

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 02.06.2023****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P.(MD)No.17404 of 2020 and**
W.M.P.(MD)No.14540 of 2020

M.Senthil Kumar

... Petitioner

Vs.

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

2. The Deputy Inspector General of Police,
Madurai Range, Alagar Kovil Road,
Madurai.

3. The Superintendent of Police,
O/o.The Superintendent of Police,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in his proceedins in C.No.F1/PR.17/2014 u/r.3(b) dated 14.10.2016 which was modified by the order passed by the 2nd respondent in his proceedings in C.No.A4/3038/AP/2017 dated 20.11.2017 which has been confirmed by the proceedings issued by the first respondent in his proceedings in RC.No.123736/AP 2(3) /2019 dated 3.6.2019 and quash



the same as illegal and unconstitutional and consequently directing the respondents to pay all attendant and monetary benefits to the plaintiff .

For Petitioner : Mr.S.Ramsundar Vijayraj,
for M/s.Veera Associates.

For Respondents : Mr.M.Senthil Ayyanar,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the police department as Grade-II police constable in the year 2003. He was implicated in a criminal case in Crime No.364 of 2012 registered on the file of Melur police station for the offence under Sections 147, 148, 341, 324, 506(ii) r/w.379(NP) of IPC. In this regard, charge memo dated 29.01.2014 was issued. The charge framed against the petitioner was that the petitioner along with others had assaulted one Murugesan and his son Madhankumar and thereby brought disrepute to the uniformed force. The petitioner offered his explanation. An enquiry officer was appointed. The enquiry officer submitted his report dated 19.08.2014 and held that the charge was



proved. A copy of the enquiry report was served on the petitioner. His further explanation was obtained on 26.05.2015. Thereafter, the disciplinary authority, namely, the Superintendent of Police, Madurai District, passed an order dated 14.10.2016 agreeing with the finding of the enquiry officer and imposed the punishment of postponement of increment for two years with cumulative effect. Challenging the same, the petitioner filed an appeal before the Deputy Inspector General of Police, Madurai Range. The appellate authority passed an order dated 20.11.2017 confirming the finding of guilt. He however interfered with the quantum of punishment. The punishment imposed on the petitioner was reduced to postponement of increment for a period of one year without cumulative effect. The petitioner filed mercy petition before the first respondent and it was also dismissed on 03.06.2019. Challenging the aforesaid orders, the present writ petition came to be filed.

3. The learned counsel appearing for the 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 grant relief as prayed for.



4. The respondents have filed counter affidavit and the learned Government Advocate took me through its contents and prayed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The first contention of the petitioner's counsel is that the criminal case ended in acquittal on 27.10.2015 in C.C.No.179 of 2014 on the file of the Judicial Magistrate, Melur and that this aspect of the matter was not taken note of by the authorities. He also relied on the decision of the Hon'ble Apex Court in G.M.Tank case and contended that where the disciplinary action as well as the criminal proceedings are grounded on the same set of facts and where the criminal case ended in acquittal, a finding of guilt cannot be rendered by the disciplinary authority.

7. This contention will not hold good for more than one reason. The subsequent decisions of the Hon'ble Apex Court have considerably diluted the proposition laid down in G.M.Tank case. It is now well settled that while the criminal case can end in acquittal, the disciplinary action



can conclude adversely against the delinquent employee. However, to satisfy my conscience, I went through the judgment of acquittal. It is unsatisfactory to say the least. Since the judgment of acquittal has become final, I do not want to make any further comment thereon. I would only remark that it would be most unsafe for the petitioner to rely on the judgment of acquittal in these proceedings. I leave the matter at that.

8. It is not as if the enquiry officer had arbitrarily found the petitioner guilty of the charge. One of the victims namely, Murugesan was examined as P.W.1 in the enquiry. He stood his ground. The petitioner cross-examined the said witness. He could not shake him at all. The testimony of the witness remained unshaken till the end. After considering the entire materials on record including the evidence adduced by the delinquent, the enquiry officer came to the conclusion that the charge against the petitioner stood established. The standard of proof in a departmental enquiry is “proof based on some evidence”. The disciplinary authority need not prove the case against the delinquent beyond reasonable doubt. Even if there is some credible material, that is more than sufficient. In this case as many as three authorities have



examined the materials and come to the conclusion that the petitioner is guilty. The learned Government Advocate relied on the decision of the Hon'ble Apex Court in the decision reported in **2022 LiveLaw (SC) 998 (UNION OF INDIA AND OTHERS V. SUBRATA NATH)** for the proposition that the writ Court will not be justified in re-appreciating the evidence in disciplinary proceedings. I do not find any ground to interfere. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

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G.R.SWAMINATHAN,J.

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