



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.01.2022

Pronounced on : 01.02.2022

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD).No.1560 of 2021

and C.M.P(MD).Nos.6452, 6453 and 6454 of 2021

M.Gunasekaran
Circle Inspector,
Temple Circle Police Station,
Rameswaram,
Ramanathapuram District.

.. Appellant/Petitioner

Vs.

1.The Deputy Inspector General of Police,
Ramanathapuram,
Ramanathapuram District.

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

3.The Additional Superintendent of Police,
Offences against Women and Children,
Ramanathapuram,
Ramanathapuram District.

.. Respondents/Respondents

Prayer:Writ Appeal filed under Clause XV of the Letters Patent Act, praying this Court to set aside the order passed by this Court in W.P(MD)No.10435 of 2021 dated 05.07.2021.

Prayer in WP(MD). 10435/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court S-20. To issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its order bearing Na.Ka.No. B1/3864/2018 dt. 15.10.2020 and to quash the same and consequently directing the 1st respondent to transfer the enquiry proceeding in P,R No. 90 of 2019 on the file of the 3rd respondent to any other officer by considering my representation dt. 01.10.2020

For Appellant

: Mr.S.C.Herold Singh

For Respondents

: Mr.M.Sidharthan

Additional Government Pleader



JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN, J.)

This writ appeal has been filed by the appellant against the order, dated 05.07.2021 passed in W.P(MD)No.10435 of 2021.

2. The case of the appellant is that while he was working as Inspector of Police in Sathirakudi Police Station, Ramanathapuram District, a charge memo was served. The third respondent has been appointed as an Enquiry Officer and he commenced enquiry on 07.03.2020. From the day one of the enquiry, the third respondent is conducting the enquiry in a biased manner. The third respondent is not giving any opportunity to the appellant to cross-examine the witnesses. The third respondent, on his own, recorded the evidence of the witnesses. The defacto complainant was examined as P.W.6 on 30.09.2020 and the third respondent forced the appellant to cross-examine the defacto complainant/P.W.6 on the same day. The Enquiry Officer was examined as P.W.7 on 03.10.2020, in the absence of the appellant. Therefore, the appellant requested the third respondent to grant some time for cross examination, but, the third respondent refused to give an opportunity and marked the appellant as absent. Hence, the appellant gave a representation on 09.06.2021 to the third respondent to recall P.W.6 and P.W.7 and to permit him to cross-examine them once again. In the meantime, the first respondent passed the impugned order dated 15.10.2020, permitting the third respondent to continue the domestic enquiry and directed the appellant to co-operate with the enquiry. The third respondent without considering the appellant's acquittal in the criminal case conducted enquiry and the third respondent has not given an opportunity to the appellant which is in violation of principles of natural justice. Therefore, the appellant filed a writ petition before this Court. The Writ Court has also dismissed the writ petition without considering the facts. Challenging the same, the present writ appeal is filed.

3. The learned counsel for the appellant submitted that the criminal case was registered against the appellant and the same was ended in acquittal. The first respondent has failed to consider the acquittal from the criminal case and initiated the disciplinary proceedings against the appellant and the same was commenced on 07.03.2020. The third respondent has been appointed as an Enquiry Officer and the defacto complainant was examined as P.W.6 on 13.09.2020. Without granting time for cross-examination, the third respondent forced the appellant to cross-examine the defacto complainant/P.W.6 on the very same day. Similarly, the Enquiry Officer was examined P.W.7 on 03.10.2020 in the appellant's absence. The appellant has approached the third respondent to recall P.W.6 and P.W.7 for cross-examination and the same was rejected. Thereafter, the appellant made a representation before the

produced a

<https://hcservices.eCourts.gov.in/hcservice5/>

<https://hcservices.eCourts.gov.in/hcservice5/>



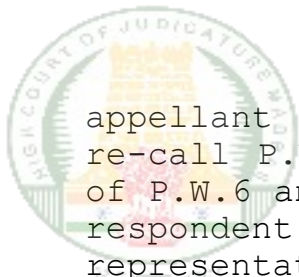
same is liable to be dismissed.

6. Heard Mr.S.C.Herold Singh, learned counsel appearing for the appellant and Mr.Sidharthan, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

7. Admittedly, the criminal case was registered against the appellant in Crime No.316 of 2018 for the offences under Sections 294(b), 323, 387 and 507(i) IPC on the file of Dindigul Taluk Police Station and after completing the investigation, the Investigating Officer has laid the charge sheet before the learned Judicial Magistrate Court No.I, Dindigul. Thereafter, the learned Judicial Magistrate No.I, Dindigul, has taken up the case on file in C.C.No.214 of 2018 and framed the charges against the appellant and two other accused. After trial, the learned Judicial Magistrate No.I, Dindigul, found that the prosecution has not proved the case against the appellant beyond all reasonable doubt. During the pendency of the said criminal case, the second respondent initiated the disciplinary proceedings in P.R.No.90 of 2019 dated 04.12.2019 against the appellant. Charge memo was issued and the third respondent has been appointed as an Enquiry Officer and 7 witnesses were examined. Thereafter, the appellant filed a petition for recalling the witnesses P.W.6 and P.W.7 and the same was rejected. The appellant made a representation before the first respondent and the first respondent rejected the request of the appellant and passed the impugned order. Challenging the impugned order, the appellant filed a writ petition before the this Court.

8. The main contentions raised by the appellant are that the appellant was acquitted from the criminal case and therefore, no departmental proceedings can be proceeded for the very same charges and another contention is that the third respondent/Enquiry Officer has conducted the enquiry in a biased manner and no opportunity was given, which is in violation of the principle of natural justice. Therefore, he has not conducted the fair enquiry and the Enquiry Officer has to be changed. It is a well settled preposition of law that an acquittal in a criminal case has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives. Therefore, the contention of the appellant in the regard, is not sustainable.

9. As far as the violation of principles of natural justice is concerned, a perusal of the records shows that the charge memo was issued on 16.11.2018 and after completing the formalities, the third respondent has been appointed as an Enquiry Officer. The third respondent commenced the enquiry on 07.03.2020 and after six months, the defacto complainant was examined as P.W.6 on 13.09.2020 and the appellant did not cross-examine the defacto complainant. The Enquiry Officer examined as P.W.7 on 03.10.2020 and on that date, the



appellant was not present and he has not filed any application to re-call P.W.6 and P.W.7. After completion of the chief examination of P.W.6 and P.W.7, on 09.06.2021, the appellant requested the third respondent to re-call the P.W.6 and P.W.7 and also give a representation to the first respondent. The first respondent rejected the representation made by the appellant and passed the impugned order, dated 15.10.2020. Challenging the said impugned order, the appellant filed a Writ Petition before the Writ Court.

10. A mere reading of the entire materials clearly shows that the third respondent/Enquiry Officer has conducted the departmental proceedings in a fair manner and the appellant tried to protract the departmental proceedings and there are no *prima facie* materials to prove that the third respondent acted in a biased manner. In this case, witnesses have been examined for more than six months. The appellant has not allowed to proceed with the departmental enquiry further and seeking further time for cross-examination is not a matter of right. The appellant has not given any reason as to why he did not cross-examine P.W.6 on the same day and as to why he did not appear on the date of chief examination of P.W.7 and why he has not approached the third respondent within a reasonable time for recalling the witnesses. On a perusal of the records, it shows that the appellant made an application before the first respondent only on 09.06.2021 and even prior to the application, the appellant made certain allegation against the third respondent before the first respondent that he conducted the enquiry in a biased manner.

11. The appellant tried to protract the enquiry, which cannot be encouraged and the Writ Court rightly decided and rejected the claim of the appellant and also this Court does not find any merit in this appeal and hence, this writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

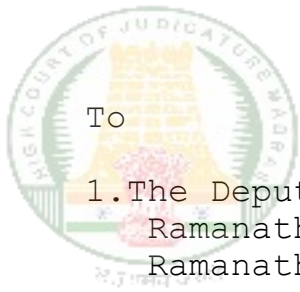
// True Copy //

/ /2022

Sub Assistant Registrar(CS)

tta

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 Deputy Inspector General of Police,
Ramanathapuram,
Ramanathapuram District.

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

3.The Additional Superintendent of Police,
Offences against Women and Children,
Ramanathapuram,
Ramanathapuram District.

4.Circle Inspector,
Temple Circle Police Station,
Rameswaram,
Ramanathapuram District

5. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-3531[F] dated
02/02/2022)

+1 CC to M/s.SPLGP (SR-3651[F] dated 02/02/2022)

W.A. (MD) .No.1560 of 2021
01.02.2022

SK(CO)
KB(15.02.2022) 6P 8C