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W.P.No.4667 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.4667 of 2023 and
WMP.Nos.4665 & 4666 of 2023

D.Alagesan

... Petitioner

Vs.

The Superintendent(General),
Central Prison,
Salem-7

... Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the records relating to the impugned charge memorandum bearing No.6916/Ke.C1/ 2022 dated 21.07.2022 issued by the respondent herein namely the Superintendent of Prisons, Central Prison, Salem-7, quash the same as non-est in the eye of law.

For Petitioner : Mr.K.S.Govinda Prasad

For Respondent : Mr.K.Tamilvendan,
Government Advocate

ORDER

This writ petition has been filed challenging the charge memo dated 21.07.2022 issued by the respondent.



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2. The petitioner while working as Assistant Jailor, Prison Department at Sub Jail, Omalur, on 27.02.2022, a wordy quarrel arose between himself and his wife. Therefore, his wife lodged a complaint and the same was registered in crime No.44 of 2022 for the offence under Sections 294(b), 323 and 506(i) of IPC alleging that the petitioner abused his wife with filthy languages and also attacked her with hands and threatened her with dire consequences. The petitioner obtained anticipatory bail in crime No.44 of 2022. In pursuant to the registration of FIR, the petitioner was served with charge memo dated 21.07.2022 consisting one charge as follows:

Thiru D. Alagesan, Assistant Jailor, is employed in Omalur Sub Jail. Since he underwent basic Warder's training and is having vast experience he is bound to know the Prison Manual Rules and the Tamilnadu Government Servants (Conduct) Rules.

2) Due to family dispute between him and his wife which took place on 01.03.2022 an FIR was registered in his name in Cr. No. 44/2022 in Tholasampatty Police Station, Salem, under sections 294 (b), 323, 506 (1), IPC. Since the above said criminal case is in contravention of Part 2, Section 127 of the Tamilnadu Prison Manual, and as per Section 54(1) of the Prison Act, 1894, is a



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punishable offence, and it is in violation of Rule 20(1) of the Tamilnadu Government Servants (Conduct) Rules.

2.1 The above charge is nothing but the petitioner involved in a criminal case and it is contravention of Part 2, Section 127 of the Tamilnadu Prison Manual, and as per Section 54(1) of the Prison Act, 1894, is a punishable offence, and it is in violation of Rule 20(1) of the Tamilnadu Government Servants (Conduct) Rules. In pursuant to the charge memo, enquiry officer was appointed to conduct disciplinary enquiry. In the criminal case, after completion of investigation, charge sheet was laid and the same has been taken cognizance in CC.No.260 of 2023 on the file of the Judicial Magistrate, Omalur, Salem by the judgment dated 08.03.2024. The petitioner was acquitted recording that there is no oral or documentary evidence to prove the prosecution case. In the impugned charge memo also, it is nothing but same charge that the petitioner involved in a criminal case. Therefore, the charge sheet as well as the charge memo in the department proceedings are one and the same and are identical. The very same documents were relied upon and also very same witnesses are relied upon in the departmental proceedings.

3. The learned counsel for the petitioner in this regard relied



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upon the judgment of the Hon'ble Supreme Court of India in the case of

Ram Lal Vs. State of Rajasthan and others reported in ***(2024) 1 SCC***

175, wherein it is held as follows:

25. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined.

The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable.

26. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

"Mainly the present case was based on the documents to this effect whether the date of birth of



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accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets.

Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence.

In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused. Resultantly, on the basis of



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aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed."

[Emphasis supplied]

27. 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 benefit.

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. Samuthiram (Supra).]

28. 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



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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 a reading 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.

4. In the criminal case, the trial court acquitted the petitioner after full consideration of prosecution evidence and held that there is no oral or documentary evidence to prove the prosecution case. In the departmental enquiry also, the same witnesses as well as the documents are produced by the Presiding Officer. Therefore, no purpose would be served if the disciplinary proceedings are allowed to continue as the charges are identical and the evidence, witnesses and circumstances were all the same. That apart, FIR was registered on the complaint lodged by the wife of the petitioner and the petitioner did not commit any crime related to moral turpitude in order to proceed with the disciplinary proceedings. Further, the petitioner was not arrested in pursuant to the



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registration of FIR and he is allowed to continue in service till now.

5. In view of the above, the disciplinary proceedings cannot be sustained and the same is liable to be quashed. Accordingly, the impugned charge memo dated 21.07.2022 issued by the respondent is quashed and this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.03.2024

Neutral citation : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
lok

To

The Superintendent(General),



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Central Prison,
Salem-7

G.K.ILANTHIRAIYAN, J.

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