



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.38795 of 2015

and

MP.No.3 of 2015, WMP.Nos.3941 of 2020 & 1856 of 2021

C.Manimaran

... Petitioner

Vs

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
2. The Superintendent of Police,
Office of the Superintendent of Police Campus,
Perambalur.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in connection with the order of dismissal dated 21.08.2007 in Na.Ka.No.F1/PR.67/2006 and the order passed by the first Respondent dated 12.10.2015 in R.Dis.No.070164/AP 4(1)/2015 and quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant benefits. (Prayer amended vide order dated 15/04/2019, made in WMP.No.32170 of 2018 in WP.No.38795 of 2015 by KRCBJ)

For Petitioner : Mr.R.Singaravelan, Sr.C.

for M/s.S.Ambigapathi

For Respondents: Mr.S.Thangavel, Spl.GP

O R D E R

According to the Petitioner, while he was working as Police Constable Grade II - PC No.1277 at Armed Reserve, Perambalur District, by order dated 22.11.2005, he was placed under suspension, for his involvement in a criminal case in Cr.No.320 of 2005 on the file of Arumbavur Police Station, for the offence under Section 392 IPC. After trial, he was convicted in SC.No. 78 of 2006 on 13.08.2007 by the Additional District and Sessions Judge, FTC, Ariyalur, against which, he preferred an appeal in Crl.A.No.789 of 2007. During the pendency of the same, the petitioner was dismissed from service by order dated 21.08.2007.



Subsequently, the criminal appeal was allowed by setting aside the judgment of conviction and sentence passed against the petitioner. Based on the same, the petitioner filed a mercy petition dated 27.04.2015 before the first respondent requesting to cancel the punishment imposed on him and to reinstate him in service. Without considering the judgment of acquittal, the mercy petition was rejected by the first respondent vide order dated 12.10.2015. Questioning the same, the petitioner has preferred this writ petition to quash the order of dismissal passed by the second respondent as well as the rejection of his mercy petition by the first respondent and consequently, direct the respondents to reinstate him in service.

2.The respondents filed a detailed counter affidavit, stating that the charge against the petitioner has two parts: firstly, his unauthorised absence from duty and secondly, for his involvement in a robbery; the trial Court as well as this Court have considered only the criminal offence and have not considered his absence from duty; in the criminal case, the petitioner was acquitted on the ground that the prosecution failed to establish the guilt of the accused beyond reasonable doubt, which means it is not a honourable acquittal, whereas enough evidence was placed in the disciplinary proceedings to establish the guilt based on preponderance of probabilities for involvement of the petitioner in the robbery and the unauthorised absence was clearly proved and hence, the petitioner's mercy petition was rejected by the first respondent by order dated 12.10.2015. It is also stated that acquittal in the criminal case does not entitle the petitioner to claim a right against the disciplinary proceedings and in support of the same, a reliance was placed in *Shashi Bhushan Prasad v Inspector General, Central Industrial Security Force and others* [(2019) 7 SCC 797]; and the yardsticks and the standard of proof are different in criminal cases and disciplinary proceedings. With these averments, the respondents submitted that there is no requirement for this Court to interfere with the orders impugned in this writ petition.

3.The learned senior counsel appearing for the petitioner raised very many contentions attacking the orders impugned herein. It is his specific argument that without considering the judgment of acquittal passed in the criminal appeal filed by the petitioner in a proper perspective, the first respondent on his own interpretation to the same, rejected the mercy petition filed by the petitioner, which is arbitrary, illegal and non est in law. Stating that the charges framed against the petitioner in the criminal proceedings and the departmental proceedings are one and the same and the judgment of acquittal passed in the criminal proceedings was not taken into consideration by the first respondent, while passing the order impugned herein, he



ultimately prayed that to meet the ends of justice, the petitioner may be permitted to submit a fresh mercy petition to the first respondent seeking to reconsider the punishment imposed on him and on filing of such petition, the first respondent may be directed to consider the same and pass orders afresh, within a time frame to be stipulated by this Court.

4.The learned Additional Government Pleader appearing for the respondents has no serious objection for granting such relief to the petitioner.

5.In view of the above, this writ petition stands disposed of, granting liberty to the petitioner to file a fresh mercy petition within a period of two weeks from the date of receipt of a copy of this order. On filing of such petition, the first respondent shall consider the same and pass orders afresh, after providing an opportunity of hearing to the petitioner, within a period of eight weeks thereafter. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
2. The Superintendent of Police,
Office of the Superintendent of Police Campus,
Perambalur.

+1cc to M/s.S.Ambigapathi, Advocate, S.R.No.21865
+1cc to the Government Pleader, S.R.No.21936

W.P.No.38795 of 2015

SR-II(CO)
SB(15/07/2021)