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WP. No. 30996 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2023

PRONOUNCED ON: .02.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.30996 of 2015

S. Ganaprakasam

... Petitioner

Vs.

1. Deputy Inspector General of prisons,
Vellore Range
Vellore- 632001

2. The Superintendent , Central Prison,
Vellore-632002.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records, on the file of the 1st respondent in proceedings No. 730/CA/2015 dt 01.09.2015 confirming the order of the 2nd respondent in proceeding 11541/SJA/2010 dated 13.03.2015 and quash the same and further direct the respondents to reinstate the petitioner with back wages and other consequential benefits.

For Petitioner : Mr.V.Raghavachari, Senior Counsel



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for Ms.P.Pooja

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For Respondents : Mr.A.M.Ayyathurai
Government Advocate

ORDER

This Writ Petition is filed seeking to quash the orders dated 13.03.2015 passed by the second respondent-The Superintendent, Central Prisons-Disciplinary Authority, imposing the punishment of ‘dismissal from service’ and the order passed by the appellate authority/the first respondent-Deputy Inspector General of Prisons, dated 01.09.2015, whereby, the petitioner’s punishment of “dismissal from service” was confirmed. The petitioner further seeks a direction to the respondents to reinstate him with back wages and other consequential benefits.

2. It is averred in the writ petition that the petitioner was employed as a Grade II warder in Sub-Jail, Polur, Thiruvannamalai. He was absent from 04.11.2010 to 24.11.2010 due to illness. After recovery from illness, he resumed duty and produced a copy of Medical certificate to the 2nd



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respondent. However, the 2nd respondent treating him as 'deserter', refused to accept the medical certificate. Secondly, the 2nd respondent found that in respect of the occurrence taken place on 04.12.2010 at about 5 pm., relating to theft of two wheeler, a case in Crime No.2392 of 2010 for offence under Section 379 IPC has been registered against the petitioner and he was remanded to prison on 06.12.2010 and thereafter, released on 21.12.2010. Therefore, the 2nd respondent, framed two charges against him and issued show cause notice. The petitioner submitted his explanation dated 25.03.2011. Thereafter, enquiry was initiated against him.

3. In the mean time, in the criminal case filed against the petitioner, charge sheet was filed and the same was taken in C.C.No.226 of 2010 on the file of Judicial Magistrate, Polur, Thiruvannamalai District. The learned Judge, after trial, based on the oral evidence let in and exhibits marked on the side of prosecution, found that the prosecution witnesses turned hostile and no evidence was put forth by the prosecution to substantiate the charge that



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the petitioner break open the lock of the two wheeler and involved in the theft. On such findings, the learned Judge, concluded that the petitioner/accused was not found guilty for offence under section 379 IPC and acquitted him.

4. On completion of enquiry in the departmental proceedings, the disciplinary authority/2nd respondent vide proceedings dated 13.03.2015 observed that the petitioner was treated as deserter as he did not report to duty for 21 days and that he was tried for criminal charge for offence under section 379 IPC. Even though he has been acquitted from the said charge, it was not honourable/clean acquittal, but only on the ground of benefit of doubt. The 2nd respondent further observed that the filing of final report by the investigating authority and the framing of charge sheet before the Judicial Magistrate and the exhibits marked on the side of prosecution would constitute that offence is committed by the petitioner, however, the learned Judge, on findings that evidence is not enough to show that the accused/petitioner committed the said offence and since the prosecution failed to prove the case by cogent evidence,



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held that the accused/petitioner is not found guilty for the offence. The 2nd respondent, on holding that the charges framed under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, are held to be proved, imposed the punishment of 'dismissal from service'.

5. Aggrieved by the said order, the petitioner filed appeal before the Appellate Authority/1st respondent. The 1st respondent, by order dated 01.09.2015, pointed out that the conduct on the part of the delinquent goes to prove that he does not take his profession seriously and hence, the department will not get any productive work from these kind of employees and holding that charges under Rule 17(b) of the Rules are proved, the appeal is dismissed and the punishment is confirmed.

6. The learned counsel for the petitioner submits that the petitioner has not been given opportunity to explain his case and further when the criminal case has been ended in acquittal and the judgment clearly establishes that the prosecution had miserably failed to establish the case against the petitioner,



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the respondents without considering the judgment passed in criminal case, held that the charges are proved and as such, the punishment awarded is not sustainable.

7. The Respondents filed counter affidavit. The learned Government Advocate while reiterating the submissions made in counter affidavit, submitted that the Enquiry Officer found that the acquittal in the criminal case is not honourable/clear acquittal, but it was only on the benefit of doubt. The allegations against the petitioner are proved by way of collection of incriminating documents. The framing of charge sheet itself proved his conduct and he lost his eligibility to be a Government servant and therefore, he was dismissed from service. It is further submitted that absence without permission for 21 days is a serious misconduct and the same would fall under 'desertion'. The learned Government Advocate, thus argued that as per the Rules, the petitioner has been dealt with departmentally and he was imposed punishment.



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8. Heard both sides and perused the records.

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9. The main ground of challenge in this writ petition is that the acquittal of the petitioner in the criminal case was a honourable acquittal. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same, the criminal court on the examination, came to the conclusion that the prosecution has not proved the guilt alleged against the petitioner beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved.

10. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

11. The trial Judge has categorically recorded the finding of fact on



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proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the petitioner and therefore he has been honourably acquitted for the offence punishable under [Section 379 IPC](#).

12. It is settled proposition of law that when the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. Therefore, the dismissal order based on the same set of facts, on the departmental side is liable to be set aside in the interest of justice. Under the said circumstances, the punishment imposed on the petitioner pursuant to the departmental enquiry has to be held as bad.

13. In the light of the above discussion, the writ petition is allowed. The impugned orders dated 13.03.2015 and 01.09.2015 are quashed. The petitioner shall be forthwith re-instated with all consequential benefits. The



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petitioner will not be entitled for back wages. No costs.

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Index:Yes/No

Neutral citation:Yes/No

Speaking Order: Yes/No

nvsri

To

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2. The Superintendent , Central Prison,
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J.NISHA BANU, J.,



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