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W.P.No.1353 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1353 of 2017

Paramasivam

... Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu, Chennai – 4.

2.The Deputy Inspector General of Police,
Trichy Region, Trichy.

3.The Superintendent of Police,
Ariyalur.

4.The Deputy Superintendent of Police
Perambalur Sub-Division,
Perambalur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of dismissal from service passed by the 3rd respondent in Na.Ka.Pa.A3/ T.P. No.24/2008 dated 04.03.2014 as modified by the 1st respondent in his proceeding bearing Rc.No.163136/ AP.IV (1)/ 2015 dated 30.10.2016 and set aside the same and consequently direct the 3rd respondent to reinstate the petitioner in service with back wages and other service benefits including seniority in service.



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For Petitioner : Mr.A.Sirajudeen
Senior Counsel
For Mr.J.Deliban

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The punishment of compulsory retirement is under challenge in the present writ petition.

2. The petitioner joined as Grade-II Police Constable on 10.12.1988 in Tamil Nadu Police Service. He was promoted as Grade-I Constable on 01.10.1999 and further, promoted as Head Constable on 01.10.2004.

3. The petitioner states that on 28.03.2008 at 7:30 a.m. in his absence from his house, his wife Smt.Mythili was found in a pool of blood and she succumbed to the injuries suffered by her. One Mr.Annathurai, distant relative, who used to visit his house frequently was also not available in the house. On a report lodged by the son of the petitioner Mr.Vinoth, the Ariyalur Police Station registered a Criminal Case in Crime No.202 of 2008 for an offence under Section 302 I.P.C. and commenced investigation. The Investigating Officer suspected the involvement of Mr.Annathurai in the



offence. Subsequently, the said Mr. Annathurai had surrendered before the Metropolitan Magistrate, Saidapet, Chennai and remanded to judicial custody. The petitioner was acquitted from the Criminal Case in S.C.No.77 of 2012 and no appeal was preferred against the order of acquittal and therefore, the judgment became final.

4. The departmental disciplinary proceedings were initiated against the writ petitioner and the charge against the writ petitioner is that he had abetted for commission of Crime of murder of Section 302 I.P.C. and further, the petitioner has not co-operated with the Investigating Officer for the purpose of arresting one Mr. Annathurai, who was also an accused in the Criminal Case. The petitioner submitted his explanations and defended his case. An Enquiry Officer was appointed, who in turn, conducted an elaborate enquiry by affording opportunity to the writ petitioner. The Enquiry Officer found that the charge against the writ petitioner was held proved. The findings of the Enquiry Officer was accepted by the Disciplinary Authority and final order was passed, imposing the penalty of dismissal from service. The petitioner preferred an Appeal before the Deputy Inspector General of Police, Trichy. The Appellate Authority modified the punishment and imposed the punishment of Compulsory Retirement. Challenging the



said punishment, the petitioner has chosen to file the present writ petition.

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5. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that it is the case of no evidence. The learned Senior Counsel for the petitioner drew the attention of this Court with reference to the findings in the judgment of the Criminal Court of Law in S.C.No.77 of 2012 dated 05.12.2013. Relying on the findings in the judgment of the Criminal Case, the learned Senior Counsel made a submission that there was no evidence to establish the offence against the writ petitioner and he was acquitted from the Criminal Case and therefore, the different view taken by the Departmental Disciplinary Authority is perverse and liable to be set aside.

6. The learned Senior Counsel appearing on behalf of the petitioner is of an opinion that findings and observations made in the judgment of the Criminal Court in S.C.No.77 of 2012 is to be taken into consideration for the purpose of proving the offence against the writ petitioner and therefore, the different opinion formed by the Department is not based on any evidence and consequently, the punishment is liable to be set aside.

7. To substantiate the contentions, the learned Senior Counsel



appearing on behalf of the petitioner contended that the Criminal Court of Law found that the accused was not available at the scene of crime during the commission of the offence. During the course of trial, the witnesses have retracted their own statements and have turned hostile and did not support prosecution. One witness Loganathan deposed that Annathurai did not have the capacity to commit the offence of such magnitude. Either the accused should have committed this murder or under his instigation, the said Annathurai should have committed this murder. The findings in the judgment of the Criminal Court further states that there is no evidences in this case as to the plea of conspiracy on the part of the accused. Accordingly, the Criminal Court of Law extended the benefit of doubt in favour of the accused and acquitted.

8. Relying on the findings, the learned Senior Counsel appearing on behalf of the petitioner reiterated that there cannot be any different view in the departmental disciplinary proceedings and therefore, the punishment is untenable.



9. The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the petitioner, who was serving in the disciplined force involved in a Criminal Case and committed a grave offence. Thus, he was placed under suspension and a charge memo in PR.24/2008 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The Enquiry Officer was appointed, who in turn, elaborately conducted an enquiry by examining the witnesses and scrutinizing the documents and affording an opportunity to the writ petitioner and submitted his report. The Enquiry Officer examined 10 prosecution witnesses and 10 documents and formed an opinion that the charges against the writ petitioner are held proved. Accordingly, the Disciplinary Authority imposed the punishment of dismissal from service to the petitioner on 04.03.2014. The Appeal filed by the petitioner was considered and the punishment of dismissal from service was modified to that of compulsory retirement.

10. The respondents have stated that though the petitioner did his para duty at the Police Station on the occurrence date and time, the writ petitioner's offences of conspiracy of murder on his wife amply proved through the substantial evidences before the Enquiry Officer. The writ



petitioner has suspected the fidelity of his wife and often discussed about his wife's character and activities with Annathurai, who is the occupant in his house and distant relative. He is unable to bear the immoral activities of his wife, he planned to kill her through Annathurai. In the above background, the said Annathurai killed petitioner's wife only in the absence of writ petitioner. After completion of the assignment given by the writ petitioner, the said Annathurai fled from the scene of occurrence. Therefore, the writ petitioner was prosecuted for the offences. The Criminal Case against the petitioner ended with an order of acquittal on the ground that witnesses turned hostile. Thus, the benefit of doubt extended by the Criminal Court of Law is not a ground to grant exoneration from the departmental disciplinary proceedings. There is no bar for the authorities to continue the departmental disciplinary proceedings even during the pendency of the Criminal Case.

11. This Court is of the considered opinion that the procedures to be adopted for departmental disciplinary proceedings and the Criminal Court of Law are distinct and different. An acquittal in a Criminal Case would not be a ground to seek exoneration from the departmental disciplinary proceedings. Strict evidence is required to convict a person under the Criminal Court of Law. However, no such strict proof is required to punish a



Government employee under the Discipline and Appeal Rules.

Preponderance of probabilities are sufficient to punish an employee. Even moral turpitude is sufficient to impose penalty under the Discipline and Appeal Rules. Therefore, the findings of the Criminal Court in its judgment may not be considered for the purpose of exonerating an employee from the departmental disciplinary proceedings.

12. In the present case, perusal of the Criminal Court judgment reveals that the main witnesses turned hostile. When the witnesses turned hostile during the trial before the Criminal Court of Law and based on the benefit of doubt, the accused was acquitted from the Criminal charges, the same yardstick need not be followed by the Disciplinary Authority in the departmental disciplinary proceedings. In the departmental disciplinary proceedings, the witnesses were examined independently and the Enquiry Officer categorically made a finding that the charges against the writ petitioner are held proved. The entire conduct with reference to the facts were considered by the Enquiry Officer in his findings. When the findings of the Enquiry Officer is independent and based on the witnesses examined by him during the departmental enquiry, then there is no reason to refer the judgment of the Criminal Court of law for the purpose of granting



exoneration from the departmental disciplinary proceedings.

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13. In the present case, the Disciplinary Authority imposed the penalty of dismissal from service. No doubt, the proved charges against the writ petitioner are grave in nature and relating to murder of his wife. Various facts and circumstances considered by the Enquiry Officer based on the deposition of the witnesses reveals that there is no reason to exonerate the petitioner from the departmental disciplinary proceedings and thus, the Enquiry Officer rightly formed an opinion that the charges against the writ petitioner are held proved. Accepting the findings, the Disciplinary Authority imposed the penalty of dismissal from service. However, on appeal, the second respondent/Appellate Authority took a lenient view and modified the punishment as Compulsory Retirement.

14. Thus, this Court is of the considered opinion that the Appellate Authority has already considered the grounds raised by the petitioner in his appeal and took a lenient view and accordingly, modify the punishment of dismissal from service to that of compulsory retirement. Therefore, no further consideration is required from the hands of this Court.

15. The power of judicial review under Article 226 of the Constitution



of India is to ensure the processes, through which, a decision is taken by the competent authority in consonance with the rules in force, but not the decision itself.

16. In the present case, the departmental disciplinary proceedings were conducted by following the procedures as contemplated and there is no infirmity. The petitioner was afforded with an opportunity to defend his case. The Disciplinary Authority imposed the punishment of dismissal from service for the proved charges, which all are undoubtedly grave in nature. However, the Appellate Authority modified the punishment as Compulsory Retirement and therefore, the punishment, which is challenge in the present writ petition cannot be construed as disproportionate or excessive. Thus, this Court is not inclined to interfere with the order of punishment.

17. Accordingly, the Writ Petition stands dismissed. No costs.

20.10.2022

Jeni/kak
Index : Yes
Speaking order

To



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S.M.SUBRAMANIAM, J.

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