



WEB COPY

W.P.No.35883 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.35883 of 2016

T.Vinayagam

... Petitioner

Vs.

1. Block Development Officer,
Panchayat Union,
Rishivandiyam, Villupuram District.
2. The Commissioner,
Rural Development and Panchayat Raj,
Chepauk, Kamaraj Salai, Chennai – 600 005.
3. The Personal Assistant to Collector,
Villupuram District.
4. The District Collector,
Villupuram District, Villupuram.

.... Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records pertaining to the termination order dated 26.07.2016 made in Na.Ka.PA1/5528/2015 on the file of the 4th respondent herein and quash the same.



WEB COPY

For Petitioner : Mr.M.Chidambaram

For Respondent : Mr.S.Ravikumar

Special Government Pleader

ORDER

This Writ Petition has been filed in the nature of Certiorari seeking records pertaining to the termination order dated 26.07.2016 made in Na.Ka.PA1/5528/2015 on the file of the 4th respondent, District Collector, Villupuram District and quash the same.

2. The petitioner had been appointed on compassionate basis as Office Assistant on 29.07.1991 at Rishivandiyam Panchayat Union. He had been so appointed, because his father, Mr.Thangavelu, who was a Teacher died while in service. The petitioner then worked as Cashier at Rishivandiyam and then his appointment was forwarded to the Government for regularisation on 10.02.1995. It was found that he was born on 20.06.1961. However, in the service records he had produced, the records reflected the date of birth as 20.06.1962. It was found that there was an alteration in the date of birth which enabled him to work for one additional year.

3. A charge memo under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued to the petitioner on



20.10.2005. Simultaneously, an FIR in Crime No.87 of 2005 was also registered by the District Crime Branch at Villupuram under Sections 420, 468 and 471 of IPC. A final report has been filed before the Judicial Magistrate, Thirukovilur, which was taken cognizance by the Judicial Magistrate, Thirukovilur in C.C.No.57 of 2007 under Sections 420, 268 and 471 of IPC. The Departmental enquiry and the trial in the Criminal case proceeded parallelly. In the Departmental enquiry, the charges were held to be proved. In the criminal case, however, the Judicial Magistrate had returned a finding of acquittal.

4. A perusal of the judgment shows that the acquittal was only on the basis of the Magistrate rejecting the confession statement given by the petitioner herein to the Investigating Officer that the certificate had actually been altered. However, the learned Judicial Magistrate had observed that in the 10th Standard Mark Sheet the date of birth of the petitioner was given as 20.06.1961.

5. In the Departmental proceedings, consequent to the charge having been held established, a punishment was imposed terminating the petitioner from service.

6. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***G.M.Tank V. State of***



Gujarat and another ((2006 5 SCC 446)). In that particular case, the appellant therein had submitted a statement of assets and liabilities, and it was found subsequently that he had acquired assets disproportionate to the known sources of income. A Departmental enquiry was conducted, wherein the charges were held to be proved and a punishment of dismissal from service was granted, which was confirmed by both the learned single Judge in a Writ Petition as well as by the Division Bench of the Gujarat High Court in a Letters Patent Appeal filed by the delinquent.

7. Assailing the said order of the Division Bench of the Gujarat High Court, the delinquent has filed an appeal before the Hon'ble Supreme Court, wherein it was contended that he was acquitted in the Criminal Case under the Prevention of Corruption Act of acquisition of assets disproportionate to his known sources of income and hence the imposition of punishment must be quashed. The Hon'ble Supreme Court allowed the appeal observing as follows:

“In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the



appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension . For the foregoing reasons, we set aside the judgment and order dated 28.1.2002 passed by the learned single Judge in Special Civil appln. No. 948 of 1983 as affirmed by the Division Bench in L.P.A. No. 1085 of 2002 and allow this appeal. However, there shall be no order as to costs. ”

8. It is thus seen that as a special case by the Hon'ble Supreme Court, which had taken note of the fact that the order of acquittal was passed on 30.01.2002, whereas the order of dismissal was on 21.10.1982 and therefore had stated that any monetary relief can only be with effect from 30.01.2002. Since the appellant therein had retired, it was therefore the order of dismissal was set aside without backwages. However, it was held that the appellant was entitled for pension.

9. It was a case where it was found that after 20 years of the order of dismissal, the order of acquittal had emanated from the Criminal Court and therefore that benefit was extended to the appellant therein.

10. In the aforesaid judgment, there have been a reference to the earlier judgment of the Hon'ble Supreme Court in the case of ***Ajit Kumar Nag V. General Manager (PJ), Indian Oil Corpn. Limited, Haldia & Ors., ((2005) 7 SCC 764)***, wherein the Hon'ble Supreme Court held as follows:



"As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

11. It the aforesaid judgment, the contention that since the appellant

therein was acquitted by the Criminal Court, the order dismissing from service deserved to be quashed was rejected by the Hon'ble Supreme Court



and the Hon'ble Supreme Court had confirmed the dismissal of the appellant therein from service.

12. In the instant case, it is clear that the date of birth had been altered and the petitioner had also benefited from that. Hence, I find no reason to interfere with the impugned order and the same is confirmed.

13. This Writ Petition is dismissed. No costs.

17.08.2023

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No
sl

To

1. Block Development Officer,
Panchayat Union,
Rishivandiyam, Villupuram District.
2. The Commissioner,
Rural Development and Panchayat Raj,
Chepauk, Kamaraj Salai, Chennai – 600 005.
3. The Personal Assistant to Collector,
Villupuram District.
4. The District Collector,
Villupuram District, Villupuram.



WEB COPY



W.P.No.35883 of 2016

C.V.KARTHIKEYAN,J.

Sl

W.P.No.35883 of 2016

17.08.2023