



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.11.2020

Delivered on : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.A. (MD) Nos.1004 & 1005 of 2020

and

C.M.P. (MD) No.5467 of 2020

Against

W.P(M) .No.14&3 of 2020

R.Suresh Kumar

: Appellant in both appeals

Vs.

1.The Government of Tamil Nadu,
Secretary to Home Department,
Fort St.George, Chennai - 600 009.

2.The Director General of Police,
Headquarters, Mylapore,
Chennai - 600 004.

3.The Commissioner of Police,
Trichy City Commissioner of Police,
Trichy.

: Respondents in both appeals

COMMON PRAYER: Appeals filed under Clause 15 of the Letters Patent challenging the common order dated 14.08.2020, made in W.P.(MD) Nos.14&3 of 2020.

Prayer in WP(MD) . 3/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the 3rd respondent in his proceedings in Tha Pa No.H1/38/2019 dated 6.12.2019 and quash the same.

Prayer in WP(MD) . 14/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the 3rd respondent in respect of the order of suspension bearing C.No.H 1/15883/2004 CPO 633/2004 by the 3rd respondent dated 21.5.2004 and consequently direct the 3rd respondent reinstate the petitioner into service together with the continuity of service along with back wages and other service benefits including seniority and promotion.



For Appellant : Mr.M.Gururaj
For Respondents : Mr.M.Muthu Geethaiyan
Special Government Pleader
(In both appeal)

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COMMON JUDGMENT

(Judgment of the Court was delivered by **B.PUGALENDHI, J.**)

The Writ Appeal in W.A.(MD)No.1004 of 2020 is directed as against the order passed in W.P.(MD)No.14 of 2020 and the Writ Appeal in W.A.(MD)No.1005 of 2020 is directed as against the order passed in W.P.(MD)No.3 of 2020.

2. The appellant / petitioner has filed W.P.(MD)No.3 of 2020 challenging the charge memo dated 06.12.2019 and W.P.(MD)No.14 of 2020 challenging the suspension order dated 21.05.2004. Both the writ petitions were disposed of by the learned Single Judge, by common order dated 14.08.2020, in the following terms:

"20.

The respondents can proceed against the petitioner, pursuant to the impugned charge memo dated 06.12.2019 and in this regard, the procedure contemplated under the relevant service regulations for conducting disciplinary proceedings have to be scrupulously followed and reasonable opportunity in all respect shall be given to the petitioner. After conducting an enquiry, if the enquiry officer's report goes against the petitioner, a further opportunity shall also be given to the petitioner to get his further defence or explanation and after giving reasonable time to give such explanation to the petitioner, final decision / order shall be passed by the respondents / disciplinary authority. The aforesaid exercise shall be undertaken by the respondents within a period of three months from the date of receipt of a copy of this order. If the disciplinary proceedings is not concluded within the period stipulated above, the petitioner shall be entitled to seek review of the impugned suspension order and under such circumstances, the respondents shall review the impugned suspension order and revoke the same, as beyond the period stipulated by this Court to complete the disciplinary proceedings, the petitioner shall not be kept under suspension. It is made clear that, while conducting the disciplinary proceedings, both the enquiry officer as well as the disciplinary authority shall borne in mind the cap put in by clause 3 of the PSO 67 to state that neither the enquiry officer nor the disciplinary authority shall deviate or desist from any decision taken or conclusion arrived at by the criminal Court, where the petitioner has already been acquitted. This is because, the charge memo impugned now is only or almost a replica of the criminal



charge from which the petitioner has already been acquitted."

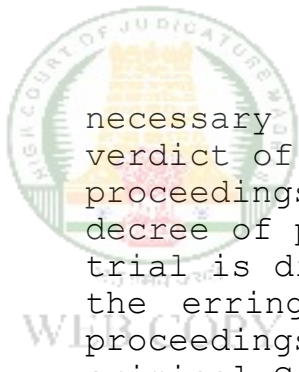
3. According to the appellant, he joined in service as Sub-Inspector of Police on 01.03.1996 and on 21.05.2014, he was placed under suspension, pursuant to the registration of a criminal case against him under Section 7 of the Prevention of Corruption Act in Crime No.2 of 2004, by the Vigilance and Anti Corruption Department, Trichy. Thereafter, charge sheet was filed and after trial, the said criminal case ended in acquittal in C.C.No.52 of 2011, on 28.11.2017. After acquittal, the appellant submitted a representation for reinstatement, however, the Department issued a charge memo dated 06.12.2019, with charges identical to that of the criminal charges, for which, he was already tried and acquitted by the criminal Court. Aggrieved over the action of the respondents, the appellant filed the writ petitions and the learned Single Judge, after hearing the learned Counsel on either side, has passed the aforesaid order. Aggrieved over the same, the appellant has preferred the instant appeals.

4. Mr.M.Gururaj, learned Counsel for the appellant would submit that for the very same set of charges, a criminal case was initiated against the appellant in C.C.No.52 of 2011 and the learned Special Judge, Trichy, by his judgment dated 28.11.2017, acquitted the appellant that the charges levelled against the appellant are false. As against the order passed in C.C.No.52 of 2011, the Department has not preferred any appeal and therefore, the judgment of acquittal becomes final. Now, on the very same set of charges, the Department has issued the charge memo, that too, after a lapse of 16 long years, similar to that of the charges, for which, the appellant was already tried and acquitted. When the Special Court, after elaborate hearing, has adjudged that the charges are false and incorrect, it is not proper for the respondents to issue the impugned charge memo, contrary to Police Standing Order 67.

5. This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

6. The decree of proof required for a criminal trial is different from that of a departmental proceedings. It is a well settled principle that in criminal cases, the prosecution has to prove the case, beyond any reasonable doubt, whereas, in departmental proceedings, the decree of proof is only the preponderance of probability.

7. Clause (1) of Police Standing Order 67 [Procedure after acquittal] states that when a Police Officer has been tried and acquitted by a Criminal Court or has had his conviction quashed on appeal he should ordinarily be reinstated. The learned Single Judge has considered the provision that the word 'ordinarily' employed in clause (1) of PSO 67 is of the alternate meaning that it is not



necessary in each and every case the Department shall accept the verdict of the criminal Court and accordingly, drop the disciplinary proceedings and to go for reinstatement of the employee. Since the decree of proof required in disciplinary proceedings and in criminal trial is different, it is for the Department to decide as to whether the erring employee has to be proceeded by way of departmental proceedings, despite the fact that he having been acquitted by a criminal Court.

8. In this regard, the learned Special Government Pleader has relied upon an unreported decision of the Hon'ble Supreme Court in Karnataka Power Transmission Corporation Limited, Rep. by Managing Director v. C.Nagaraju & another [Civil Appeal No.7279 of 2019, decided on 16.09.2019], wherein, the Hon'ble Supreme Court has held as follows:

"13. ...It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court is justified and needed no interference by the High Court."

9. In view of the ratio laid down by the Hon'ble Supreme Court and the reasonings of the learned Single Judge, we do not find any reason to interfere with the impugned order as regards the issuance of charge memo.

10. Insofar as the suspension is concerned, though the suspension is a prolonged one, it is because of the pendency of the criminal case. The charge memo has been issued after the conclusion of the criminal trial. In fact, the learned Single Judge has also issued a direction to complete the disciplinary proceedings in a time bound manner. It is also stated that if the disciplinary proceedings is not concluded within the time frame stipulated, the appellant is entitled to seek review of suspension order and in that case, the suspension shall be revoked.

11. In view of the above discussions and reasonings offered by the learned Single Judge, this Court is not inclined to interfere with the impugned orders dated 14.08.2020 and accordingly, the same



stand confirmed. In fine, both the writ appeals are dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar (CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Home Department,
Fort St.George, Chennai - 600 009.
- 2.The Director General of Police,
Headquarters, Mylapore,
Chennai - 600 004.
- 3.The Commissioner of Police,
Trichy City,
Trichy.

Pre-Delivery Judgment made in
W.A. (MD) Nos.1004 & 1005 of 2020
and
C.M.P. (MD) No.5467 of 2020
08.12.2020

PK (CO)
KB (16.12.2020) 5P 4C