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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.18485 OF 2015

A.Dhayanithi

...Petitioner

-Vs-

1. The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Joint Director of
School Education (Personnel),
College Road,
Chennai - 600 006.
4. The Chief Educational Officer,
Vellore and District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order of the 1st respondent in G.O.(2D).No.92 dated 12.12.2014 dismissing the petitioner's 2nd Appeal dated 24.05.2013 and confirming the orders passed by the 2nd respondent in Na.Ka.No.48399/C4/E3/2012 dated 02.05.2013 and the 3rd respondent in Na.Ka.No.26257/C3/E3/07 dated 15.06.2012 and quash the same and consequently direct the respondents to reinstate the petitioner with backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Ms.P.Rajarajeswari,
Government Advocate



ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

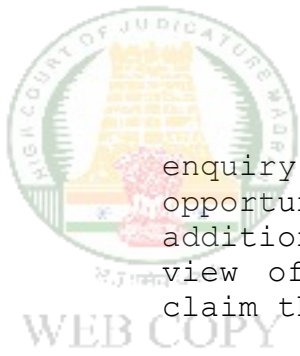
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2.The petitioner herein, while serving as a Maths Teacher in a Government School, Jangalapalli, Vellore District, was imputed with certain charges issued by the 4th respondent in Na.Ka.No.356/a3/07 dated 08.05.2007 and by the 2nd respondent in Na.Ka.No.26257/C3/E3/07 dated 14.01.2008 based on the allegations that he had kidnapped a minor girl studying in 10th standard and sexually assaulted her.

3.In the aforesaid charge memos, the 4th respondent herein had relied on certain documents in support of those charges. After enquiry, the Disciplinary Authority/3rd respondent herein had imposed the punishment of Dismissal from Service vide Na.Ka.No.26257/C3/E3/2007 dated 15.06.2012. The Appeal and further 2nd Appeal preferred by the petitioner, were rejected on 02.05.2013 and 12.12.2014 respectively. Challenging the order of punishment and other consequential orders, the present Writ Petition has been filed.

4.The learned counsel appearing for the petitioner predominantly raised two grounds challenging the impugned orders. Firstly, he would submit that the domestic enquiry itself was not conducted in a fair and proper manner and that, though the 4th respondent herein had relied on certain documents in the charge memos and in spite of repeated requests made by the petitioner, the same were not furnished to him. He would further add that in the Appeal and 2nd Appeal preferred before the respondents 1 and 2 herein, he had referred to such requests for the documents, which were ignored. Apart from that, no witnesses were examined during the course of enquiry and the petitioner was not given an opportunity to cross examine the alleged witnesses. Secondly, the learned counsel submitted that the criminal case revolving around the similar charges, had ended in an acquittal based on the evidence adduced before the Court. Therefore, the very basis before which the charges may redempted.

5.Per contra, learned Government Advocate had placed reliance on the impugned orders of punishment as well as the averments made in the counter affidavit filed by the respondents and submitted that, the enquiry was conducted by the Authority, after proper and prior intimation to the petitioner. The petitioner was allowed to adduce the relevant documents at the time of enquiry and the affected girl and her father were enquired in the presence of the petitioner. A copy of the



enquiry report was also served on the petitioner and an opportunity was extended to the petitioner to give his additional statement of defence based on the enquiry report. In view of this procedure adopted, the Government Advocate would claim that the enquiry was done in a fair and proper manner.

6.The further submission of the learned Government Advocate is that, an acquittal in the criminal case will not affect the Departmental Enquiry. Since the respondents have adopted the principle of preponderance of probability, which is permissible in law, she would therefore submit that as the charges were grave in nature, the punishment of dismissal is proportionate to the charges laid on the petitioner.

7.This court has given careful consideration to the submissions made by the respective counsels. As rightly pointed out by the learned counsel appearing for the petitioner, the charge memos dated 08.05.2007 and 14.01.2008 had referred to 5 document. The petitioner, in his explanation submitted that on 14.05.2007, had specifically requested for supply of these documents. There is no reference to the request made by the petitioner for supply of documents either in the enquiry report or in the punishment order of the Disciplinary Authority. Likewise, the charge memos do not reflect the list of witnesses, which are mandatory requirements in departmental proceedings.

8.This apart, in the grounds of Appeal raised by the petitioner herein, he had specifically raised a ground stating that he had requested the Enquiry Officer for supply of the documents relied in the charge memos, which were not given to him. This aspect was not considered by the Appellate Authority, as well as by the subsequent 2nd Appellate Authority.

9.Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule, prescribes the procedure to be adopted by the Authorities during the course of an enquiry. As per the said Rules, on framing of a definite charges, the delinquent should be given an opportunity to putforth his defence in a written statement and to state whether he desires an oral inquiry or to be heard in person or both. Thereafter, in the inquiry, even if a person charged has waived an oral inquiry, such inquiry shall be held by the Authority concerned in respect of the charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. The delinquent should also be served with the documents on which reliance is placed for the enquiry.

10.The representations made by the petitioner and the Appeal grounds discloses that the petitioner had been consistently



requesting for the documents relied by the respondent in the charge memo, which were ignored. On a comprehensive consideration of the request made and the non-consideration of his request, this Court is of the considered view that the inquiry was not conducted in a fair and proper manner and it was also in violation of the principles of natural justice.

11. In normal circumstances, this Court would have interfered with the punishment and remanded the matter back for a fresh enquiry. But the inquiry in the present case would be a futile exercise on account of two grounds raised by the learned counsel for the petitioner. The charges against the petitioner relates to abduction and sexual assault of a minor girl. The petitioner claims to have an alibi on the date of the incident, which seems plausible.

12. In connection with these charges, a criminal case came to be registered against the petitioner, which was taken on file in S.C. No.128 of 2010, before the learned District and Sessions Judge, Vellore, by the judgment dated 01.08.2011. The petitioner was acquitted from the charges on merits and upon consideration of the oral and documentary evidences adduced by the criminal Court. This Court had an occasion to consider 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 dated 07.01.2020, wherein, it was held that when the Criminal Court has acquitted the delinquent on merits of the case, the departmental enquiry, on a same set of charges, cannot be proceeded with. The relevant portions 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.

9.....

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



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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 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



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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 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



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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 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."

13. The aforesaid extract is self-explanatory. Thus, when the criminal Court had found that the charges against the petitioner to be unfounded based on the evidence let in before it and the charges against the petitioner herein in the Departmental Inquiry are predominantly one and the same, the judgment of



acquittal of the petitioner would stand in his favour and therefore, the punishment of Dismissal from Service cannot be sustained. Thus, remitting the matter back to the Disciplinary Authority, would be inefficacious.

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14. As stated earlier, both the charge memos do not reveal the list of witnesses to be examined during the course of enquiry. Though it is stated in the counter affidavit that the petitioner has cross examined the witnesses, it is the stand of the petitioner herein the witnesses were not examined and that the enquiry itself was done in a slipshod manner and was completed within 20 minutes. The very fact that the petitioner had been repeatedly requesting for some documents, which are relevant to the inquiry and which were not supplied to the petitioner, would reveal that the inquiry was against the principles of natural justice. Likewise, the Disciplinary Authority, on considering the inquiry report submitted, has lost sight of the request made by the petitioner for the supply of documents. Similarly, when the 2nd respondent herein had dealt with the Appeal filed by the petitioner, had ignored the specific ground that the petitioner had requested for documents at the time of enquiry and those documents were not supplied to the petitioner.

15. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, provides for the manner in which the Appeal should be dealt with by the Authorities. As per the Rules, the Appellate Authority is bound to consider all the grounds raised in the Appeal filed by the delinquent and thereafter, substantiate as to whether the facts on which the order was based have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is proportionate to the charges.

16. Apparently, these requirements have not been fulfilled by the Appellate Authority, owing to the fact that the request of the petitioner for supply of documents was denied and in spite of this being brought to the notice, the Appellate Authority, he had chosen to ignore it. Thus, the order passed in the Appeal filed by the petitioner dated 13.07.2012, is in violation of Rule 23(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore, the same cannot be substantiated.

17. The 2nd Appellate Authority is also bound to look into the earlier orders of punishment, as well as to the order made in the Appeal, and then should have rendered an independent finding as to why the orders do not require revision. This exercise has not been done in the present case and hence all the orders cannot be sustained.



18. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, awarding full backwages would be justifiable. The relevant portion of the order reads as follows:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

19. In the light of the above findings and decisions extracted above, the impugned orders passed of the 1st respondent in G.O.(2D).No.92 dated 12.12.2014 dismissing the petitioner's 2nd Appeal dated 24.05.2013, confirming the orders passed by the 2nd respondent in Na.Ka.No.48399/C4/E3/2012 dated 02.05.2013 and the 3rd respondent in Na.Ka.No.26257/C3/E3/07 dated 15.06.2012, are hereby quashed. Consequently, there shall be a direction to the respondents to reinstate the petitioner back into service together with full backwages and other attendant benefits. The respondents shall also endeavour to pass appropriate orders in this regard, atleast within a period of four weeks from the date of receipt of a copy of this order.

20. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vkr



To:

1. The Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
College Road,
Chennai - 600 006.

3. The Joint Director of
School Education (Personnel),
College Road,
Chennai - 600 006.

4. The Chief Educational Officer,
Vellore and District.

+1cc to Mr.S.Sathia Chandran, Advocate, S.R.No.5957

+1cc to the Government Pleader, S.R.No.6805

W.P.No.18485 of 2015

SRA(CO)
RLP(23/02/2022)