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WA No. 1586 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 1586 of 2022
and
CMP No. 10533 of 2022

1. The Deputy Inspector General of Prison
Coimbatore Circle, Coimbatore.

2. The Superintendent,
Central Prison, Coimbatore

.. Appellants

Versus

1. Rajasekaran

2. Sankaranarayanan

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 19.07.2021 made in WP No. 42902 of 2016.

For Appellants : Mr. S. Yashwanth
Additional Government Pleader

For Respondents : Mr. Karthik Rajan
for Mr. C. Elamurugan



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JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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The appellants have filed this appeal aggrieved by the order dated 19.07.2021 passed in WP No. 42902 of 2016 filed by the respondents herein.

2.The necessary facts leading to the filing of the present appeal would run thus:

2.1. The respondents herein were initially appointed as Grade-II Warders in the Prison Department during the year 2013. After completion of training, they were posted at Central Prison, Coimbatore, and joined duty on 19.07.2013. While they were working as Grade-II Warders, certain charges were levelled against them alleging that they had impersonated as police officers and demanded Rs.500/- from one S. Arunkumar and P. Subash. In connection with such charges, an enquiry was conducted and thereafter, the disciplinary authority imposed the punishment of dismissal from service on 15.10.2015, vide proceeding Nos.6667/G4/2014 and 6668/G4/2014. The appeal preferred by the respondents thereagainst was dismissed by the first appellant herein on 12.09.2016, vide order Nos.3894/CA/2016 and 3895/CA/2016.



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2.2. While so, the criminal case registered against the respondents was taken on file as C.C. No. 274 of 2014 in the Court of Judicial Magistrate No.III, Coimbatore and after trial, the respondents herein were acquitted from the charges on 07.03.2016 by the Judicial Magistrate No.III, Coimbatore by concluding that the crucial prosecution witnesses have turned hostile and thereby, the prosecution failed to prove the guilt of the accused/respondents herein.

2.3. As against the punishment of dismissal from service awarded by the second appellant as confirmed by the first appellant, the respondents filed WP. No. 42902 of 2016 praying to quash the orders dated 12.09.2016 and to direct the appellants to reinstate them with continuity of service, backwages and suitable promotions.

2.4. The learned Judge, by order dated 19.07.2021, allowed the writ petition mainly on the ground that the entire disciplinary proceedings, commencing from the inception of the enquiry, till the order passed by the appellate authority, are based on no evidence. By applying the ratio laid down by the Hon'ble Supreme Court, in *Union of India v. H.C.Goel [AIR 1964 SC 364]*, the learned Judge held that the order of punishment against the respondents cannot be sustained and accordingly, allowed the writ petition filed by the respondents herein.



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them. Further, at all stages of the departmental proceedings, the principles of natural justice were adhered to. Further, it is not the case of the respondents that the departmental enquiry conducted against them is improper or farce. When once the departmental enquiry has been conducted in adherence to the principles of natural justice, the learned Judge ought not to have allowed the writ petition filed by the respondents.

4. The learned Additional Government Pleader appearing for the appellants further submitted that the learned Judge has held that it is a case of no evidence. In this context, the learned Additional Government Pleader drew the attention of this court to the enquiry report, which reads as follows:

"In the wake of filing of a criminal case in B-4, Race course, Police station Crime No.527/2014 Under Section 4(A), 170, 419 and 506 (i) IPC against Tr.P.Rajasekar, Grade II Warder, he was placed under suspension w.e.f. 9.04.2014 as per the order No.6667/G4/2014, dated 09.04.2014 of the Superintendent of Prisons, Central Prison, Coimbatore. He acquainted well with the prison rules. He has more than one year of experience and completed the basic training of the Grade II warders. He acted against the rules and acted differently against a uniformed personnel. Regarding the charges leveled against him, personal enquiry was conducted on 28.01.2015 and 11.02.2015. The prosecution witnesses 1 and 2 have deposed that, "when they were standing at the Gandhipuram town bus stand, on hearing the scream they neared the place, when the police officials enquired them, they replied that they don't know, the police officials requested them to come to police station to give report, nobody has threatened them to part with money and Tr.P.Rajasekar is unacquainted to them".

The prosecution witness No.3., Tmt.R.Pabhadevi, Sub Inspector of Police (Crime) deposed that, upon receipt of complaint from the prosecution witnesses 1 and 2, she filed a case in B-4, Race course, Police station Crime No.527/2014 under Section 4 (A), 170, 419 and 506 (i) IPC and sent the FIR to the court of Judicial Magistrate No.3, when conducted enquiry at the place of occurrence, it was came to know that the incident was happened and after completion of the investigation charge sheet was filed against Tr.P.Rajasekar on 30.07.2014, this case is not yet taken up for trial. "Further the prosecution



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witnesses No.1 and 2 have deposed that they are unacquainted of Tr.P.Rajasekar which is not acceptable. Therefore the allegations leveled against him that he has acted unbecoming of a member of the Government Service is proved beyond any doubts."

By pointing out the report of the enquiry officer, it is submitted that in the departmental enquiry, witnesses have been examined to substantiate the charges levelled against the respondents. However, the learned Judge did not consider the fact that by the conduct of the respondents, the image and reputation of the Police force has been brought down. As a Government servant, the respondents are expected to maintain absolute integrity and devotion to duty and they should not indulge themselves in any act, which may cause disrepute to the department. In this case, even though the complainants, who have given the complaint against them, turned hostile before the criminal court, the complaint itself is sufficient to hold that the provisions under Rule 20 (1) and (2) of the Tamil Nadu Government Servant Conduct Rules, 1973 are attracted. The learned Judge, without taking note of the same, has allowed the writ petition filed by the respondents as if there is no evidence made available against them and hence, it calls for interference by this Court.

5. Per contra, the learned counsel for the respondents would contend that this is a case of no evidence. The Criminal Court acquitted the respondents from the criminal proceedings on the ground that the prosecution has not proved the case beyond reasonable doubt. In the departmental



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proceedings also, there is no concrete evidence available to impose the capital punishment on the respondents. PW1 is the Sub-Inspector of Police who registered the first information report against the respondents on the basis of the complaint given by the complainants and he only elaborated the procedures followed and the investigation conducted. The statement of PW1 is not credible to attribute that the respondents indulged in any such delinquency of impersonating themselves as Policemen and demanded money from the complainants. Furthermore, the complainants viz., Arunkumar and Subash were examined before the enquiry officer as PW2 and PW3 and they feigned ignorance about any such occurrence. Therefore, the initiation of the departmental proceedings against the respondents is without any basis. Accordingly, the learned Judge, on appreciating the entire materials placed before him, has correctly come to the conclusion that this is a case of no evidence, based on which the respondents cannot be imposed with the capital punishment of dismissal from service.

6. As regards the scope of interference in matters relating to imposition of punishment, the learned Judge placed reliance on the decision of the Honourable Supreme Court in **Union of India v. H.C. Goel [AIR 1964 Supreme Court 364]** to conclude that while dealing with writ petitions filed



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by public servants, who have been dismissed or otherwise dealt with so as to attract Article 311 (2) of The Constitution of India, the High Court under Article 226 of the Constitution of India, has jurisdiction to enquire whether the conclusion of the Government is not supported by any evidence. In the present case, inasmuch as there is no scrap of evidence made available against the respondents in the departmental proceedings, the learned Judge rightly interfered with the order of punishment. Therefore, according to the learned counsel, there is no requirement to interfere with the order of the learned Judge.

7. We have heard the learned Additional Government Pleader appearing for the appellants as well as the learned counsel for the respondents and also perused the materials placed on record.

8. On appreciation of the material evidence, it unfolded that the respondents were subjected to departmental enquiry as well as criminal proceedings on the basis of the complaint given by the complainants. According to the complainants viz., S. Arunkumar and S.Subash, on 07.04.2014, when they were waiting at Gandhipuram Town Bus Stand at Coimbatore, the respondents posing themselves as Policemen, demanded Rs.500/- from them. When they replied that they have no such money to be paid, the respondents allegedly threatened them that they would foist false case



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against them. In this context, the complainants have given a complaint to B-4 Police Station, Coimbatore based on which the case in Crime No. 527 of 2014 came to be registered for the alleged offences punishable under Sections 4 (A), 170, 419 and 506 (i) of the Indian Penal Code on 08.04.2014. Immediately, i.e, on the next date of the alleged occurrence, the first information report came to be registered against the respondents. On 09.04.2014, in connection with the registration of the said criminal case, the respondents were suspended from service.

9. Admittedly, in the criminal case launched against the respondents, they were acquitted on 07.03.2016. During the pendency of the criminal case, a departmental proceeding was conducted in which the Sub-Inspector of Police, who registered the first information report, was examined as PW1. The complainants were examined as PW2 and PW3. However, they turned hostile by stating that they could not remember any such occurrence said to have taken place at all. Having regard to the same, the learned Judge allowed the writ petition by holding that this is a case of no evidence against the respondents and accordingly, set aside the capital punishment of dismissal from service.

10. However, it could be seen that though PW2 and PW3, during their examination in the departmental enquiry, have stated that they



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could not remember any such occurrence, it is not their case that they did not give the complaint at all, based on which the case in Crime No. 527 of 2014 came to be registered against the respondents. In fact, during the departmental enquiry, a question was posed as to why the complaint was given to the B-4 Police Station against the respondents. In reply, it was merely stated by the complainants that they were asked to sign in some papers by the police officials attached to B-4 Police Station and therefore, they have signed. This piece of deposition of PW2 and PW3 give rise to an inference that there was a complaint given against the respondents before the B-4 Police Station, Coimbatore, but, during the departmental enquiry, the delinquency against the respondents has not been proved. In such circumstances, at the best, the provisions contained under Rule 20 (1) and (2) of the Tamil Nadu Government Servants Conduct Rules are attracted against the respondents herein. Thus, for having caused dis-reputation to the police force, by giving room for registration of a complaint against them, containing serious charges, the respondents should be imposed with some punishment and they cannot be let go scot-free. Accordingly, the order of the learned judge requires interference to some extent.

11. On going through the order passed by the learned Judge, we are in agreement that it is a case of no evidence and therefore, the capital



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punishment of dismissal from service is not warranted. At the same time, the

learned Judge in para No.9 of the order, held as follows:

"9. In the light of the above observation, the impugned order passed by the second respondent in Proceedings No.6667/Po4/14 dated 15.10.2015, in so far as the first petitioner herein/P.Rajasekar is concerned and the impugned order in Proceedings No.6668/Po4/14 dated 15.10.2015 passed by the second respondent, in so far as the second petitioner viz., K. Sankaranarayanan, as well as the order passed in the appeal by the first respondent in his Proceedings No.3895/mu/2016, 12.09.2016 in so far as it relates to P. Rajasekar is concerned and the order passed by the first respondent in Proceedings No.3894/mu/2016 relating to K.Sankaranarayanan, are quashed. Consequently, the petitioners herein are directed to be reinstated into service, together with all consequential service benefits, from the date of the order of the dismissal i.e., from 15.10.2015 onwards. It is made clear that the petitioners shall not be entitled for any monetary benefits during their period of non-employment, viz., between 15.10.2015, to the date of reinstatement, including backwages."

12. It is evident that the learned Judge, on the one hand, held that the respondents are entitled for reinstatement with all backwages. On the other hand, it was concluded that the respondents are not entitled for any monetary benefits during their period of non-employment. This observation made in para No.9 of the order passed by the learned Judge, requires modification. At this juncture, it is pertinent to point out that the order of the learned Judge has not been challenged by the respondents/ writ petitioners. Therefore, in the light of the above conclusion reached by us, we are of the view that the respondents herein are not entitled for backwages from the date of their dismissal from service till the date of their reinstatement. The learned



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counsel for the respondents, during the course of hearing of this appeal, fairly submitted that the respondents are not claiming backwages from the date of dismissal from service till their reinstatement.

13. In view of the above, we modify the order dated 19.07.2021 passed by the learned Judge to the effect that "*the respondents are entitled for pay and other benefits only from the date of reinstatement pursuant to the judgment now passed by this court*". The appellants are directed to reinstate the respondents in service, within a period of four weeks from the date of receipt of a copy of this judgment.

14. Accordingly, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.]

[M.S.Q., J.]

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Index : Yes / No

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To

1. The Deputy Inspector General of Prison
Coimbatore Circle, Coimbatore.
2. The Superintendent,
Central Prison, Coimbatore.



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