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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.791 of 2021

C.Ayyachamy

.. Appellant/Petitioner

Vs.

1. The Secretary to Government
Home (Police) Department,
Fort St. George, Chennai.
2. The Director General of Police,
Chennai 600 004.
3. The Deputy Commissioner of Police,
Flower Bazar District,
Chennai.

.. Respondent/Respondent

* * *

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 02.03.2020 in W.P.No.21727 of 2011.

PRAYER IN W.P.No.21727 of 2011:

Writ Petition filed under Article 226 of the Constitution of India. Praying to the issue a writ of certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent herein in his proceedings RC.No.119936/AP.3 (3)/2009 dated 01.12.2009 and the order passed by the 3rd respondent herein in his proceedings P.R.No.34/P.R.(N) (1)/99 dated 07.11.2001 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits, or issue any other appropriate Writ Order, Direction in the nature of a Writ of another appropriate relief.

For Appellants : Mr.M.Radhakrishnan

For Respondents : Mr.C.Jayaprakash
Government Advocate



J U D G E M E N T

Pushpa Sathyanarayana, J.

The unsuccessful writ petitioner is the appellant herein and he questioned the order dated 02.03.2020 passed by the learned Single Judge in W.P.No.21727 of 2011.

2. 'The thorns collected for a hedge have proved injuries to the feet' is an saying. According to the respondent, the writ petitioner, who was a Policeman, caused injuries to the society, instead of guarding it.

3. According to the writ petitioner, he joined the uniformed services as a Grade II Police Constable in the year 1976 and he was working in B-1, North Beach Police Station, Law and Order from 13.12.1998. When he was on Medical Leave from 19.03.1999, he was implicated in Crime Nos.558/1998 and 3017/1998 for the offence under Sections 394 IPC and 379 IPC respectively and was arrested on 28.04.1999 and a confession statement was alleged to have been recorded from him as if he involved in those cases. He was issued with a charge memo under rule 3(b) of the Tamil Nadu Police Subordinate Services Rules (in short, 'TNPSS Rules') on 29.07.1999. Though he sought to postpone the departmental proceedings till the conclusion of the criminal case, an ex-parte enquiry was conducted and the enquiry officer held that the charge was proved. The third respondent, based on such report, inflicted the major punishment of dismissal from service on 07.11.2001 upon the writ petitioner. Since the criminal case ended in acquittal before the trial Court and his co-accused were reinstated into service, the writ petitioner submitted a representation on 24.03.2008 before the first respondent. Since there was no response, he filed W.P.No.13412 of 2009, which was disposed on 16.07.2009 with a direction to the respondents therein to consider his representation and pass orders thereon in eight weeks. Pursuant to the said order, his representation was rejected by the second respondent on 01.12.2009, which was questioned before the writ court.

3.1. It is the claim of the writ petitioner that the Writ court failed to consider the grounds raised by him and erred in dismissing the writ petition.

4. Heard the learned counsel for the appellant and the learned Government Advocate appearing on behalf of the respondents.

5. The primordial submission of the learned counsel for the appellant is that the writ petitioner/appellant was in jail during the course of departmental enquiry and thus, he was not



afforded a reasonable opportunity of hearing and on this sole ground of violation of principles of natural justice, the order of dismissal is to be held null and void. It is further contended that the learned Single Judge has erroneously held that the order of dismissal became final and concluded in the year 2001 without taking into account that the said order got merged in the order dated 01.12.2009 passed by the second respondent, which was questioned in the writ petition.

6. On the other hand, the learned Government Advocate contended that the disciplinary authority had passed the well-considered and reasoned order, which was correctly upheld by the Writ Court in the impugned order and the said orders do not require interference by this Court.

7. Admittedly, the petitioner was arrested on 28.04.1999 upon implication of criminal cases with grave charges and his confession statement was recorded. The charge memo under rule 3 (b) of the TNPSS Rules was issued on 29.07.1999 and he was proceeded departmentally. Though his presence or written statement was called for, he failed to submit himself or any explanation before the Enquiry Officer and remained ex-parte. The deposition made by the witnesses during such enquiry was served on the writ petitioner, which was also acknowledged by him. Even thereafter, he failed to appear before the Enquiry Officer. In such situation, the Enquiry Officer vide the report dated 27.09.2001 found him guilty of the charge. Subsequently, the Disciplinary authority also served the enquiry report on the writ petitioner on 03.10.2001 giving him an opportunity of putting forth his case, which was not responded to by the writ petitioner. Thus, the punishment was imposed on him on 07.11.2001. Even after such imposition of punishment, the writ petitioner kept quiet for so many years. He was acquitted in the criminal cases during 2006 and 2007. However, he sought reinstatement into service only when another co-accused was reinstated into service on 21.02.2008, vide representation dated 24.03.2008. Having accepted the punishment which was inflicted upon him as early as on 07.11.2001 and not chosen to challenge the said order by keeping quiet for more than six years, the petitioner is not entitled for reinstatement. Holding so, the writ court negatived his prayer. While doing so, the writ court also considered the claim of the writ petitioner that another co-accused was reinstated into service and he is entitled for similar relief and held that the case of the said co-accused is different, as he was imposed with the major punishment for his unauthorized absence from duty.

8. It is also relevant to state that the Enquiry Officer offered to hold the enquiry in the place of his incarceration. Despite the same, the writ petitioner restrained himself from



attending the enquiry and not chosen to conduct the enquiry either on his own or through a counsel. Having failed to utilize the opportunities given to him to represent his case, now he cannot claim that he was not given opportunity.

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9. It is pertinent to note that in a recent judgment, a Three-Judge Bench of the Hon'ble Supreme Court in Pravin Kumar V. Union of India, (2020) 9 SCC 471, held as follows :

"It is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. [Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442] Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764.

10. In view of the above said position, the writ petitioner cannot claim that his acquittal in the criminal case and the reinstatement of the co-accused secure him the same benefit. The learned Single Judge considered all these aspects and rightly dismissed the writ petition.

11. For the foregoing reasons, there is no infirmity nor illegality in the order of the learned Single Judge. Accordingly, the Writ Appeal fails and the same is dismissed upholding the order of the learned Single Judge. No costs.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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TO

1. The Secretary to Government,
Home (Police) Department,
Fort St.George, Chennai.
2. The Director General of Police,
Chennai - 600 004
3. The deputy Commissioner of Police,
Flower Bazar District,
Chennai.
4. The Public Prosecutor,
High Court, Madras - 104.

+1cc to the Government Pleader, S.R.No.32145
+1cc to Mr.G.Anbuechezheian, Advocate, S.R.No.32168

W.A.No.791 of 2021

RLD(CO)
SU(27/07/2021)