



W.P.(MD) No.5558 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.5558 of 2020

P.S.Antony Raj

... Petitioner

-VS-

- 1.The Government of Tamil Nadu
Rep. By its Additional Chief Secretary to Home
Department, (Police VI)
Fort St. George, Chennai 600 009.
- 2.The Director General of Police,
Kamarajar Salai
Mylapore, Chennai.
- 3.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
- 4.The Commissioner of Police,
Tirunelveli City,
Tirunelveli District.
- 5.The Superintendent of Police,
Tuticorin, Tuticorin District.

... Respondents



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Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 5th respondent's punishment order in PR.22/2004 dated 20.06.2007 and the 3rd respondent's appeal order in C.No.C4/AP-55/2007 dated 22.09.2007 and rejection of review order passed by the 2nd respondent in proceedings Rc.No.206004/AP2(1)/08 dated 10.12.2008 and 1st respondent in G.O.(D) No.1427 Home Police VI Department dated 25.11.2019 and quash all the same and consequently direct the respondents No.1 and 2 to regularise the service seniority and give further promotion with monetary benefits to the petitioner.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order of the 5th respondent dated 20.06.2007 and the appeal order dated 22.09.2007 of the 2nd respondent and for a direction to the respondents 1 and 2 to regularise the service seniority and give further promotion with monetary benefits to the petitioner.



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2. The case of the petitioner is that he was appointed as Grade II Police Constable on 15.04.1997 in the respondent department and he is currently working as a Head Constable. While so, during the year 2004, the 4th respondent had issued an order dated 23.01.2004 suspending him from the service on the ground that he was involved in a Criminal Case and further he was acquitted from the Criminal Case by the Trial Court by its Order dated 19.10.2006.

3. It is the further case of the petitioner that though he was acquitted in the said case, departmental proceedings were initiated against him by the 4th Respondent's vide order dated 20.06.2007 and a punishment of reduction in time scale of pay by two stages for a period of two years with cumulative effect was imposed, against which, he filed an appeal before the 3rd Respondent, which was also rejected. The mercy petition filed before the respondents 1 and 2 also came to be rejected. Challenging the impugned order of the 5th respondent and the order of the 2nd respondent, the present writ petition is filed.



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3.The learned counsel for the petitioner would submit that though the petitioner was acquitted before the criminal court, for the similar set of facts, initiation of departmental proceedings and thereby awarding the punishment of reduction in time scale of pay by two stages for a period of two years with cumulative effect is not sustainable one. It is his further contention that departmental action ought not to have been initiated in respect of criminal case allegedly initiated against an employee, when the same is no way connected with the discharge of his administrative duties.

4. It is his further contention that pursuant to the charge memo, being not satisfied with the explanation offered by the petitioner, enquiry was conducted, which culminated in the submission of report. The disciplinary authority/5th respondent, being not satisfied with the explanation, imposed the punishment of “reduction in time scale of pay by two stages for a period of two years with cumulative effect” vide impugned order dated 20.06.2007. Aggrieved by the said order, appeal was preferred by the petitioner before the appellate authority/2nd respondent, which was dismissed vide order dated 22.09.2007 without considering the materials in



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proper perspective. Against the said orders, mercy petition was preferred before the 1st respondent, which also resulted in confirming the orders passed by the disciplinary and appellate authorities, without properly considering all the materials.

6. Learned counsel appearing for the petitioner submitted that no disciplinary action can be taken against a Government servant, when a criminal case pertains to criminal aspect, which is not connected with the administrative functioning of the Government servant and not in the course of discharge of his duties, which has been clearly spelt out in G.O. Ms. No. 124/P & AR (Per-N) Dept., dated 22.2.1983. That being the case, the initiation of disciplinary action against the petitioner is wholly unsustainable.

7. It is his further submission that once the criminal prosecution has ended in acquittal, the petitioner should be given the benefit of the same in the departmental proceeding also, which has been launched on the similar set of facts and the petitioner should be entitled for all the service benefits



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to which he is entitled to, including monetary and promotional benefits in accordance with FR-54. However, on an erroneous interpretation of the materials, the petitioner has been inflicted with the punishment, which deserves interference at the hands of this Court.

8. Per contra, learned Special Government Pleader appearing for the respondents would submit that there is no bar for the respondents to initiate disciplinary proceedings on the same set of allegations as made in the criminal case, as both the criminal case and the department action stand on different footing and they operate in different fields.

9. It is the further submission of the learned Special Government Pleader that the acquittal in the criminal case cannot be the basis to claim that disciplinary proceedings should also result in a similar order is totally incorrect, as the disciplinary proceedings and criminal prosecution cannot be equated, as the criminal prosecution is on the basis of the penal provisions, however, the disciplinary proceedings do not operate on such strict rules as penal prosecution and it is only on the touchstone of



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principles of natural justice and there is no requirement of proof beyond reasonable doubt, but a civil standard governed by preponderance of probabilities. Therefore, the continuation of the disciplinary proceedings against the petitioner in spite of the acquittal in the criminal case cannot be said to be bad or impermissible.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. The facts in the present case is not in dispute. Admittedly, the case in C.C.No.125/2004 ended in favour of the petitioner and subsequently the departmental proceedings also ended thereby a punishment of reduction in time scale of pay by two stages for a period of two years with cumulative effect was imposed on 20.06.2007 and further the appeal and the mercy petition filed by the petitioner were concurrently rejected by the appellate as well as revisional authority.



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12. It is also amply evident that the mere acquittal in the criminal trial cannot be the basis to absolve a delinquent under the disciplinary jurisdiction as in the departmental enquiry, the nature of proof is not as strict as that in the criminal trial and penalty can be imposed on a delinquent by recording a finding on the basis of preponderance of probability. Therefore, the scale of evidence required in a disciplinary proceedings is not so very strict and rigid as in a criminal trial and, therefore, the acquittal by the criminal Court cannot be the basis for the delinquent to derive any benefit from the criminal trial. Therefore, the contention placed on behalf of the petitioner deserves to be rejected.

13. Similarly, the punishment cannot be said to be disproportionate or shocking the conscience of this Court and, therefore, this Court under Article 226 of the Constitution of India cannot sit in appeal over the punishment imposed by the disciplinary authority as confirmed by the appellate and revisional authorities by substituting its view and, therefore, no interference is warranted with the punishment imposed.



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14. For the reasons aforesaid, the writ petition fails and the same is dismissed. There shall be no order as to costs.

08.12.2022

Index : Yes/No
Internet : Yes

RR

To

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Department, (Police VI)
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M.DHANDAPANI, J.

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