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W.P.No.6796 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

CORAM:

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

W.P.No.6796 of 2020
and W.M.P.No.8095 of 2020

G.Sridharan

...Petitioner

-Vs-

1. The Commissioner,
Hindu Religious and
Charitable Endowment,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.
2. The Joint Commissioner/
Fit Person,
Enquiry Officer,
Arulmigu Vadapalani Andavar Thirukoil,
Vadapalani,
Chennai – 600 026.
3. The Deputy Commissioner/
Executive Officer,
Arulmigu Vadapalani Andavar Thirukoil,
Vadapalani,
Chennai – 600 026.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorified Mandamus, calling for the records of th second respondent insofar as the impugned order 25.12.2019 and



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quash the same and consequently to re-instate the petitioner notionally with continuity of service and pay the terminal benefits together with back wages and other benefits due thereto.

For Petitioner : Ms.M.D.Leelavathi

For Respondents

For R1 & R2 : Mr.K.Karthikeyan
Government Advocate

For R3 : Mr.S.Surya
For M/s.A.S.Kailasam and Associates

ORDER

This writ petition has been filed challenging the order passed by the second respondent thereby confirming the order of termination of the petitioner, passed by the third respondent.

2. The petitioner was appointed as Ticket seller during the year 1983 in the second respondent temple. Subsequently, he was promoted to the post of Junior Assistant during the year 1992. While being so, the petitioner involved in a crime and he found embezzling money from the Hundiyaal of the temple to the tune of Rs.13,000/- and he was caught red handed by the then Executive Officer and staff members of the temple. In pursuance to that complaint was lodged and the same was registered in



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Crime No.86 of 1997 in the jurisdictional police station. After filing the final report, it has been taken cognizance in C.C.No.775 of 2000 on the file of the XVII Metropolitan Magistrate Court, Saidapet. Therefore, the petitioner was placed under suspension from the service from 31.01.1997.

3. The order of suspension was challenged before this Court in W.P.No.6396 of 2003 and the same was disposed with direction to the respondents to pay subsistence allowance to the petitioner. However, due to the pendency of the disciplinary proceedings, he was not paid any subsistence allowance. Therefore, the petitioner filed a contempt petition in Cont.P.No.904 of 2003. While pending the contempt petition, the disciplinary proceedings was completed and the charges held to be proved as against the petitioner. Thereafter, the petitioner was terminated from service on 26.03.2004 by the third respondent. In the mean time, the criminal proceedings as against the petitioner in C.C.No.775 of 2000 was ended in acquittal, by an order dated 08.11.2002.

4. In fact, the petitioner already challenged the order passed by the third respondent on 26.03.2004, in W.P.No.16672 of 2007 and the same was dismissed and aggrieved by the same, the petitioner filed a writ



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appeal in W.A.No.1114 of 2011. The Hon'ble Division Bench of this Court by an order dated 31.01.2019, allowed the writ appeal and set aside the order of termination and also directed the respondents to conduct denovo enquiry. As directed by the Hon'ble Division Bench of this Court, the petitioner was served with enquiry report and conducted denovo enquiry. After conducting detailed enquiry, the petitioner was terminated from service by an order dated 25.12.2019. Aggrieved by the same, the petitioner filed the present writ petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. Though the petitioner got acquittal from the charges, which was taken cognizance in C.C.No.775 of 2000, the petitioner embezzled money from the temple hundiya worth about Rs.13,000/- in the year 1997. Therefore, the action of the petitioner is against the interest of the temple. It is well settled proposition of law that mere acquittal in the criminal proceedings would not vitiate the departmental proceedings. Though the petitioner was acquitted in the criminal case, it has no bearing or relevance on the disciplinary proceedings as standard of proof in both



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the cases are different and the proceedings operate in difference and have different objections. The criminal court acquitted the petitioner on the ground that the prosecution failed to bring the charges to home. Further, prosecution failed to prove the case beyond doubt. Therefore, the benefit of doubt goes in favour of the accused and acquitted the petitioner.

7. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India, in the case of **Suresh Pathrella vs. Oriental Bank of Commerce** reported in **(2006) 10 SCC 572**, wherein it is held that the yardstick and standard of proof in a criminal case differrent from those in a disciplinary proceeding. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is based on the preponderance of probabilities. Therefore, acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings, as the standard of proof in both cases are totally different. In a criminal case, the prosecution has to prove its case beyond all reasonable doubt, whereas in a departmental proceeding, the department has to prove only the preponderance of probabilities.



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8. It is also relevant to extract the judgment of the Hon'ble

Supreme Court of India in the case of ***State of Rajasthan and others vs.***

Heem Singh reported in (2021) 12 SCC 569, which held as follows:-

“38. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Assn. v. Union of India [Southern Railway Officers Assn. v. Union of India, (2009) 9 SCC 24 : (2009) 2 SCC (L&S) 552] , this Court held : (SCC p. 40, para 37) “37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.” (emphasis supplied)

39. In State v. S. Samuthiram [State v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566



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: (2013) 1 SCC (L&S) 229] , a two-Judge Bench of this Court held that unless the accused has an “honourable 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 : (SCC pp. 609-10, paras 24-26) “Honourable acquittal

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* [*RBI v. Bhopal Singh Panchal*, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . 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 [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 [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 [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : ILR (1934) 61 Cal 168] which is as follows : (Raghava case [State of Assam v. Raghava Rajgopalachari, 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 extra-judicial 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 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 [Robert Stuart Wauchope v. Emperor, 1933 SCC OnLine Cal 369 : 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 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



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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 supplied)

9. Further, it is relevant to extract the judgment of the Hon'ble Supreme Court of India in the case of ***State of Rajasthan and others vs. Heem Singh*** reported in **(2021) 12 SCC 569**, which held as follows:-

“37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The Judge does not assume the mantle of the disciplinary authority. Nor does the Judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are



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not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review.



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To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the Judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the Judges' craft is in vain.”

10. Thus, it is clear that the Courts exercising power of judicial review are entitled to consider whether, while inferring the commission of misconduct on the part of a delinquent officer, a relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence that meets the requirements of legal principles. To determine whether the finding in a disciplinary enquiry is based on some evidence, an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the Court that there is some evidence to support the charge of



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misconduct and to guard against perversity. But this does not allow the Court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view that appears to the Judge to be more appropriate.

11. Mere acquittal by the criminal Court would not give a clean chit to the delinquent in disciplinary proceedings. As stated supra, the manner in which the proceedings were conducted and the trial, due to which the petitioner was acquitted from the criminal charge, therefore, the judgment of the criminal Court cannot be considered in the disciplinary proceedings. This Court finds no infirmity or illegality in the order passed by the second respondent and the writ petition is devoid of merits and liable to be dismissed.

12. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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