



Writ Petition No.13031 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
02.04.2024

PRONOUNCED ON
16.04.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.13031 of 2007
and M.P.No.1 of 2007**

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home Department, Fort St. George,
Chennai – 600 009.
- 2.The Director General of Police,
Chennai – 600 002.
- 3.The Inspector General of Police,
Law and Order, Chennai – 4.
- 4.The Commissioner of Police,
Coimbatore City.
- 5.The Deputy Commissioner of Police,
(L&O), Coimbatore Circle,
Coimbatore.

... Petitioners

Vs

- 1.I.Muthupandi
- 2.TheRegistrar,
Tamil Nadu Administrative Tribunal,



Writ Petition No.13031 of 2007

Chennai – 4.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the order dated 25.05.2004 made in Original Application No.818 of 2004 on the file of Tamil Nadu Administrative Tribunal, Madras and quash the same and pass further orders.

For Petitioners : Mr.P.Balathandayutham
Special Government Pleader

For Respondents : Mr.K.Venkataramani for R1
Senior Counsel
for Mr.M.Muthappan
R2 - Tribunal

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This instant Writ Petition had been preferred against the order of the Tribunal, wherein, the punishment imposed by the department as against the first respondent had been set aside with a consequential direction to reinstate him and with backwages, service and monetary benefits.

2. Heard Mr.P.Balathandayutham, learned Special Government Pleader for the petitioners and Mr.K.Venkataramani, learned Senior Counsel for Mr.M.Muthappan, learned counsel for the first respondent.



Writ Petition No.13031 of 2007

WEB COPY

3. Mr.P.Balathandayutham, learned Special Government Pleader for the petitioners would submit that the first respondent had been charged for the offences under Section 302 and 498A of IPC and that a criminal case has also been registered against him. Hence, a charge memo was issued against him for his involvement in such an offence, which had led to a unbecoming conduct and behavior to be continued in Police force. He would further submit that there were about 10 witnesses who have been examined during the course of the enquiry and that the enquiry officer had given a detailed report, indicating that the delinquency upon which the first respondent had been proceeded with had been conclusively proved. Thereafter, a second show cause notice was also issued and the disciplinary authority had imposed an order of dismissal of the first respondent from service. The Appellate Authority as well as the Revisional Authority had also confirmed the order of punishment.

4. Being aggrieved against the order of punishment, the first respondent had approached the Administrative Tribunal in O.A.No.818 of



Writ Petition No.13031 of 2007

2004. He would submit that the Tribunal had reappreciated the evidence of the respective witnesses which was beyond its authority and had held that there was no evidence as against the first respondent and recorded a finding that the report of the enquiry officer as accepted by the disciplinary authority is not based on any evidence. Further, he would submit that the Tribunal had also taken into account the acquittal of the first respondent by the criminal Court. He would submit that the criminal proceedings had been ended by giving a benefit of doubt to the first respondent herein. Further, applying the same principle to the disciplinary proceedings is contrary to the well established service jurisprudence. According to him, it only preponderance of probability which had been clearly established that the first respondent had been involved in such delinquency. In support of his contention, he would rely upon the judgment of the Hon'ble Apex Court in the case of ***State of Karnataka and Another Vs Umesh*** reported in ***2022 (6) SCC 563*** to contend that the acquittal of an accused in a criminal case does not debar an employee from proceeding in exercise of disciplinary jurisdiction. Hence, he would seek interference of the order passed by the Tribunal.



Writ Petition No.13031 of 2007

5. Countering his arguments, Mr.K.Venkataramani, learned Senior

Counsel appearing on behalf of the first respondent would submit that the criminal case that had been lodged upon the first respondent, based upon which the disciplinary proceedings were initiated had ended in acquittal. He would further submit that even though the criminal court had acquitted the first respondent by giving the benefit of doubt, an analysis of the entire judgment of the Trial Court would indicate that there is no evidence on the side of the prosecution to convict the first respondent. He would further submit that neither the prosecution nor the parents of the deceased had preferred any further appeal as being aggrieved against the acquittal of the first respondent. He would further submit that the witnesses examined during the criminal case were the witnesses who are also examined during the disciplinary proceedings. The criminal Court had not believed their evidences and had acquitted the first respondent. He would also further submit that the Hon'ble Tribunal had also analysed the evidences that had been recorded by the enquiry officer to come to a finding that there was no evidence based upon which such an enquiry report had been filed. He would submit that such a finding rendered by the Tribunal would only show that



Writ Petition No.13031 of 2007

the entire report of the enquiry officer is wholly perverse which was liable to be interfered with.

6. He would further submit that the Tribunal had not reappreciated the evidence, but had given a finding of fact that while going through the evidences, that there was no evidence of the involvement of the first respondent in the crime that had been alleged against him. He would further submit that the judgment of the criminal Court would only stand as a testimony to the findings that had been arrived at by the Tribunal. He would rely upon the judgment of the Hon'ble Apex Court made in ***Civil Appeal No. 7935 of 2023 dated 04.12.2023*** in support of his contention. Therefore, he would submit that there was no infirmity or illegality in the order passed by the Tribunal which warrants interference of this court.

7. We have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.



Writ Petition No.13031 of 2007

8. It is an admitted case that the first respondent had been proceeded with on an unitary charge of him being involved for the offence under Section 302 and 498A of IPC. It is also an admitted case that the first respondent had been acquitted in the criminal case. However, the enquiry officer based upon the evidences that were available before him had given a report that the charge against the first respondent had been proved. Based upon which the Disciplinary Authority had imposed a punishment of dismissal from service which had been confirmed by the Appellate as well as the Revisional Authority.

9. The learned Special Government Pleader for the petitioners had vehemently contended that an acquittal in a criminal case would not take away the jurisdiction of a Disciplinary Authority in proceeding with the disciplinary proceedings and take a different view than that had been taken by the criminal Court.

10. As regards to the first part of his submissions, we do not have any different view, as it is a well settled service jurisprudence that just because a



Writ Petition No.13031 of 2007

criminal case has ended in an acquittal, it will not preclude the Disciplinary Authority proceeding with the charges that had been framed against him.

What we disagree with the argument, is that the Disciplinary Authority can take a different view than that had been taken by the Criminal Court.

11. In the present fact and circumstances of the case, the reason that we attribute to such disagreement is because, the witnesses that were examined during the disciplinary proceedings were the same witnesses who had deposed before the criminal Court and whose evidences have not been weighed by the Court to convict the appellant. The witnesses could not improve their statements. Even if the witnesses had deposed differently before the Disciplinary Authority, we are of the view that such witnesses cannot have improve their statements more than what they had deposed before the criminal Court which did not lead to the conviction of the first respondent. If the witnesses had advanced a better statement before the Disciplinary Authority, such advancement cannot be relied upon for the simple reason that atleast P.W.1 who was the father of the deceased had not sought to prefer any appeal against the order of the acquittal.



Writ Petition No.13031 of 2007

12. In that context, it would be useful to refer to the judgment of the Hon'ble Apex Court relied upon by the learned Senior Counsel for the first respondent in ***Civil Appeal No. 7935 of 2023 dated 04.12.2023***. For better appreciation, the relevant paragraphs of the said judgment is extracted hereunder:-

“24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh.P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefits. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S.Samutiram (Supra).]

25. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be



understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after areading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said



to be “not proved” when it is neither “proved” nor “disproved” [See *Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190*].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in **G.M. Tank (supra)**. ”

13. We had thoroughly gone through the judgment rendered by the criminal Court in acquitting the first respondent. The criminal Court had categorically held that there has been no evidences to the Court to come to a conclusion that the crime had been carried out by the first respondent and thereby giving a benefit of doubt had acquitted him. Hence, we are of the considered view that the Disciplinary Authority cannot come to a different conclusion than that had been arrived at by the criminal Court. Further, as



Writ Petition No.13031 of 2007

found supra, the witnesses that were examined both before the Trial Court and the enquiry officer are one and the same.

14. Applying the ratio laid down by the Hon'ble Apex Court in the aforesaid judgment to the facts of the case, we do not find any infirmity or illegality in the order impugned before us which would warrant any interference by this Court.

15. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. The petitioners are directed to reinstate the first respondent with all benefits that had been ordered by the Tribunal, if the same has already not been implemented, within a period of two (2) weeks from the date of receipt of a copy of this order.

(D.K.K.,J.)

(K.B., J.)

16.04.2024

Index: Yes/No

Speaking Order/Non Speaking Order

12/14



Writ Petition No.13031 of 2007

Neutral Citation:Yes/No
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To
TheRegistrar,
Tamil Nadu Administrative Tribunal,
Chennai – 4.



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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

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