

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5766 of 2018

P.Senthilkumar

... Petitioner

Vs.

1.The Director General of Police,
Santhome,
Chennai – 600 004.

2.The Commissioner of Police,
Coimbatore City,
Coimbatore.

3.The Deputy Commissioner of Police,
Armed Reserve,
Coimbatore City,
Coimbatore.

4.The Assistant Commissioner of Police,
Crime (East),
Coimbatore City,
Coimbatore.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings RC.No.211896/API(1)/2015, dated 11.03.2017 and quash the same as illegal and direct the respondents to reinstate the petitioner in his service

with continuity of service, monetary benefits and other service benefits to the petitioner from 27.09.2013.

For Petitioner : Mr.C.Sendhilmurugan

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was selected as Grade-II Police Constable on 01.03.2008. When he was working in VII Platoon, Armed Reserve, Coimbatore City, on 19.09.2012, his wife Sathiya committed suicide. The petitioner's father-in-law lodged complaint leading to registration of Crime No.288 of 2012 on the file of the Inspector of Police, Watrap Police Station, Virudhunagar District for the offences under Sections 498(A) and 306 of IPC. Following the said implication, the petitioner was issued with charge memo dated 12.02.2013. An enquiry officer was appointed on 09.05.2013 and he submitted his enquiry report holding that the charges are proved. The enquiry report was served on the petitioner and the petitioner also submitted his further representation on 05.08.2013. After consideration of the same, the disciplinary authority namely, the Deputy Commissioner of Police, Head Quarters, Coimbatore passed order

dated 27.09.2013 dismissing the petitioner from service. Since during the relevant time, the criminal case was still pending, the petitioner probably did not avail the appeal remedy. He was acquitted vide judgment dated 26.06.2015 in S.C.No.182 of 2013 on the file of the learned Fast Track Mahila Court, Virudhunagar District at Srivilliputhur. Thereafter the petitioner filed a mercy petition before the first respondent. The first respondent by the impugned order dated 11.03.2017 modified the punishment into compulsory retirement. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and direct the writ petitioner's reinstatement with continuity of service. The learned counsel, on instructions, states that the petitioner will not press for backwages and that he will be satisfied if continuity of service alone is granted.

4.The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents. His first contention is that this Court may not have territorial jurisdiction to entertain the writ petition. He pointed out that the cause of action arose at Coimbatore and that therefore the

writ petition would have been filed in the Principal Seat. His next contention is that acquittal in the criminal case subsequent to the passing of the punishment order cannot have any bearing on the disciplinary proceedings. He further added that the standard of proof in a departmental proceedings is only preponderance of probability whereas in the criminal Court, the standard of proof is “beyond reasonable doubt”. He relied on the decisions reported in ***AIR 2005 SC 4217 (Ajit Kumar Nag Vs. General Manager, Indian Oil Corporation Ltd., Haldia and Another)*** and ***(1996) 6 SCC 455 (State of Larnataka V. Venkataramanappa)***. He also drew my attention to the fact that the writ petitioner did not chose to file any appeal before the appellate authority and what was filed only a mercy petition. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the material on record. The objection regarding territorial jurisdiction may be taken up first. Article 226 (1) and (2) of the Constitution of India are as follows:-

“226. Power of High Courts to issue certain writs

(1) *Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs,*

including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”

6.This Court will have jurisdiction to entertain the matter even if part of the cause of action arises within its limits. It is seen that the basis for initiating disciplinary action against the writ petitioner was the commission of suicide by the petitioner's wife. The petitioner's wife committed suicide in Virudhunagar District, which is within this Court's jurisdiction. That apart, the impugned order passed by the first respondent was served on the writ petitioner only at Virudhunagar. The Hon'ble Supreme Court in the decision reported in (2014) 9 SCC 329 (Nawal Kishore Sharma vs. Union of India) held as follows:-

“16.Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the

Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

I, therefore, hold that the writ petitioner cannot be non-suited on the ground of territorial jurisdiction.

7.Coming to the merits of the matter, the charge against the writ petitioner is his implication in Crime No.288 of 2012 on the file of Watrap Police Station, Virudhunagar District. Implication in a criminal case by itself cannot constitute an act of misconduct. Implication can be construed as involvement under certain circumstances and can constitute a threshold bar for entry into police department. But on that ground, a serving employee cannot be shown the door. This is because a person can be falsely implicated also. The petitioner was eventually acquitted from the criminal charge by the competent criminal Court. I went through the contents of the judgment of acquittal dated 26.06.2015 in S.C.No.182 of 2013 on the file of the learned Fast Track Mahila Court, Virudhunagar District at Srivilliputhur. It is seen that the writ petitioner's father-in-law turned hostile. Even in the departmental enquiry, his target was only the writ petitioner's mother and sister. In any event, the enquiry officer could not have rendered a finding as regards the culpability of the writ

petitioner. That was a call which the criminal Court alone could have taken. In this case, the criminal Court had rendered a finding in favour of the petitioner. The writ petitioner did not commit any act of misconduct in respect of discharge of his official duty. In fact, the first respondent in the impugned order had stated that the writ petitioner otherwise had an unblemished service. The petitioner is having ten year old child. The petitioner through his counsel informs the Court that the child is very much with him.

8.It is true that acquittal in a criminal case will not tie the hands of the disciplinary authority. But then, it all depends upon the nature of allegation made against the employee. I have already held that the disciplinary authority could not have enquired into the charge framed against the writ petitioner. If the writ petitioner had been found guilty by the Criminal Court, his dismissal would have been automatic. The writ petitioner has been acquitted and the cause of action did not pertain to his official discharge of duties. The impugned order is therefore set aside. The respondents are directed to reinstate the petitioner in service. The petitioner has already given up his claim for backwages. The first respondent is directed to issue order reinstating the writ petitioner in service with continuity of service but without backwages. Such an order will be passed within a period of eight weeks from the date of receipt of a

copy of this order.

G.R.SWAMINATHAN, J.

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9.The writ petition is allowed on these terms. No costs.

17.10.2022

Index : Yes / No

Internet : Yes/ No

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Santhome, Chennai – 600 004.
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