



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.12478 to 12480 of 2011

and

M.P.Nos.1, 1 & 1 of 2011 and 1, 1 & 2012

R.Gugan

Inspector of Police,

No.57, Udayar Colony First Street,

Tiruppur District,

(Now under suspension)

...Petitioner in WP/12478/2011

C.Paraman

Special Sub-Inspector of Police,

No.2, Karuvampalayam Extension,

Tiruppur North, Tiruppur - 641604.

(Now under suspension)

...Petitioner in WP/12479/2011

S.Arumugam

Grade I Police Constable 1972,

No.19/13, Nachimuthu Gounder Street,

Mettur-Pothanur,

Coimbatore District.

(Now under suspension)

...Petitioner in WP/12480/2011

Vs.

1.The Director General of Police,

Chennai - 4.

2.The Deputy Inspector General of Police,

Coimbatore Range, Coimbatore - 18.

3.The Additional Superintendent of Police,

Prohibition Enforcement Wing,

Erode District, Erode.

...Respondents in all WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the charge memo formulated by the second respondent herein in his Na.Ka.No.F1/P.R.No.40,41 & 42/TPR/2011 dated 23.03.2011 and the consequential endorsement passed by the second respondent herein in his C.No.D1/9524/2010 dated 29.04.2011 and the further consequential order of the third respondent herein passed in his C.No.F1/PR.40,41,42/2011



dated 11.05.2011 and quash the same.

For Petitioner : Mr.Ravi Shanmugam
(in all WPs)

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For Respondents : Mr.P.Ganesan [R1 to R3]
(in all WPs) Government Advocate

COMMON ORDER

In all these writ petitions, the charges framed against the petitioners herein for their alleged involvement of having caused the custodial death, is put under challenge.

2. The learned counsel for the petitioners submitted that through a judgment dated 02.09.2021, the criminal case in S.C.No.188 of 2013 on the file of the II Additional District and Sessions Judge, Tiruchirapalli, against these petitioners, had ended in an honourable acquittal and hence, the same set of charges against them cannot be proceeded with. In support of such a submission, he placed reliance on the order of this Court passed in the case of 'K.Ganesankar Vs. The District Collector of Dharmapuri, in WP.No.15316 of 2017 dated 31.01.2022.

3. A perusal of the judgment of acquittal reveals that the learned Sessions Judge had taken into consideration of the evidence before him and had held that there was no evidence for the purpose of substantiating that the petitioners herein had taken the deceased Krishnamurthi to the Police Station and further, there was no evidence that the deceased was kept in custody in the night at the Police Station. In the light of these findings, the learned Sessions Judge had further placed reliance on the evidence of the wife of the deceased which does not disclose that the death had occurred owing to the assault made by the petitioners herein. The Criminal Court had also taken note of the procedural lapses under Section 176 1(8) of the Cr.P.C. An overall appraisal of the findings of the Criminal Court, indicates that the acquittal was honourable.

4. In identical situation pertaining to charges of custodial death, this Court in the case of 'K.Ganesankar' (supra), had quashed the charge memo in the following manner:-

.....

"4. This Court had an occasion to consider these similar grounds in the case of K.P.Krishnamoorthy Vs. The District Collector, Trichy and others passed in W.P.(MD) No.16001 of 2018 and in its order dated 07.01.2020, it was held that when the Criminal Court



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has acquitted the delinquent on the merits of the case, the departmental enquiry cannot be proceeded with. The relevant portion of the order reads as follows:-

"8. A Division Bench of this Court had also taken a similar view in the case of G.Maragatha Meenakshi Vs.The District Collector and others reported in 2010 (2) CWC 154. Likewise, a learned judge of this Court in a judgement reported in 2015 (1) CWC 423 referred to various decisions of the Appellate Court, as well as this Court and was of the view that laches of five years in that case, without any explanation, would be fatal to the Department.

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10. Apart from the aforesaid discussions, it is also seen that the criminal case initiated by the police against the petitioner herein, had ended in acquittal, through the judgment dated 28.03.2017 passed in Special Case No.12 of 2011 by the Special Court of Vigilance and Anti Corruption, Trichy. In the said decision, the Special Court had found that there was a previous enmity between the complainant and the petitioner herein and therefore the complaint itself could have been motivated. The fifth respondent in his Counter affidavit had taken a stand that the Directorate of Vigilance and Anti Corruption was of the view that the order of acquittal was not a fit case to be challenged in an appeal. Thus the judgment passed by the criminal Court had become final.

11. The reading of the judgment of the criminal court would reveal that the order itself has been passed after appreciation of the evidences, both oral and documentary. When the criminal Court has passed a judgment of acquittal based on the merits of the case, the subsequent continuation of the departmental proceedings would be impermissible in view of the decisions of this Court.

12. In the case of S. Chinnadurai Vs. the Deputy Inspector General of Police, Trichy Range, Trichy city and others passed on 28.03.2018 in W.P.No.34799 of 2013 and W.P.No.27463 of 2016, the learned single Judge of this Court had relied



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on the decision of the Division Bench of this Court and held that the departmental action on the same set of charges as that of the criminal case is not permissible. Relevant portion of the order reads as follows:

14. The learned counsel for the petitioner would also rely on the decision passed by the learned Division Bench of this Court in the case of P.Ramasamy Vs. Government of Tamil Nadu, reported in (2006) 1 MLJ 146. He would draw the attention of this Court to paragraph Nos.4 and 5 of the order of the learned Division Bench which dealt with the cases of similar circumstances, are reproduced hereunder:-

"4. Coming to the order of the Tribunal, though counsel appearing for the petitioner did not appear at the time when the case was taken up by the Tribunal, but the perusal of the Original Application shows that the petitioner/applicant has specifically referred to the judgment of the Sessions Court dated 2-11-95 acquitting him stating that the charges have not been proved beyond reasonable doubt. In such a circumstance, it is but proper on the part of the Tribunal to consider the same while passing the order in the Original Application. Instead, the Tribunal having gone into the enquiry proceedings, confirmed the order of the Original Authority without making any reference as to the pronouncement of judgment by the Sessions Court in favour of the petitioner/accused. Inasmuch as the charges both in the departmental enquiry and in the criminal case are one and the same, and the Criminal Court acquitted the accused on merits, we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused



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on merits is to be considered by the department before proceeding further. We are satisfied that inasmuch as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 2-11-95, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference.

5. In the light of what is stated above, the impugned order of the Tribunal and all the orders of the respondents 3 and 5 are quashed. The Writ Petition is allowed. No costs."

The learned Division Bench had quashed the proceedings pending before the disciplinary Tribunal on the basis of the acquittal by the Criminal Court of the delinquent Officer therein. This Court no doubt finds that the observations made by the learned Division Bench of this Court extracted supra, squarely covers the issues presented in these cases.

15. As stated above that once the Criminal Court has given a clear acquittal on merits to the accused viz., the petitioner herein, it is not open to the department to proceed with the same set of charges, be that the departmental charges and take departmental action. Such action of the department will not be in the interest of good administration continuing the departmental action in the above said circumstances of the case is per se cannot be justified and countenanced.

16. This Court is conscious of the fact that the disciplinary action is not to be trifled with during its pendency. However, as far as the present case on hand is concerned that the Criminal Court has given a clear finding of innocence of the petitioner's involvement in the charges framed against him. It is



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therefore not just and proper for the departmental action to continue and proceed against the petitioner. Therefore, this Court finds that the petitioner has made out a clear case for interfering with the departmental proceedings pending against him.

13. Further, when it is stated that the witnesses in the criminal case and in the departmental enquiry are one and the same, this Court is unable to comprehend as to how any other contradictory view can be elucidated during the course of the departmental enquiry from the same witnesses, who have already deposed before the criminal Court, when the acquittal order has been passed based on such statements. Hence, it would not be proper to permit the departmental action to continue as against the petitioner."

5. The aforesaid extract is self explanatory. As such, the petitioner herein need not be subjected to departmental action, since he has been acquitted from the criminal case on merits and further, the initiation of departmental proceedings, after 8 years, would be an inordinate delay and hence unjustifiable."

5. The aforesaid extract is self-explanatory. While holding that for the same set of facts, a departmental enquiry cannot be proceeded with, the delay in initiation of departmental proceedings of 8 years was also taken note of.

6. In the instant case also, the charges were framed in the year 2011 and 11 years have been lapsed and therefore, it would not be appropriate to subject the petitioners herein to the departmental enquiry, more particularly when the Criminal Court had acquitted them.

7. For all the foregoing reasons, these Writ Petitions are allowed and the impugned charge memo dated 23.03.2011, is quashed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

// True Copy //

Sub Assistant Registrar

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To

1.The Director General of Police,
Chennai - 4.

2.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore - 18.

3.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Erode District,
Erode.

+1cc to the Government Pleader, Sr.No.16687

W.P.Nos.12478 to 12480 of 2011

MG(CO)
RN(30/03/2022)