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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.40001 OF 2015

AND

M.P.NO.2 OF 2015

G.Krishnan

...Petitioner

Vs.

1. The Additional Director General of Prisons,
Egmore, Chennai - 8.
2. The Deputy Inspector General of Prison,
Trichy Range, Trichy.
3. The Superintendent of Prisons,
Central Prison, Coimbatore.
4. The Home Secretary, Government of Tamil Nadu,
Fort St.George, Chennai - 9.

..Respondents

Prayer :

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondents 1, 2 & 4 dated 22.10.2010, 19.12.2009 and 15.10.2012 issued in proceedings No.6804/EW-1/2010, 4060/Mu.Vu./2009, 11469/Po-1/96 and G.O.(D).No.854 Home (Prison-2) Department respectively and quash the same and consequently to direct the 3rd respondent to reinstate the petitioner into service with all attendant service and monetary benefits.

For Petitioner : Mr.P.Manojkumar

For Respondents : M/s.S.Anitha
[R1 to R4] Special Government Pleader



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ORDER

The order of dismissal from service issued in G.O.(D). No.854, Home (Prison-2) Department dated 15.10.2012 is under challenge in the present writ petition.

2. The writ petitioner joined as a Grade-II Warder in Prison Service on 21.03.1988.

3. A charge memo was framed against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 29.10.1999. The charge against the writ petitioner was that on 24.08.1996 at about 9.15 p.m., the petitioner thrown bundle of prohibited article (Ganja) inside the Prison for handing it over to the Prisoner No.2573, Muthu Krishnan. When the information was passed on to the Jailer, an inspection was conducted and they found half Kilogram ($\frac{1}{2}$ kgs) of Prohibited article i.e., Ganja (7 packets) beneath the bed of MuthuKrishnan, Prisoner. Therefore, the departmental disciplinary actions were initiated. A criminal case was also registered. However, the criminal case ended with an order of acquittal through judgment dated 28.02.2006. The petitioner was acquitted on the ground of benefit of doubt. However, the departmental disciplinary proceedings against the writ petitioner was continued and the Enquiry Officer was appointed, who in turn, conducted an enquiry. Based on the findings of the Enquiry Officer, holding that the charges are held proved, the punishment of dismissal from service was issued by the 2nd respondent in proceedings dated 19.12.2009. The petitioner preferred an appeal to the first respondent and the said appeal was also rejected on 22.10.2010. The writ petitioner earlier filed W.P.No.11574 of 2011, challenging the order of dismissal passed by the 2nd respondent and the said writ petition was withdrawn by the writ petitioner with a liberty to approach the authority for appropriate remedy. Again, the writ petitioner filed a Revision Petition before the 4th respondent on 31.10.2011, which was also rejected by the 4th respondent in G.O. (D).No.854, Home (Prison-2) Department dated 15.10.2012 and the said orders are under challenge in the present writ petition.

4. The learned counsel for the petitioner mainly contended that the case of the petitioner before the Criminal Court of Law was adjudicated elaborately and after conducting trial, the Criminal Court granted an order of acquittal. When the evidence produced before the Criminal Court and the departmental proceedings are one and the same, there is no reason whatsoever to impose the punishment of removal from service. The Disciplinary Authority have imposed the punishment of removal from service based on the statement recorded during the preliminary enquiry and such statement obtained during the



preliminary enquiry cannot be a basis for imposing the penalty of dismissal. The statement recorded during the preliminary enquiry alone would be insufficient to impose punishment in the departmental disciplinary proceedings. The respondents have failed to consider the findings of the Criminal Court for the purpose of acquittal of the writ petitioner and also failed to consider the contradictions between the statements of P.W.1 to P.W.8 and the documents, which were dealt with by the Criminal Court of Law.

5. At the outset, the learned counsel for the petitioner is of an opinion that the case on hand is a case, where, no evidence is available and therefore, the order of dismissal is to be set aside.

6. The learned Special Government Pleader appearing on behalf of the respondents objected the said contentions by stating that the petitioner himself gave a statement on 26.08.1996 to the Additional Superintendent Thiru.M.Senthoorapandian, admitting his guilty of the alleged throwing of kanja inside the Prison. In the said statement, the petitioner admitted and stated that the wife of the remand prisoner Muthukrishnan handed over the kanja packets and he threw the same over the compound wall inside the factory of Central Prison from outside. Thereby the petitioner committed the following offences:-

(1) Threw the indiscriminate article (kanja) inside the prison.

(2) Having illegal contact with the wife of a remand prisoner by getting the kanja packets, which was against the rule No.147 of the Tamil Nadu Prison Rules, 1983.

7. The respondents have stated that the statement of the writ petitioner before the Superintendent of Police was voluntary and therefore, it is to be construed as a valid statement for all purposes including for the purpose of conducting departmental disciplinary proceedings. Now after a lapse of long time, the petitioner turned around and state that the statement was recorded during the preliminary enquiry and therefore, the said statement should not be relied upon by the authorities.

8. The learned Special Government Pleader reiterated that the behaviour of the petitioner i.e., throwing prohibited article i.e., kanja inside the prison is an offence in terms of Rule 298 of the Tamil Nadu Prison Rules, 1973. Thus, he has committed the offence of smuggling of contraband inside the prison with an intention to get pecuniary advantage. The Criminal Case ended with an order of acquittal only on benefit



9. Considering the arguments, this Court is of an opinion that the charges against the writ petitioners are serious in nature. He has not only violated the provisions of the Prison Manual and also committed an offence, but the petitioner was acquitted in the criminal case on benefit of doubt. Such an acquittal on benefit of doubt by the Criminal Court of Law would not grant an automatic exoneration of the Delinquents from the departmental disciplinary proceedings. The departmental disciplinary proceedings are to be conducted independently with reference to the documents and evidences. In the present case, the authorities continued the departmental disciplinary proceedings though the writ petitioner was acquitted in the criminal case, which cannot be considered as a violation.

11. In this context, this Court has to consider, whether the procedures has been followed by the Disciplinary Authority or not. Charge memo was issued. The petitioner was provided with an opportunity and an enquiry was conducted. The prosecution witnesses in the disciplinary proceedings have given their statements and the documents were produced by the Department and based on the statement of the witnesses and considering the documents, the Enquiry Officer submitted his report, holding that the charges against the writ petitioner are held proved. Accepting the report of the Enquiry Officer, Disciplinary Authority imposed a punishment of removal from service and the said punishment was confirmed by the Appellate Authority and the Revision Authority.

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13. The findings of the Enquiry report categorically reveals that the prosecution witness one Thiru.Gurusamy has clearly stated that the Guard on duty in tower Thiru.Shanmugasundaram, Grade II Warder, informed the said P.W.1 Gurusamy about the incident and immediately the said Gurusamy informed Mr.Palanisamy, Jailer and they have conducted an inspection in Room No.14 and found that the remand prisoner No.2573 Muthukrishnan was in possession of half kilograms ($\frac{1}{2}$ kgs) of Ganja in 7 bundles. P.W.2 Mr.Palanisamy has given his statement after his retirement. He also deposed before the Enquiry Officer regarding the incident occurred and the statement of the prosecution witnesses are cogent and in corroboration with the allegations against the charged officials.

14. Perusal of the statement of witnesses reveals that the incident was established and the allegation against the writ petitioner was also established. However, no strict evidence is not required in a departmental disciplinary proceedings. The probabilities are sufficient enough to punish an employee under the Disciplinary Rules. In the present case, the prosecution witnesses have cogently narrated the incident and based on the statement and the records available, the Enquiry Officer formed an opinion that the charges against the writ petitioner are proved. Therefore, this Court do not find that the case on hand, the Department has failed to establish the charges. The benefit of doubt granted by the Criminal Court of Law would not be a ground to seek exoneration by the writ petitioner.

15. Disciplinary enquiries have to abide by the Rules of Natural Justice. But, they are not governed by the strict rules of evidence, which apply to judicial proceedings. The standard of proof is not the strict standard, which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on the context and subject. There may be cases, where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc., However, those factors cannot be a ground to seek exoneration from the departmental disciplinary proceedings or to set aside the punishment imposed after conducting an enquiry by the Disciplinary Authority.

16. In the case of Shashi Bhushan Prasad Vs. Inspector General, Central Industrial Security Force and Others, reported in (2019) 7 SCC 797, the Hon'ble Supreme Court of India held as follows:



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"19.....Two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority."

17. In the case of Ajith Kumar Nag Vs. G.M.(P.J.) Indian Oil, reported in (2005) 7 SCC 764, the Hon'ble Supreme Court of India held as follows:

"11. Acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In



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criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation."

18. Even this Court do not find any disproportionality with reference to the quantum of punishment imposed. Allegations against the writ petitioner are grave in nature and an offence as contemplated under law. When such charges are proved in the departmental disciplinary enquiry, there is no reason whatsoever to interfere with the quantum of punishment imposed by the Disciplinary Authority.

19. For all these reasons, this Court do not find any infirmity or perversity in respect of the punishment of dismissal from service imposed on the petitioner and the reason stated by the Appellate Authority and the Revision Authority are also convincing.

20. Consequently, the writ petition fails and stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Additional Director General of Prisons,
Egmore,
Chennai - 8.
2. The Deputy Inspector General of Prison,
Trichy Range,
Trichy.



3. The Superintendent of Prisons,
Central Prison,
Coimbatore.

4. The Home Secretary, Government of Tamil Nadu,
Fort St.George,
Chennai - 9.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.39157

W.P.No.40001 of 2015

SSI (CO)
PM/05/07/2022