

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 31793 & 32401 of 2018

(Through Video Conferencing)

A.Sethuraman

... Petitioner in both W.Ps.

vs

1.The Deputy Commissioner of Police,
Mount District, Greater Chennai Police,
Chennai 16.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 8.

... Respondents in
W.P.No.31793 of 2018

1.The State of Tamol Nadu,
Rep.by Principal Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai – 9.

2.The Director General of Police,
(Recruitment and Training Section)
Dr.Radhakrishnan Salai,
Mylapore, Chennai 4.

3. The Deputy Commissioner of Police,
Headquarters,
I/c Joint Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 7.

.. Respondents in
W.P.No.32401 of 2018

Prayer in W.P.No.31793 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondents in connection with the impugned orders passed by the 1st respondent in PR.No.108/PR.S(1)/2016 South Zone 137/2018 dt 09.02.2018 and by the 2nd respondent in Rc.No.PR.V(1)88665/CPO/2018 PR.No.108/PR.S(1)/2016 u/r 3(b) dated 09/10/2018 and quash the same.

For Petitioner : Mr.K.Venkatramani
For Respondents : Mr.V.P.R.Elampoarithi
Government Advocate.

Prayer in W.P.No.32401 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in connection with the impugned order passed by him in Na.Ka.No.R & T(1)/59/66036/2014 dated 31.03.2015 and quash the same and direct the respondents to appoint the petitioner as Sub-Inspector of Police based on the orders of the Hon'ble Supreme Court in C.A.No.7674/2014 in SIP(C) No.11008/2011 dated 07/08/2014 and send

him for training and grant him all consequential service and monetary benefits at par with his batchmates.

For Petitioner : Mr. K.Venkatramani

For Respondents : Mr.V.P.R.Elampoarithi
Government Advocate.

COMMON ORDER

In W.P.No.31793 of 2018, the petitioner has challenged the impugned orders dated 9.2.2018 bearing reference in PR.No.108/PR.S(1)/2016 South Zone 137/2018 of the 1st respondent and impugned order dated 9.10.2018 bearing reference Rc.No.PR.V (1) 88665/CPO/ 2018 PR.No.108/PR.S (1) / 2016 u/r 3(b) of the 2nd respondent and to quash the same.

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2. In W.P.No.32401 of 2018, the petitioner has challenged the impugned order dated 31.3.2015, bearing reference in Na.Ka.No.R & T(1)/59/66036/2014 of the 3rd respondent therein and to quash the same and

for consequential direction to the respondents to appoint the petitioner as Sub- Inspector in terms of order dated 7.8.2014 of the Hon'ble Supreme Court in civil appeal No.7679 of 2014 in SLP (Civil) No.11008/ 2011.

3. The brief facts of the case are that the petitioner was appointed as a Grade-I Police Constable in the year 1993. Thereafter, the petitioner was promoted as a Grade I police Constable in the year 2003, and thereafter as a Head Constable in the year 2008. In the year 2001, the Uniformed Services Recruitment Board called for appointment of Sub-Inspectors from both open market and among the in-service candidates by direct recruitment. In the selection process, the petitioner secured 64.56 marks and since the cut-off mark for the Chennai Range was 73.76 marks, he was not selected.

4. This was challenged by the petitioner, which issue ultimately went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court by its order dated 7.8.2014, ultimately allowed the relief to the petitioner. The petitioner was thereafter asked to attend Medical Board on 15.12.2014.

5. However, the petitioner was placed under suspension from service on 7.1.2015 as he was allegedly involved in a crime involving juveniles who are arrested and were in the custody of the police station where the petitioner was serving as Head Constable.

6. It was alleged that the petitioner had forced juveniles to indulge in oral sex with him. The petitioner was thus issued with the impugned order dated 31.3.2015, bearing reference in Na.Ka.No.R & T(1)/59/66036/2014 of the 3rd respondent as a criminal case in Crime No.1 of 2015 filed against him on the file of Crime Branch, CID, Chennai.

7. Thus, the petitioner was not appointed as an Inspector of Police though the petitioner had succeeded in long battle till the Supreme Court in view of the aforesaid criminal case which was initiated against him. The petitioner has thus challenged the impugned order dated 31.3.2015, bearing reference Na.Ka.No.R & T(1)/59/66036/2014 of the 3rd respondent has been challenged in W.P.No.32401 of 2018.

8. Meanwhile, the petitioner was also issued with a Charge Memo dated 19.12.2016. A charge sheet was also filed before the District Court/Mahila Court in Sessions Case No. 227 of 2016. Before the Trial Court, in support of the prosecution, 17 witnesses were examined and some of these witnesses were also the witnesses in the Department of proceedings which was initiated against the petitioner.

9. The four witnesses who were named in the disciplinary proceedings included investigating officer - PW1 and juveniles as P.W.2 to P.W.4. By an order dated 10.8.2018, the District Sessions Court/ Mahila Court in Sessions Case No. 227 of 2016 acquitted the petitioner.

10. In the disciplinary proceedings, two of the juveniles who were arrayed as prosecution witness Nos.2 and 3 did not support the department's case and denied their earlier statement made before the Investigating Officer - P.W.1. They in fact denied the occurrence of the alleged event. However, the enquiry officer found the petitioner guilty based on the statement of the PW1- Investigating Officer. Vide order dated 9.2.2018, the 1st respondent

passed the disciplinary proceeding stating that punished the petitioner with stoppage of increment for a period of six years, with cumulative effect. The aforesaid order was challenged by the petitioner before the 2nd respondent, which has culminated in the order dated 9.10.2018 of the 2nd respondent. These orders have been challenged in W.P.Nos.31793 of 2018.

11. The learned Senior counsel for the petitioner submits that the impugned orders are unsustainable in the light of the fact that the petitioner has been acquitted in the criminal proceedings *post facto* vide order dated 10.8.2018 in S.C.No.227 of 2016 which the 2nd respondent failed to consider while dismissing the petitioner's appeal against the impugned order dated 9.02.2018 of the 1st respondent. It is submitted that the fact that the petitioner has been acquitted, based on the same set of facts and same witnesses who were also the witness in the criminal proceedings in Sessions Case No.227 of 2016, should have been considered positively by the 2nd respondent as an Appellate Authority.

12. It is submitted that the order of the 2nd respondent as an Appellate Authority and non-speaking order passed by the 1st respondent as the disciplinary authority was merely based on the findings given by the Enquiry Officer. It was unsustainable inasmuch as the Enquiry Officer has merely found the petitioner guilty of the alleged delinquency based on the statement of P.W.1 – Investigating Officer. It is submitted that P.W.1- Investigating Officer's statement cannot be the basis for concluding delinquency of the petitioner. It is submitted that there is no preponderance of probability and the petitioner was found guilty based on the media pressure due to a news item in Times of India on 12.10.2012 .

13. Learned Senior counsel for the petitioner submits that P.W.1 Investigating Officer who gave his finding based on the news report and the alleged statement of the medical officer *ipso facto* did not mean that the petitioner was involved in the alleged act of delinquency. It is further submitted that one of the juvenile who was to be examined as PW2 did not appear to give his evidence against the petitioner in the disciplinary proceeding. Therefore, his presence was dispensed with.

14. PW.3 though, appeared in the disciplinary proceeding did not confirm the involvement of the petitioner in the alleged crime and delinquency. PW4 also did not confirm the statement made by him before the investigating officer which led to registration of the FIR against the petitioner and initiation of both the criminal proceeding and the Department disciplinary proceedings. Learned Senior Counsel has referred to the following two decisions rendered by the Hon'ble Supreme Court:-

“ i) **Paul Antony vs. State of Gujarat and another**,
2006 (5) SCC 446

ii) **G.M Tanks vs. State of Gujarat and another**,
2006 (5) SCC 446”.

15. Learned Senior counsel, therefore prays for allowing these two writ petitions. Appearing on behalf of the respondents, learned Government Advocate submits that the impugned orders passed by the respondents in these writ petitions are well reasoned and require no interference. Learned Government Advocate submits that the test in the criminal proceedings and in the Department of proceedings are different. He submits that merely because the petitioner was acquitted in the criminal

proceedings by itself would not mean that the orders passed by the respondents which are impugned in these writ petitions were liable to be quashed. It is submitted that the petitioner has not satisfied Rule 3 (b) of the Tamil Nadu Police Subordinate Service Rules as a criminal case was pending against him.

16. It is submitted that though the petitioner was called for medical examination pursuant to the directions of the Hon'ble Supreme Court. However, the petitioner was placed under suspension due to his involvement in the crime, which was under investigation, and therefore the order of the 3rd respondent Deputy Commissioner of Police in W.P.No.32401 of 2018 cannot be interfered with.

17. It is further submitted that the involvement of the petitioner in the delinquency stands proved inasmuch as the juveniles had given statement against the petitioner, notably both before the Magistrate under Section 164 of the Criminal Procedure Code and also before the Investigating officer who was examined as PW1. It is submitted that in

preliminary evidence let to initiation of disciplinary proceeding against the petitioner . There was pre-ponderance of probability of the petitioner's involvement in the alleged crime and the punishment was awarded in the disciplinary proceedings. The allegation against the petitioner stands proved and same yardstick in criminal proceedings need not be followed in the disciplinary proceeding.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. The criminal court has ultimately acquitted the petitioner of the crime vide its order dated 10.8.2018 in S.C.No.227 of 2016. The fact that some of the witnesses who were examined in the criminal proceedings were the only witnesses in the disciplinary proceedings is not in dispute. Barring the statement of the P.W.1- Investigating officer who was incidently also the prosecution witness in the criminal proceedings, there is no other independent evidence to substantiate that the petitioner was involved in the alleged crime against the juveniles under Section 23 of the Juvenile Justice Act (Carry and Protection of Act) 2003.

19. In the case of **G.M.Tanks vs. State of Gujarat and another**, 2006 (5) SCC 446, it has been held that *the distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable. In our opinion, when the evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference.*

20. In **M.Paul Anthony vs. Bharat Gold Mines Ltd.**, (1999) 3 SCC 679, it was held as under : -

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

21. In the case of **G.M Tanks vs. State of Gujarat and another**, 2006 (5) SCC 446. It was held as under:-

“ 30. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in **Paul Anthony case** [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

22. The ratio of these decisions of the Hon'ble Supreme Court squarely applies to the facts and circumstances of the case. If, the petitioner was found guilty in the criminal proceedings, the respondents could have certainly sustained the impugned proceedings. Considering the above, the entire departmental proceedings are liable to be quashed.

23. Accordingly, these writ petitions stand allowed and the impugned orders of the 1st respondent and second respondent dated 09.02.2018 and 09.10.2018 are hereby quashed. The respondents are therefore directed to release the arrear amount which were otherwise to be paid to the petitioner, but for the punishment order. The amounts are directed to be released to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

25.08.2021

Index: Yes/ No
Internet : Yes/No
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Note : Issue Order Copy on 09.09.2021

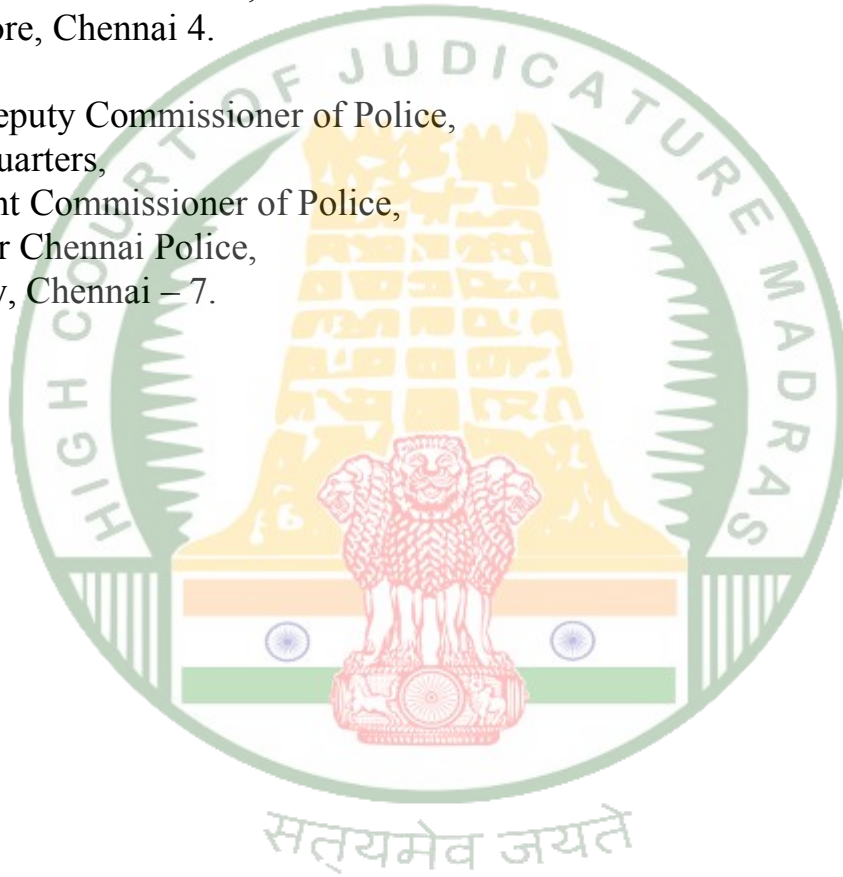
To:

- 1.The Deputy Commissioner of Police,
Mount District, Greater Chennai Police,
Chennai 16.
- 2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 8.

3.The Principal Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai – 9.

4.The Director General of Police,
(Recruitment and Training Section)
Dr.Radhakrishnan Salai,
Mylapore, Chennai 4.

5. The Deputy Commissioner of Police,
Headquarters,
I/c Joint Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 7.



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W.P.Nos.31793 & 32401 of 2018

C.SARAVANAN,J.

Today, these writ petitions are listed under the caption “for being mentioned” at the instance of learned Senior counsel for the petitioner. The learned Government Advocate for the respondents is also present.

2. The learned Senior counsel for the petitioner submits that there are few typographical errors in the order passed by this Court on 25.08.2021 in W.P.Nos.31793 & 32401 of 2018 and that may be corrected.

3. Considering the submission of the learned counsel for the petitioner, the typographical errors are corrected as follows:

- (a) In paragraph No.7, before the expression “Inspector of Police”, the word 'Sub' is directed to be added .
- (b) In paragraph No.10, in 8th line, the word “six” stands substituted with “three”.
- (c) In paragraph No.15, in last two lines, “Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules” stands also substituted with “Rule 13(b) of the Special Rules for Tamil Nadu Police Subordinate Service”.

C.SARAVANAN,J.

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(d) In the third line of the paragraph no.23, the following sentence is inserted:

Consequently, the respondents are directed to appoint the petitioner as a Sub-Inspector of Police and send the petitioner for training in terms of the decision of the Hon'ble Supreme Court in C.A.No.7679 of 2014 in SLP(C)No.11008 of 2011 dated 07/08/2014, within a period of six weeks preferably.

Registry is directed to carry out the aforesaid corrections and issue fresh copy of the order to the parties.

20.09.2021

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W.P.Nos.31793 & 32401 of 2018