

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.02.2021

Judgment Delivered on : 05.03.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1435 of 2019
and
C.M.P.No.9883 of 2019

1. The Commandant,
Tamil Nadu Special Police-II Battalion,
Avadi, Chennai-54.
 2. The Deputy Inspector General of Police,
Armed Police, Chennai-10.
 3. The Director General of Police,
Tamil Nadu, Chennai-4.
 4. The Principal Secretary to Government,
Home Department,
Fort St.George, Chennai-9. .. Appellants
- Vs.
- A.Duraimurugan, S/o Arjunan,
formerly Gr.II P.C. 3291,
Tamil Nadu Special Police II Battalion,
Avadi, Chennai-600 054. .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.06.2018 passed by the learned Single Judge in Writ Petition in W.P.No.10845 of 2013, on the file of this Court.

WP.No.10845 of 2013:Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to calling for the records of the respondents in connection with the impugned orders passed by the 1st respondent in PR No.25/2009 Rule 3 (b) dt 24.8.2010 by the 2nd respondent in RC No.C1/Appeal No.18/2010 dt 22.9.10 and by the 3rd respondent in RC. No. 236708/AP 3(1)/2010 dt 4.7.2011 and quash the same and consequently direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For appellants : Mr.P.H.Arvinth Pandian,
Addl. Advocate General,
assisted by Mrs.A.Srijayanthi, Spl.G.P.

For respondent : Mr.K.Venkataramani, Senior Counsel for
Mr.M.Muthappan

JUDGMENT

R.SUBBIAH, J

This Writ Appeal is filed as against the order dated 26.06.2018 passed by the learned Single Judge in Writ Petition in W.P.No.10845 of 2013, on the file of this Court.

2. The said Writ Petition was filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned orders passed (i) by the first appellant herein in P.R.No.25/2009 under Rule 3(b), dated 24.08.2010, (ii) by the second appellant herein in RC.No.C1/Appeal No.18/2010, dated 22.09.2010 and (iii) by the third appellant herein in RC.No.236708/AP 3(1)/2010, dated 04.07.2011 and quash the same and consequently direct the appellants herein (respondents in the Writ Petition) to reinstate the respondent herein/writ petitioner into service and grant him all consequential service and monetary benefits.

3. By the said order dated 26.06.2018, the learned Single Judge had allowed the said Writ Petition and set aside the above said orders of the appellants and consequently, the learned Single Judge directed the appellants herein to reinstate the respondent/writ petitioner in service. The learned Single Judge also directed the appellants to comply with the said direction issued by the Court within eight weeks from the date of receipt of a copy of the order.

4. Brief facts which are necessary to decide the issue involved in this Writ Appeal are as follows:

(a) The respondent/writ petitioner had entered into service as directly recruited Grade-I Police Constable through selection conducted by Tamil Nadu Uniformed Services Recruitment and was appointed to service on 01.02.2008. After institutional training, he was posted to serve in TSP-II Battalion, Avadi, Chennai-54. While serving there, he was on deputation to serve in Coastal Security Force of the Police Department.

(b) While so, he was placed under suspension by order dated 29.04.2009 pending enquiry into grave charge(s) for his involvement in a road accident, which had resulted in the death of PC 2069 Chandru, TSP SP Veerapuram. A criminal case was also registered in Crime No.205/AM3/09 under Sections 279 and 337 IPC, which was subsequently altered into one under Sections 279, 337 and 304-A IPC. After suspension, he was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, in P.R.No.25/2009, dated 03.07.2009 containing the following charges:

(i) While on deputation with coastal security force, on 23.04.2009 while on casual leave, forgetting his responsibility he along with another person in a drunken state drove a motor cycle TN-07-AD-8100 and while passing the Cutchery Road by rash and negligence act, caused the death of one Chandru PC 2069 thereby committed irreprehensible conduct.

(ii) By violating traffic rules, thereby involved in a criminal case in Crime No.205/AM3/09 u/s 279, 337 and 304(A) IPC, and thereby brought ill reputation to the Police Department."

(c) In the Departmental Enquiry, on the side of the appellants/prosecution, seven witnesses were examined and relevant documents have been marked. The main allegation against the respondent/writ petitioner is that he was driving the vehicle under the influence of alcohol. On conclusion of the enquiry, a report was submitted holding that the charges levelled against the respondent/writ petitioner have been proved. The disciplinary authority/first appellant agreed with the findings of the Enquiry Officer and imposed a penalty of removal from service on 24.08.2010. As against the order of punishment of removal from service, the respondent/writ petitioner preferred an appeal to the second appellant, which was rejected on 22.09.2010. Thereafter, a mercy petition was filed before the third appellant, which was also rejected on 04.07.2011. Challenging these orders, the respondent/writ petitioner filed the above Writ Petition before the learned Single Judge. The said Writ Petition was allowed, against which, the present Writ Appeal is preferred by the State/Police.

5. The case of the respondent/writ petitioner was resisted by the appellants by filing a detailed counter affidavit justifying the order of removal from service passed against him and prayed for dismissal of the Writ Petition.

6. The learned Single Judge had allowed the above Writ Petition on the ground that there is no direct evidence and there is lack of certainty to the crucial fact as to who drove the two-wheeler on the date of accident. The findings of the

Enquiry Officer holding that the charges levelled against the respondent/writ petitioner, have been proved, cannot be accepted. Thus, the learned Single Judge allowed the Writ Petition, against which the present Writ Appeal is filed by the State/Police.

7. The learned Additional Advocate General appearing for the appellants/State, by inviting the attention of this Court to the orders under challenge before the learned Single Judge, submitted that the learned Single Judge had allowed the Writ Petition mainly on the ground that there was no direct evidence and there is lack of certainty as to who drove the two-wheeler on the date of accident. The learned Additional Advocate General appearing for the appellants submitted that the charge(s) against the respondent-writ petitioner is that, on 23.04.2009, while the respondent-writ petitioner was on casual leave, under the influence of alcohol, he drove the motor cycle TN-07-AD-8100 in a rash and negligent manner and caused the death of one Chandru PC 2069. In order to prove the said charge(s) levelled against the respondent/writ petitioner, totally 7 witnesses were examined. The casualty slip given by the Doctor at Royapettah Hospital was marked as one of the documents in the enquiry proceedings, which shows that the respondent/writ petitioner was breathing the smell of alcohol. That apart, one Murugan who was the pillion rider along with the respondent (writ petitioner), was examined as P.W.3, who has clearly stated in his evidence that on the date of accident, it was the respondent/writ petitioner who was driving the vehicle from Muttukkadu to Mylapore. A cumulative effect of the oral evidence of P.W.3 and the Accident Register copy marked, shows that it was the respondent/writ petitioner, who drove the vehicle under the influence of alcohol and caused the death of the Police Constable PC Chandru. But, the learned Single Judge had come to an erroneous conclusion as if there is no direct evidence at all to show that it was the respondent/writ petitioner who drove the vehicle. According to the learned Additional Advocate General appearing for the appellants, there is no glaring lack of certainty as to who drove the vehicle at the time of accident.

8. In the above context, the learned Additional Advocate General appearing for the appellants/State/Police relied on a judgment of this Court reported in 2020 (7) MLJ 815 (Director General of Police Vs. K.Chidambaram), in which, one of us (R.Subbiah,J) was a member and submitted that, unlike in a criminal case, proving the case beyond reasonable doubt, does not arise in this case. In the departmental proceedings, strict proof of evidence is not required and only preponderance of probabilities is enough to prove the allegations/charges levelled against a delinquent. The charges in the departmental proceedings need not be proved as in a criminal case before the Criminal Court. Ignoring these legal principles, the learned Single Judge had allowed the Writ Petition. In support of the

above contentions, the learned Additional Advocate General also relied on the following judgments:

(a) 2020 (3) SCC 423 (State of Karnataka Vs. N.Gangaraj), and

(b) 2020 (9) SCC 471 (Pravin Kumar Vs. Union of India).

9. By placing reliance on the above decisions of the Supreme Court, the learned Additional Advocate General appearing for the appellants/State/Police submitted the the order of removal from service against the respondent/writ petitioner was passed after conducting due enquiry. During the course of enquiry, witnesses were examined and cross-examined by the Management as well as delinquent. When once an order of punishment was imposed preceded by a valid enquiry, judicial interference of this Court under Article 226 of the Constitution of India, is legally impermissible, unless it is shown that the order of punishment was imposed by taking into consideration irrelevant material evidence or when there is no evidence at all. Thus, the learned Additional Advocate appearing for the appellants/State prayed for setting aside the order under challenge passed by the learned Single Judge.

10. Countering the above submissions, the learned Senior Counsel appearing for the respondent/writ petitioner submitted that, absolutely, no proof is produced before the Enquiry Officer that the respondent was under the influence of alcohol at the time of accident. Though it has been stated by the appellant/State that the State Government officials, in order to prove that the respondent/writ petitioner was under the influence of alcohol, had marked the casualty slip given by the Doctor at Royapettah Hospital, Chennai, who treated the respondent/writ petitioner in the out-patient ward, the said Doctor was not examined. Furthermore, till date, no charge sheet was laid in the criminal case.

11. The learned Senior Counsel appearing for the respondent/writ petitioner submitted that, absolutely there is no evidence to speak about the alleged drunkenness of the respondent/writ petitioner. Though 7 witnesses were examined on the side of the prosecution, except P.W.6 Chinnoda, who was an eye-witness to the occurrence and who took all the injured to the hospital, all the other witnesses are only hear-say witnesses. P.W.6 had categorically stated in his evidence that the two-wheeler was driven by one Thiru.Murugan and the respondent/writ petitioner was only travelling as a pillion-rider. Moreover, P.W.6 was not treated as an hostile witness. On the other hand, the Enquiry Officer in his findings, observed that the said witness changed his statement in his oral enquiry, which was relied upon to hold that the charge was proved. In fact, the Enquiry Officer was not sure as to who actually drove

the vehicle. The learned Single Judge, by deeply going through the entire factual aspects, had come to the conclusion that there was no direct evidence at all and there is glaring lack of certainty as to who drove the vehicle at the time of accident. Thus, according to the learned counsel appearing for the respondent/writ petitioner, the learned Single Judge correctly set aside the punishment imposed on the writ petitioner. Therefore, absolutely there is no need to interfere with the order under challenge, passed by the learned Single Judge and prayed for dismissal of the Writ Appeal.

12. Keeping in mind the above submissions made on either side, we have carefully perused the materials available on record.

13. In view of the submissions made on either side, the question that falls for consideration in this appeal is as to whether any evidence is available on record to establish the charge(s) levelled against the respondent/writ petitioner.

14. As we have discussed the facts in detail as above, we refrain from reiterating the same any further and the facts which are germane alone are discussed hereunder.

15. According to the learned Additional Advocate General appearing for the appellants/State, the evidence of P.W.3 who was the pillion-rider on the date of accident, is clear that, it was the respondent/writ petitioner who was driving the motor cycle under the influence of alcohol. The casualty slip given by the Royapettah General Hospital had also been marked as an exhibit and that he was breathed the smell of alcohol. Therefore, it is submitted that, even if there is some evidence, this Court cannot go into the finding of facts and re-appreciate the evidence. This is not a criminal proceedings where strict proof of evidence is necessary to establish the charge(s) beyond reasonable doubt. The existence of preponderance of probabilities is largely sufficient. In this case, absolutely, there cannot be any quarrel over the said proposition. At the same time, it has to be seen as to whether some evidence is available on record to disprove the charge(s) against the delinquent and also as to whether any direct evidence is available on record, or not. Suppose there is no clarity in the evidence and there is no glaring lack of certainty in the evidence or if it is a case of no evidence, the Court can interfere with the findings rendered by the learned Single Judge.

16. In the instant case, though P.W.3 had stated that it was the respondent/writ petitioner who had driven the vehicle at the time of accident, eye-witness to the occurrence who was examined as P.W.6 and who had taken all the three persons to the hospital

and admitted there, stated that the writ petitioner was only a pillion-rider and not a rider.

17. Thus, in the case on hand, there is no direct evidence to connect the incident, that too, in the circumstances when a capital punishment of dismissal from service was awarded.

18. Further, the crucial aspect of the case is that the FIR was registered in 2009 itself, but till date, the charge sheet has not been filed in the criminal case as against the respondent/writ petitioner, though 11 years had lapsed since the incident that took place in 2009, in which a Police Constable died.

19. Further, we find that there is also no evidence available on record to show that the vehicle was driven rashly and negligently at the time of accident. Thus, in our opinion, even the preponderance of probabilities to connect the respondent/writ petitioner to the charge(s) of drunkenness, or rash and negligent driving, or he had driven the vehicle at the time of accident, was not available in this case. In the absence of proof of the same, the order of removal from service cannot be sustained.

20. The learned Single Judge, considering all the above facts, had come to the conclusion that there is no certainty in the evidence or any glaring error on the face of record.

21. The fact that the Police could not file the charge sheet for the past 12 years, shows that they were not in a position to secure the person who had indulged in the act and merely based on some inconclusive evidence, the capital punishment of removal from service imposed on the respondent/writ petitioner, is totally unwarranted. Thus, we do not find any compelling circumstances warranting interference in the order under challenge passed by the learned Single Judge.

22. For the foregoing reasonings, the Writ Appeal is dismissed. No costs. Consequently, C.M.P.No.9883 of 2019 is closed.

Sd/-

Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

CS

To

1. The Commandant,
Tamil Nadu Special Police-II Battalion,
Avadi, Chennai-54.
2. The Deputy Inspector General of Police,
Armed Police, Chennai-10.
3. The Director General of Police,
Tamil Nadu, Chennai-4.
4. The Principal Secretary to Government,
Home Department,
Fort St.George, Chennai-9.

+2 ccs to Mr.Muthappan Advocate sr14002
+1 cc to the Government Pleader sr14441

W.A.No.1435 of 2019

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