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W.P.No.3600 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.3600 of 2017

S.Gopinath

...Petitioner

-Vs-

1.The Dy. Inspector General of Police,
Kancheepuram Range,
Kancheepuram.

2.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to 2nd respondent's order made in P.R.No.117/2009 dated 27.07.2012, as confirmed by the 1st respondent by proceedings in C.No.134/5296/2015 (appeal No.12 of 2015) dated 26.06.2015, to quash the same and to consequently direct the respondents to extend both service and monetary benefits.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Ms.Meera Arumugam,
Additional Government Pleader



ORDER

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The petitioner herein, while working as Grade-I Police Constable under the respondents herein, was served with a charge memo dated 25.08.2009, for the charge of having involved in a criminal case in Crime No.330 of 2009 before Pallipatti Police Station and was arrested in connection with this. Based on the levelled charges, an enquiry came to be conducted. Pending the disciplinary proceedings, the criminal case in C.C.No.249 of 2011 against the petitioner had ended in acquittal on 25.04.2012. Thereafter, the disciplinary authority had imposed the punishment of postponement of increment for a period of three years with cumulative effect, through his order dated 27.07.2012. The order of punishment came to be confirmed by the first respondent herein in his proceedings dated 04.10.2012. Since the criminal case had ended in acquittal at that time, the petitioner herein had preferred a writ petition in W.P.No.26205 of 2013 and by an order dated 10.03.2015, this Court had directed the first respondent herein to reconsider the petitioner's appeal, in the light of the judgement of acquittal dated 25.04.2012 in C.C.No.249 of 2011. Pursuant to the orders of this Court, the first respondent herein had



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once again rejected the petitioner's appeal on 26.06.2015. Challenging the original order of punishment, as well as the orders passed in appeal, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that though this Court had earlier specifically directed the first respondent to reconsider the appeal, in the light of the judgement of acquittal in the criminal case, the first respondent had not made any reference or considered the judgement of acquittal and therefore, the order itself is liable to be set aside.

3. Per contra, the learned Additional Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that the procedure contemplated for conducting a departmental enquiry was strictly adhered to and though notice was served on the petitioner, he did not participate in the enquiry. As such, the punishment does not require interference.

4. The only charge against the petitioner herein is for his involvement in a criminal case in Crime No.330 of 2009 and his arrest in connection with



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the criminal case. The over tact attributed against the petitioner in the criminal complaint was not made as the basis of the charge. In other words, the charge itself is for his involvement in the criminal case simpliciter.

5. It is no doubt true that when a member of the respondent department involves himself in a criminal case or is arrested in connection with the criminal case, the same would amount to a misconduct. As such, framing of charges against the petitioner herein for his involvement and arrest cannot be found fault with at the first instance. Nevertheless, when the basis of the charge is diluted, after a judgement of acquittal is passed in favour of the petitioner, his involvement in the criminal case goes. If that be so, all further proceedings, pursuant to the framing of charges, necessarily has to be set aside.

6. This apart, when the first order passed by the appellate authority, confirming the punishment of the disciplinary authority, was set aside by this Court in its order passed in W.P.No.26205 of 2013, there was a specific direction to the first respondent to reconsider the petitioner's grounds of appeal, in the light of the judgement of acquittal dated 25.04.2012 in



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C.C.No.249 of 2011. But, contrary to such a direction, the first respondent had reconsidered the petitioner's grounds of appeal and passed an order on 26.06.2015, without reference or in discussion with regard to the judgement of acquittal.

7. On the other hand, the first respondent had passed the order-in-appeal by holding that the acquittal was on the basis of the prosecution having failed to prove the charge against the petitioner and that in a judicial proceedings, the charge should be proved beyond reasonable doubt, but in a departmental proceedings, preponderance of probability is sufficient for proving the charges. I am not in agreement with such a finding.

8. In the instant case, when the charge itself was only for the petitioner's involvement in the criminal case, the judgement of acquittal would have no relevance. In other words, even if the petitioner was not honourably acquitted, the charge has to necessarily go, since it was only for his involvement in the criminal case. Consequently, the question of preponderance of probability would not arise in the present case, since what requires to be determined by the appellate authority was, whether the



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probability of the petitioner in having involved in the criminal case or not, has to be analysed and nothing more. When the judgement of acquittal is passed at a later stage, prepondering the probability of his involvement in a criminal case does not arise. Thus, the findings of the appellate authority in this regard also cannot be sustained.

9. For all the foregoing reasons, the impugned order of punishment dated 27.07.2012 passed by the second respondent and the impugned order-in-appeal dated 26.06.2015 passed by the first respondent, are quashed. Consequently, there shall be a direction to the first respondent herein to pass necessary orders, granting all the service and monetary benefits to the petitioner that may have been deprived to him, in view of the original order of punishment dated 27.07.2012. Such order shall be passed by the first respondent, within a period of six (6) weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs.

14.12.2022

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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To

- 1.The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.
- 2.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.



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M.S.RAMESH,J.

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