



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.10982 of 2021

and

W.M.P(MD)Nos.8616 and 8617 of 2021

C.Sethumani Mathavan

... Petitioner

Vs

- 1.The Secretary to Government of Tamil Nadu (Home),
(Prohibition and Excise Department),
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
- 3.The Deputy Inspector General of Police,
Thanjavur Ragne,
Thanjavur.
- 4.The Commissioner of Police,
Madurai City,
Madurai - 625 002.
- 5.The Additional Superintendent of Police,
Prohibition Enforcement Wing/Enquiry Officer,
Thanajvur District.

... 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 pertaining to the impugned charge memo in PR.No.03/14 (PR53/2016 of MC), dated 03.01.2014 issued by the third respondent and the impugned enquiry report of the fifth respondent in Minutes dated 02.02.2016 and the consequential impugned memorandum issued by the 4th respondent in C.No.D1(1)/PR NO.53/2016, dated 08.01.2021 and quash the same as illegal and consequential directing the respondent Nos.2 and 4 to extent all the benefits both service namely promotion and monetary including backwages and other pensionary benefits forthwith within the time stipulated by this Court.



For Petitioner : Mr.V.R.Shanmuganathan, Advocate
for
Mr.J.LAWRANCE, Advocate
For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

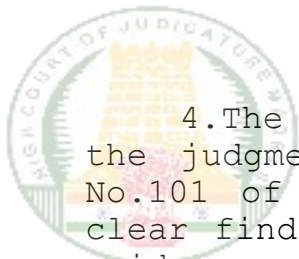
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ORDER

This writ petition is filed challenging the charge memo dated 03.01.2014 issued by the third respondent and the consequential memorandum dated 08.01.2021 issued by the fourth respondent.

2.The learned Counsel for the petitioner submits that the petitioner while was working as Inspector of Police, Thanjavur Medical College Police Station was placed under suspension, pursuant to a criminal case registered in Crime No.95 of 2007 on the file of the CBCID, Thanjavur for the offence under Sections 420, 418 and 417 IPC. The averments in the complaint are that one Akilandeswari, committed suicide by hanging due to the torture of this petitioner and non-returning of money to her. After completion of the investigation, a final report was filed before the Mahila Court, Thanjavur in S.C.No.373 of 2011. While so, the third respondent issued a charge memo to the petitioner in PR.No.3 of 2014, dated 03.01.2014 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

3.The learned Counsel further submits that in conclusion of trial, the Court has found this petitioner guilty and convicted him. Based on the conviction imposed by the trial Court, the disciplinary authority imposed a major penalty of removal from service on 07.04.2017 on the petitioner. As against the conviction, the petitioner preferred an appeal before this Court in Crl.A(MD)No.101 of 2017, which was allowed by this Court by judgment dated 27.11.2019, by holding that the conviction recorded by the trial Court was only on the basis of presumption and assumption, set aside the order of conviction imposed by the learned Sessions Judge (Fast track Mahila Court, Thanjavur) in S.C.No.373 of 2011 and acquitted this petitioner of all the charges. Based on the judgement of this Court, this petitioner made a representation to the Department on 23.12.2019 and also filed a writ petition in W.P(MD) No.1421 of 2020. This Court by order dated 14.10.2020 directed the respondents to consider the representation of the petitioner on its merits. The Commissioner of Police by his order dated 04.11.2020 reinstated this petitioner into service and reopened the disciplinary proceedings pending against this petitioner in P.R.No.3 of 2014 and also issued the impugned memorandum of notice dated 08.01.2021 calling for his further representation within a period of seven days from the date of receipt of the copy the memorandum. and the same is challenged in this writ petition.



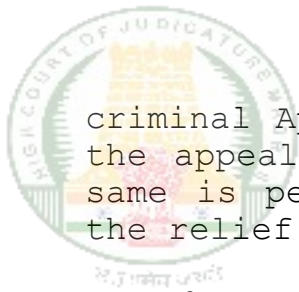
4.The learned Counsel appearing for the petitioner by referring the judgment dated 20.03.2017 passed by this Court in CrI.A(MD) No.101 of 2017, made his submission that this Court has given a clear finding in favour of the petitioner that there is no iota of evidence connecting this petitioner with the charges framed against him. However, on the very same set of charges, the department is proceeding with the departmental proceedings in PR.No.3 of 2014 and has also directed this petitioner to offer his further representation, as if the charges have been proved in the departmental proceedings. This impugned memorandum issued by the fourth respondent is amounting to double jeopardy and the same is violative of Article 20(2) of the Constitution of India.

5.The learned Additional Government Pleader appearing for the respondents submits that the petitioner was added as accused in a criminal case on serious allegations. CBCID conducted investigation and filed a final report as against the petitioner for the offence punishable under Sections 343, 306, 354, 409 and 294(b) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act in the year 2007.

6.The case was tried by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur in S.C.No.373 of 2011 and the petitioner was found guilty, convicted and sentenced to undergo ten years of rigorous imprisonment by judgment dated 20.03.2017. Considering the nature of the offence committed and the allegations levelled against him, the department has also proceeded with the enquiry in PR.No.3 of 2014 under Rule 3 (B) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The enquiry officer found that the charges are proved in the departmental proceedings and based on the proved minutes, the petitioner was directed to furnish his further representation in the year 2016. In the meantime, the petitioner was found guilty and convicted by the trial Court by judgment dated 20.03.2017 and following the conviction, the petitioner was dismissed from service with effect from 20.03.2017. Aggrieved over the conviction, the petitioner preferred an appeal and the same was allowed by this Court on 27.11.2019 and this order of acquittal passed by this Court is challenged by the Department before the Hon'ble Supreme Court in SLP No.6554 of 2020 and the same has been admitted by the Hon'ble Supreme Court.

7.Since the petitioner was dismissed from service based on the order of conviction imposed by the trial Court, the earlier order of dismissal was recalled and the petitioner was reinstated into service. Consequently, the departmental proceedings, which was pending against the petitioner in P.R.No.3 of 2014 was also reopened from the stage it was dropped and this petitioner was called upon to offer his further representation.

8.According to the learned Additional Government Pleader, the petitioner filed this writ petition based on the acquittal in



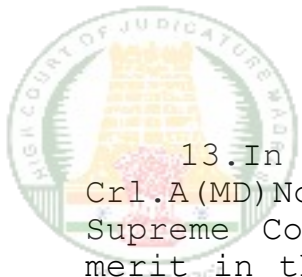
criminal Appeal, however, the Hon'ble Supreme Court has entertained the appeal filed by the Department in SLP No.6554 of 2020 and the same is pending and therefore, the petitioner is not entitled for the relief sought for in this writ petition.

9. Heard the learned Counsel on either side and perused the materials placed on record.

10. This writ petition has been filed as against the charge memo in PR.No.3 of 2014, dated 03.01.2014 and the memorandum dated 08.01.2021 issued by the fourth respondent. The petitioner, who was working as an Inspector of Police, Thanjavur Medical College Police Station during the year 2007, was placed under suspension in connection with a case registered in Crime No.495 of 2007 on the file of the CBCID, Thanjavur. Based on the criminal case, a charge memo was issued to him in PR.No.3 of 2014 under Rule 3(B) of the Tamil Nadu Subordinate Service (Discipline and Appeal) Rules 1955. CBCID filed a final report as against this petitioner in Crime No.495 of 2007. The case was tried by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur in S.C.No.373 of 2018. While so, based on the proved minute drawn in the departmental proceedings, the petitioner was directed to offer his further representation if any. But, the petitioner did not submit his further representation and therefore, the departmental proceedings was not concluded. At that point of time, the trial Court by judgment dated 20.03.2017 found the petitioner guilty, convicted and sentenced him to undergo ten years rigorous imprisonment. Based on the conviction and sentence imposed by the trial Court, the petitioner was dismissed from service. The said order of conviction was set aside by this Court in Crl.A(MD)No.101 of 2017 by judgment dated 27.11.2019, based on which, the petitioner was reinstated into service. Accordingly, the departmental proceedings was also reopened from the stage where it was left. The petitioner was directed to offer his further representation based on the proved minute drawn by the enquiry officer in the departmental proceedings. At this stage, the petitioner has filed this writ petition based on the order of acquittal passed by this Court in Crl.A(MD)No.101 of 2017.

11. It is to be noted that the Hon'ble Supreme Court in the **State of Rajasthan Vs. B.K.Meena, 1996 6 SCC 417** held that it is permissible to conduct the departmental proceedings as well as the criminal proceedings simultaneously on the same charges.

12. The ratio adopted in criminal proceedings cannot be equated with the ratio, which has to be adopted in the departmental proceedings. The order of acquittal in the criminal case cannot be a ground to drop the departmental proceedings. In view of the above cited judgment, the department is entitled to decide the departmental proceedings independently on the broad probabilities of the case.



13.In this case, the order of acquittal passed by this Court in CrI.A(MD)No.101 of 2017 is also challenged before the Hon'ble Supreme Court in SLP No.6554 of 2020 and therefore, there is no merit in this writ petition. Accordingly, this writ petition stands dismissed. No costs. Consequently connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

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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 Secretary to Government of Tamil Nadu (Home),
(Prohibition and Excise Department),
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

3.The Deputy Inspector General of Police,
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4.The Commissioner of Police,
Madurai City, Madurai - 625 002.

5.The Additional Superintendent of Police,
Prohibition Enforcement Wing/Enquiry Officer,
Thanajvur District.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-1208[F] dated 11/01/2022)

+1 CC to M/s.SPL GP (SR-1314[F] dated 11/01/2022)

W.P(MD)No.10982 of 2021
10.01.2022

SS/05.04.2022 : 5P/8C

<https://hcservices.ecourts.gov.in/hcservices/>