

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :
03.01.2022

Delivered on :
10.02.2022

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CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 28979 of 2010

C.Dhanapal

..Petitioner

Vs.

The Director General of Police,
Tamil Nadu,
Chennai-4

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent herein in Rc.No.127828/AP.2 (2)/2010 dated 02.08.2010 only insofar as imposing a modified punishment of reduction in time scale of pay by three stages for two years without cumulative effect and quash the same and consequently direct the respondent to promote the petitioner as Special Sub Inspector of Police from the date of promotion of immediate junior with all consequential monetary and service benefits.

For Petitioner : Mr.Ravishanmugam

For Respondent : Mr.J.C.Durairaj, AGP

O R D E R

Brief facts of the case is that the writ petitioner joined the services as Grade II Police Constable on 23.12.1985 and promoted as Grade I Police Constable on 01.09.1997 and as Head Constable on 22.07.2002. The petitioner was served with a charge memo in P.R.3/2005 dated 12.01.2006 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (D&A) Rules for the allegation that on 23.09.2005 at 20.30. hrs, he had murdered his wife namely Amsaveni and involved in Cr.No. 292/2005 U/s. 302 IPC. Initially the petitioner was placed under suspension and based on the findings of the enquiry officer, the petitioner was dismissed from service. Since, the Sessions Court had acquitted the petitioner as not guilty for the offences charged, the



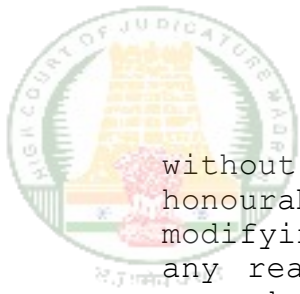
petitioner had approached this Court and obtained directions to the respondent. The respondent had passed the impugned order reinstating the petitioner in service with a modified punishment of reduction of time scale of pay by three stages for two years without cumulative effect. Challenging the same, the present writ petition is filed.

2. The learned counsel for the petitioner submitted that pursuant to the charge memo in P.RNo. 3/2005, dated 12.01.2006 framing charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D&A) Rules, the Superintendent of Police, Krishnagiri District has issued orders dated 26.09.2005 placing the petitioner under suspension. The Deputy Superintendent of Police, Hosur was appointed as Enquiry Officer in the departmental enquiry. The Village Administrative Officer, Denkanikottai namely Thoppudu was examined as PW1, the Sub Inspector of Police, Denkanikottai Police Station namely Lakshmanadas was examined as PW2, the Inspector of Police, Denkanikottai namely Akkumaran was examined as PW3 and the Deputy Superintendent of Police namely Gunasekaran was examined as PW4. During Chief examination, PW1/ Village Administrative Officer and PW2/Inspector of Police have not let-in any evidence in implicating the petitioner in the charge.

3. The learned counsel for the petitioner has further submitted that neither in the chief examination nor cross examination, there was absolutely no evidence to show that on 23.09.2005 at 20.30hrs the petitioner had assaulted his wife or murdered her. Hence the findings of the enquiry officer is perverse. Subsequently, after elaborate discussion of evidence PW1 to PW15, the trial Court had acquitted the petitioner as not guilty under Section 302 and 201 IPC on the ground that the prosecution has miserably failed to establish the guilty of the offence.

4. The learned counsel for the petitioner has further submitted after having been acquitted honourably, the petitioner had preferred an appeal before the Director General of Police and pending appeal, the petitioner had also filed a writ petition in W.P.No. 27946 of 2008 before this Court. By order dated 26.03.2010, this Court issued directions to the Director General of Police to dispose of the appeal in the light of the judgment in S.C.No. 175/2007, dated 28.04.2008.

5. The learned counsel for the petitioner has further submitted that consequence to the directions of this Court, the Director General of Police by proceedings dated 02.08.2010 had passed orders reinstating the petitioner into service with modified punishment of reduction in time scale of pay by three states for two years without cumulative effect. The respondent



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without considering the fact that the petitioner was acquitted honourably in the criminal case, had passed the impugned orders modifying the punishment. Further the respondent has not given any reason how there is evidence to hold the given charge as proved to impose such punishment, which according to the learned counsel for the petitioner is perverse and liable to be quashed.

6. On the other hand, the learned Additional Government Pleader appearing for the respondent has submitted that based on the proved minute by the enquiry officer, the petitioner was awarded with a punishment of reduction in rank as Grade I PC for three years . Subsequently, based on the suo-motu review, the Deputy Inspector General of Police, Salem has issued the show cause notice to the petitioner under Rule 15(A)(i)(iii) of TNPSS (D&A) Rules, 1955 to enhance the punishment awarded to the petitioner. The petitioner has submitted his explanation and since the said explanation was not accepted by the Deputy Inspector General of Police, Salem, the petitioner was awarded the punishment of 'Dismissal from service'

7. The learned Additional Government Pleader appearing for the respondent has further submitted that based on the acquittal order and the directions issued by this Court in W.P.No. 27946 of 2008 dated 26.03.2010, the petitioner was reinstated into service with modified punishment of reduction in time scale of pay by three states for two years without cumulative effect.

8. The learned Additional Government Pleader appearing for the respondent has further submitted that as per paragraph 26 of the judgment in S.C.No. 175 of 2007, it is clear that the acquittal of the petitioner is only on the benefit of doubt and since the prosecution witnesses turned hostile , the prosecution miserably failed to prove the case. Therefore, the contention of the learned counsel for the petitioner that the petitioner was honourably acquitted is wrong and the punishment awarded to the petitioner is perfectly valid and does not require any interference.

9. Heard Mr.Ravishanmugam, learned counsel appearing for the petitioner and Mr.J.C.Duraiaraj, learned Additional Government Pleader appearing for the respondent and perused the documents available on record.

Points that arose for consideration to decide the case are as to;

- I.whether the Sessions Court acquitted the petitioner on merits
- II.whether the charges framed as against the petitioner in the criminal case and the departmental proceedings are one and the same?
- III.if so, whether the petitioner can succeed as per the





15. It is evident from the enquiry report submitted by the enquiry officer namely the Deputy Superintendent of Police, Hosur that based on the witnesses PW1 to PW4, the enquiry officer has concluded the disciplinary proceedings against the petitioner and imposed punishment. As discussed above, for the same set of charges and based on the the statement of PW1/VAO and PW/Sub Inspector Police, since other witnessed turned hostile, the Sessions Court acquitted the petitioner from the offences charged. Therefore, it is clear that both the enquiry proceedings and the criminal proceedings before the Sessions Court were proceeded and concluded for the same set of facts and based on the same witnesses and documents. The point no. 2 is answered accordingly.

16. Insofar point no.3 is concerned, the learned counsel appearing for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of G.M.Tank Vs.State of Gujarat & another reported in TLNJ 2006(3) 457 (Civil) has held that if such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The relevant portion is extracted hereunder;

30. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to



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the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed 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 department 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 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's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

17. In the present case on hand also, as discussed above, the allegations made before the Sessions Court and the charges framed in the departmental proceedings against the petitioner were based on the identical and similar set of facts and the evidence before the Criminal Court and the departmental proceedings are also exactly the same. Further, the Sessions Court in its Judgment in S.C. No. 175 of 2007 dated 28.04.2008, after elaborate discussion, has concluded that the prosecution has miserably failed to prove its case through oral and documentary evidence. The relevant paragraph of the judgement is extracted hereunder;

"26. Further, this Court's opinion is that the bounden duty of the prosecution, three important aspects are established by the prosecution. (1) Circumstantial evidence (2) Motive and (3) 27-recovery. The above said three aspects not established by the prosecution case. Under above circumstances this Court's opinion is that prosecution has miserably failed to prove its case through oral and documentary evidence. Therefore this Court's



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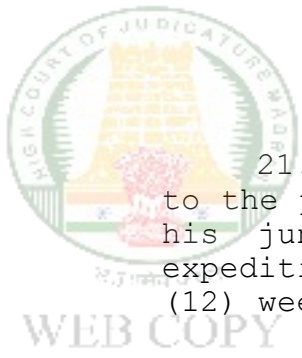
opinion is that the benefit of doubt is given to the accused and the accused acquittal from the charges is not against law. Further this Court finds that, there are serious act of commission and omissions on the part of the investigation defective and tentative which against unsafe for the Court to rely upon the evidence adduced before this Court after such tentative investigation and on that score also the prosecution case has necessarily failed. For all the discussion held above this Court is constrained to hold that the prosecution is miserably failed to establish the guilty of the accused for the offences u/s.302 and 201 of IPC for the murder of his wife and he deserves to be acquitted.

28. In the result, the accused is found not guilty of the offence/U/Sec. 302 and 201 of IPC and he is acquitted from the charge U/s. 235(1) of CPC."

18. The aforesaid findings of the Sessions Court and disciplinary proceedings clearly proves that the both the proceedings were initiated for the set of facts and the witnesses and documents considered in the both the proceedings are also one and the same. Therefore, no doubt that the decisions of the Hon'ble Supreme Court cited supra in G.M.Tank's Case will squarely apply to the facts of the present case any by relying upon the said decision of the Hon'ble Supreme Court, this Court without any hesitation has come to the conclusion that the impugned order of punishment passed by the respondent is liable to be quashed and the petitioner is entitled for notional pensionary benefits.

19. As regards the second charge is concerned, since the petitioner was arrested and remanded to judicial custody, the Superintendent of Police, Krishnagiri had suspended the petitioner from service stating reason that the petitioner has brought disrepute to the police department and issued a charge memo. In view of the acquittal of the petitioner by the Sessions Court, concluding that the prosecution has miserably failed to prove guilt of the petitioner, this Court is of the view that the said charge is unsustainable as the petitioner was acquitted from the criminal offence on merits.

20. Considering the facts and circumstances of the case and by relying upon the decisions of the Hon'ble Supreme Court cited supra, the impugned modification order passed by the respondent is quashed. The writ petition is allowed. No costs.



21. The respondents are directed to grant notional promotion to the petitioner as Special Sub Inspector of Police on par with his juniors and also grant revised pensionary benefits as expeditiously as possible, preferably within a period of twelve (12) weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Director General of Police,
Tamil Nadu,
Chennai-4

+1cc to the Government Pleader, S.R.No.9008

W.P.No.28979 of 2010

MT(CO)
CT 25/03/2022