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W.P.No.28454 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.28454 of 2021

and

W.M.P.No.30044 of 2021

Loganathan (M/28 years)
S/o.Natchimuthu
Formerly Grade II PC 4526
TSP IX Battalion
Manimutharu, Tirunelveli District

Residential address:
3/3, Old Post Office St
Tondamuthur, Samathur PO
Pollachi Taluk, Coimbatore District

... Petitioner

/Vs/

1.The Assistant Commandant – II
TSP IX Battalion
Manimutharu

2.The Commandant
TSP IX battalion
Manimutharu

3.The Director General of Police
Tamil Nadu, Chennai 4.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for



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issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent in connection with the impugned order passed by him in C.No.A4/PR41/2017 B.O.No.191/2018 dt. 21.03.2018 and confirmed by the third Respondent in Rc.No.564849/APIII(1)/2020 dated 10.07.2021 and quash the same and direct the Respondents to reinstate the Petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani
Senior counsel
for Mr.M.Muthappan

For Respondents : Mr.P.Sanjai Gandhi
Government Advocate

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in connection with the impugned order passed by him in C.No.A4/PR41/2017 B.O.No.191/2018 dt. 21.03.2018 and confirmed by the third Respondent in Rc.No.564849/APIII(1)/2020 dated 10.07.2021 and quash the same and direct the Respondents to reinstate the Petitioner into service and grant him all consequential service and monetary benefits.

2.The Petitioner has filed this Writ Petition challenging the order of



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removal of service and direct the Respondents to reinstate the Petitioner and quash the same.

3.Heard Mr.K.Venkataramani, learned Senior counsel appearing for Mr.M.Muthappan, learned counsel for the Petitioner and Mr.P.Sanjai Gandhi, learned Government Advocate for the Respondents.

4.Mr.K.Venkataramani, learned Senior counsel for the Petitioner submitted that the Petitioner has been given with charge memo for his alleged involvement in Cr.No.11/17 u/s.294(b), 323, 506(i) IPC and Section 4 of TNPWH Act and that he has suppressed his arrest and remand in the said case and that his involvement in the criminal case for his unbecoming conduct. After the initiation of the disciplinary proceedings, all the three charges have been proved against the Petitioner and punishment of removal from service has been ordered.

5.Mr.K.Venkataramani, learned Senior counsel for the Petitioner further submitted that the Criminal Case in this connection was pending in CC.No.257 of 2017 before the learned Judicial Magistrate II, Pollachi, also ended in acquittal on 20.01.2021. Mere involvement in the criminal case cannot be a



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reason for a removal of service. No witnesses was examined in the criminal

case. The Petitioner relied upon a judgment of this High Court in W.P.No.20298 of 2006 dated 22.04.2013. In the said case, the case was registered against the Petitioner under Section 498(A), 304(B) and 506 IPC and Section 4 of Dowry Prohibition Act. In the above said judgment it is stated that the disciplinary proceedings cannot overtake the well reasoned order of the criminal Court, which has given an order of acquittal. The relevant portion of the said case is extracted as under:

“13. It is not in dispute that in the instant case, punishment imposed on the petitioner by the respondent is solely based on the pendency of the criminal case. Unless or otherwise, the charges, at least one of the charges against the petitioner under Sections 498(A), 304-B and 306 IPC or the demand of dowry under Section 4 of Dowry Prohibition Act is proved and ended in conviction, the respondent cannot hold that the petitioner is guilty of the offence for the removal of the petitioner from service. Admittedly, the alleged delinquency against the petitioner is not relating to the official duty of the petitioner. The charges were framed against the petitioner (1) in view of the criminal case pending against him before the criminal court, the reputation of the police department was tarnished and (2) the petitioner had obtained Anticipatory Bail and appeared before the concerned police station, as directed by this Court and also attended the



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enquiry conducted by Revenue Divisional Officer, however, did not intimated the same to the respondent. Learned senior counsel appearing for the petitioner submitted that the Departmental proceeding is solely based on the pendency of the criminal case. Hence, the acquittal recorded has direct relevance in the Departmental proceeding.

...

15. In G.M.Tank vs State of Gujarat and others reported in 2006 (5) SCC 446, the Hon'ble Apex Court has held as follows:

"30. ... It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellants' residence, recovery of articles therefrom. The Investigating Officer Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the



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charge has not been proved. 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."

6.Mr.K.Venkataramani, learned Senior counsel for the Petitioner relied upon another judgment of the Division Bench of this Court in The Commandant, Tamil Nadu Special Police Vs. P.Sakthivelayuthasamy in W.A.No.2545 of 2013, the relevant portion of the Judgment is extracted as under:

"2. Pending appeal, the order of the learned single Judge was given effect to. We do not find any merit in this appeal. Admittedly, the respondent has been honourably acquitted of all the charges, which were culminated out of a criminal case registered against the respondent wherein he has been acquitted on the ground that the occurrence was not during the course of the employment. Therefore, we are not inclined to agree with the reasoning of the learned single Judge. Non-intimation of the anticipatory bail order and the participation in the proceeding before the Revenue Divisional Officer would not per se attract any violation of the rule warranting action. In any case, such an action cannot be extended to dismissal. Similarly, bringing dis reputation also gives an impression against the respondent when the criminal case has ended in acquittal. The registration of the case against the accused is



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not in his hands. Thus, looking from any perspective, we do not find any merit in this appeal and the writ appeal fails and the same is dismissed.”

7. In yet another judgment rendered by this Court in *I. Swaminathan and another Vs. I. The Secretary to Government, Health and Family Welfare Department and others (W.A.No.193 of 2020)*. The relevant portion is extracted as under:

“6.2 Thus, the issue that arose for consideration in the Writ Appeal is as to whether the failure on the part of the government employee to intimate the Department about his involvement in the criminal case and the receipt of anticipatory bail would amount to misconduct, so as to initiate disciplinary proceeding by the respondents under Rule 17(b) of the Tamil Nadu Civil (Discipline and Appeal) Rules. This vital aspect was not dealt with by the learned Single Judge, rather, he has given findings with regard to the degree of proof that are required in both the disciplinary and criminal proceedings, which is not related to the issue at all. Though the deceased first appellant raised very many contentions both in the form of Grounds of Writ Petition and Memorandum of Grounds of Appeal, we are not going to advert to those issues and the contentions raised in that regard, inasmuch as, it would be suffice to answer the issue that arises herein as the same will give quietus to the entire issue, and



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hence, all other contentions raised by the deceased first appellant are brushed aside. Since in the case on hand, disciplinary proceedings were initiated under 17(b) Rules, firstly, it has to be seen whether the said Rule prescribes any specific provision to impose punishment on a government servant on account of his failure to intimate the Department about alleged involvement in a criminal case.”

8.Mr.P.Sanjai Gandhi, learned Government Advocate for the Respondents submitted that the impugned order has reference about the conduct of the Petitioner which is unbecoming of the Police. He cited the judgment of the Hon'ble Apex Court in *State of Rajasthan and others Vs. Heem Singh* reported in (2021) 12 Supreme Court Cases 569, in support of his contention. In the said case it is held as under:

“In Inspector General of Police v. S. Samuthiram¹⁰ , a two-Judge Bench of this Court held that unless the accused has an “honorable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”. Noticing this, the Court observed:



“Honourable acquittal

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. 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.

25. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam v. Raghava Rajgopalachari* [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor* [ILR (1934) 61 Cal 168] which is as follows: (Raghava case [1972 SLR 44 (SC)] , SLR p. 47, para 8) “8. ... ‘The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of



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our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.’” (Robert Stuart case [ILR (1934) 61 Cal 168] , ILR pp. 188-89).

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.” (emphasis added)”

9.Unfortunately, the Petitioner did not prefer any Appeal against the order of punishment but has directly filed the Review Petition before the third



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Respondent. In fact the Petitioner preferred the Review Petition after the criminal case ended in acquittal. Even that was not considered favourably and the impugned order of rejection is a non-speaking order.

10.It is pertinent to note that inspite of acquittal order passed in C.C.No.257 of 2017 dated 20.01.2021 by the learned Judicial Magistrate No.II, Pollachi, the third Respondent has not chosen to consider the order passed in C.C.No.257 of 2017 dated 20.01.2021, while passing order dated 10.07.2021 in the review. Taking into account of all these factors, I feel it is appropriate to set aside the order of the third Respondent in Rc.No.564849/APIII(1)/2020 dated 10.07.2021 and direct him to reconsider the case of the Petitioner and pass fresh orders, taking into consideration the acquittal order passed in C.C.No.257 of 2017 dated 20.01.2021 by the learned Judicial Magistrate No.II, Pollachi, within a period of four weeks from the date of receipt of a copy of this order.

In the result, with the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order



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