of the Act could not have dealt with the said question. The principle of res judica is species of the principle of estoppel. When a proceeding based on a particular cause of action has attained finality, the principle of res judicata shall fully apply.

19. Reference in this regard may be made to Wade and Forsyth on Administrative Law, 9th Edn., P.243, wherein it is stated:

"One special variety of estoppel is res judicata. This results from the rule, which prevents the parties to a judicial determination from litigating the same question over again even though the determination is demonstrably wrong. Except in proceedings by way of appeal, the parties bound by the judgment are estopped from questioning it.

5. In view of the aforesaid decision of the Hon'ble Supreme Court, this Court is of the view that the writ petitioner challenging the order of dismissal from service, has invoked appeal remedy before the Appellate Authority and the Appellate Authority, after considering his contentions, has dismissed the appeal and the same was confirmed in the Writ Petition in W.P.No.504/2005 as well as in the Writ Appeal in W.A.No.570 of 2007. Not satisfied with the orders passed, the writ petitioner again approached the Hon'ble Supreme Court of India in SLP.(C). No.21977 of 2008 and the same was also dismissed, again, the

writ petitioner has filed Review Petition in Rev.Petition (Civil) No.465 of 2009 and that was also dismissed. Thus, the petitioner has lost his legal right to reconsider the punishment imposed by the respondents. Pursuant to the closing of the Criminal Case in Cr.No.739 of 1999, the writ petitioner has filed the present Writ Petition with a prayer, challenging the very same punishment order imposed by the respondents, which was already decided by this Court as well as confirmed by the Hon'ble Supreme Court of India. Therefore, the present Writ Petition is barred by res judicata and therefore, the prayer claimed by the petitioner in the present Writ Petition is barred by res judicata.

6. Therefore, the Writ Petition filed for the aforesaid prayer is not maintainable and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.P.Srinivasan, Advocate, Sr.No.12354

+1cc to M.Vijay Anand, Advocate, Sr.No.12297

W.P.No.3766 of 2014

NMI (CO)
GS (28/05/2020)