



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.2194 of 2020

and W.M.P. (MD)No.1847 of 2020

WEB COPY

K.Vivekanandan

... Petitioner

versus

1. The Director General of Police,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Madurai,
Madurai Range.

3. The Commissioner of Police,
Coimbatore City.

4. The Deputy Commissioner of
Police Traffic,
Coimbatore City.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in C.No.A2(1)/4970/124/2018 (PR No.54/2005 of CBE City) dated 23.08.2018, quash the same and consequently, direct the respondents herein to fix and revise the pay, arrears of pay, increment with all monetary and service benefits including due seniority and promotion.

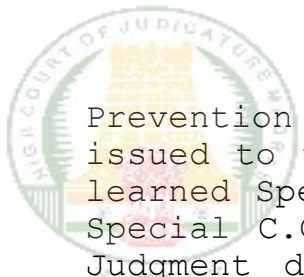
For Petitioner : Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

This writ petition is filed as against the order dated 23.08.2018, in and by which, the disciplinary authority, namely, the second respondent has imposed a punishment of stoppage of increment to the petitioner pursuant to the enquiry conducted by him.

2. The learned counsel for the petitioner submits that the petitioner joined the service as Sub Inspector of Police on 02.06.1997 and after completion of regularization of his service, he has been working as Sub Inspector of Police, Armed Reserve. While so, he was placed under suspension based on a criminal case registered against him in Cr.No.18 of 2002 for the offence punishable under Sections 7 & 13(2) r/w. Sections 13(1)(d) of



Prevention of Corruption Act 1988. Subsequently, a charge memo was issued to the petitioner. The said criminal case was tried by the learned Special Judge cum Chief Judicial Magistrate, Coimbatore, in Special C.C.No.7 of 2003. After the trial, the trial Court, vide Judgment dated 24.08.2010, acquitted the petitioner from all the charges. Aggrieved over the same, the respondents filed an appeal in C.A.No.723 of 2010 before this Court. This Court, vide Judgment dated 24.01.2013, dismissed the appeal, by confirming the Judgment of acquittal passed by the trial Court. When the petitioner was acquitted from all the charges, the charge memo issued to the petitioner based on the criminal case in Spl.C.C.No.7 of 2003 ought to have been dropped by the respondents. However, the disciplinary authority proceeded with the departmental proceedings and passed an order dated 23.08.2018, imposing the punishment of stoppage of increment pursuant to the enquiry conducted by them.

3. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader appearing for the respondents submits that the order of acquittal passed by the Criminal Court is not a bar for the Department to proceed with the departmental proceedings and therefore, they have proceeded with the departmental proceedings with the available materials and the petitioner was imposed with the punishment of stoppage of increment. He further submits that as against the order of punishment, an appeal remedy is also available to the petitioner before the Director General of Police, but, without invoking the appeal remedy, the petitioner is before this Court.

4. This Court paid its anxious consideration to the rival submissions made.

5. The petitioner was issued with the charge memo, pursuant to his involvement in the criminal case in Spl.C.C.No.7 of 2003. However, the criminal case ended in acquittal. The disciplinary authority proceeded with the departmental proceedings based on the available materials and after the enquiry, the disciplinary authority, vide his order dated 23.08.2018, imposed punishment of stoppage of increment on the petitioner. Against the order of punishment, an appeal remedy is available to the petitioner, but, the petitioner has approached this Court without resorting to the remedy of appeal. The acquittal in criminal case is not a bar for the Department to proceed with the departmental proceedings. The ratio adopted in a criminal case is benefit of doubt and the ratio adopted in the departmental proceeding is preponderance of probabilities. Therefore, this Court is not inclined to accept the contention of the learned counsel for the petitioner that in view of acquittal in criminal case, the Department is not entitled to proceed with the departmental proceedings. As against the order of punishment, the petitioner is having an appeal remedy before the appellate authority, namely, the Director General of Police. Without invoking the appeal remedy, the petitioner has approached

<https://services.govt.in/homestead> Article 226 of the Constitution of India. Hence,



the writ petition is dismissed with liberty to the petitioner to prefer an appeal before the appellate authority, within a period of three weeks from the date of receipt of a copy of this order.

6. In view of the liberty granted to the petitioner, the appellate authority, on filing of an appeal within the said period of three weeks, entertain the appeal without raising any objection on limitation and decide the same on merits and in accordance with law, within a period of six months from the date of receipt of such appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.S.III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Director General of Police,
Chennai - 600 004.
2. The Deputy Inspector General of Police,
Madurai, Madurai Range.
3. The Commissioner of Police,
Coimbatore City.
4. The Deputy Commissioner of
Police Traffic,
Coimbatore City.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to SPECIAL GOVERNMENT PLEADER, SR.No.368

W.P(MD)No.2194 of 2020

Date:04.01.2022

SA(11.03.2022) 3P 7C