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W.A.No.2597 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2024

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2597 of 2023
and
C.M.P.No.21961 of 2023

1.The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

2.The Deputy Inspector General of Police,
Kancheepuram Range, Kancheepuram.

3.The Director General of Police,
Dr.Radhakrishanan Salai,
Mylapore, Chennai – 04.

4.The Additional Chief Secretary to Government,
Home (Police II) Department,
Fort St.George, Chennai – 600 009.

.. Appellants

Vs.

Hariram Kumar,
S/o.Patturaj,
Formerly Gr-I PC.1731 (AR),
Kanchipuram District, Kanchipuram.

.. Respondent



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Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 18.08.2021 passed in W.P.No.30180 of 2017 on the file of this Court.

For Appellants : Mr.P.Kumaresan
Additional Advocate General
assisted by Mrs.S.Anitha
Special Government Pleader

For Respondent : Mr.T.Mohan, Senior Counsel
for Mr.H.Prosper

JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN, J.]

This writ appeal has been filed by the State against the order passed by the learned Judge in W.P.No.30180 of 2017 on 18.08.2021.

2. The necessary facts leading to the filing of this writ appeal are that while the respondent was in service, he was issued with a charge memo following the registration of a criminal case in Crime No.37 of 2013 for the offences under Sections 3(1)(x1) and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 354, 451, 323 and 506(I) IPC. The said criminal case ended in acquittal, as the



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witnesses turned hostile during trial in S.C.No.248 of 2013 on the file of the Principal Sessions Court, Kanchipuram District @ Chengalpattu. However, in the disciplinary proceedings initiated against the respondent in PR.No.4/2013 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, the charges against the respondent were held as proved and the disciplinary authority imposed the punishment of “Removal from service” against the respondent. The appeal preferred by the respondent against the said order of punishment, came to be rejected, by order dated 07.10.2014 of the second appellant and the mercy petition, was also rejected by the fourth appellant, by order dated 25.06.2016. Challenging all these orders passed by the respective appellants, the respondent filed a writ petition in W.P.No.30180 of 2017 to quash the same and direct the appellants to reinstate him into service and grant him all consequential service and monetary benefits. By order dated 18.08.2021, the learned Judge disposed of the said writ petition, in the following terms:

“36...this writ petition is allowed by modifying the order of the punishment of dismissal from service with punishment of stoppage of increment for a period of six months without cumulative effect for a period of one year.

37. The respondents are directed to reinstate the petitioner from the date of his dismissal from service on 21.08.2014 together with attendant



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benefits and further there will not be any pay cut during the period when the petitioner was not in service since the petitioner was not allowed to work. This exercise shall complete the same within a period of six weeks from the date of receipt of a copy of this order. ..”

Aggrieved by the aforesaid order passed by the learned Judge, the present appeal has been preferred by the appellants / State before this court.

3. The learned Additional Advocate General appearing for the appellants submitted that both the charges framed against the respondent were proved and the criminal case in Cr.No.37 of 2013 on the file of D1 Chengalpattu Town Police Station, then Kancheepuram District registered for the offences under section 3(1)(X1) and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 354, 451, 323 and 506(I) IPC, ended in acquittal only due to the complainant and other independent witnesses were turned hostile during trial. Adding further, it is submitted that in the enquiry conducted by the Enquiry Officer against the respondent, the defacto complainant Sumathi, her parents and one Kuppan categorically stated about the presence of the respondent in front of that house, assaulted them indiscriminately and also threatened them with dire consequences on the midnight at about 11.00pm



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on 18.01.2023 and there was no material contradiction elicited by the respondent in the cross examination of the said witnesses during the course of enquiry. Hence, the enquiry officer based on preponderance of probabilities, had arrived at the conclusion that the charges against the respondent were clearly proved. Relying on the report of the enquiry officer, the appellant authorities imposed the punishment of removal from service on the respondent. However, the learned Judge erred in modifying the same into one of stoppage of increment for six months without cumulative effect for one year, besides awarding backwages. It is also submitted by the learned Additional Advocate General that the delinquency committed by the respondent is serious in nature; that, he was not honourably acquitted from the charges, by the criminal court; and therefore, he was rightly imposed with the punishment of removal from service. Without properly appreciating the same, the learned Judge erroneously allowed the writ petition in favour of the respondent, by the order impugned herein, which will have to be set aside.

4. Per contra, the learned counsel for the respondent submitted



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that the learned Judge after analysing the facts and circumstances of the case, has rightly set aside the orders passed by the appellant authorities and allowed the writ petition in favour of the respondent and the same need not be interfered with by this court.

5. Heard both sides and perused the materials available on record.

6. It appears that the respondent was issued with a charge memo containing two charges viz., (i) he wilfully evaded from his guard duty on 18.01.2013 at about 12.00 noon, entrusted to him at Sriperumbudur, Pennalur EB office, by simply making entries at the Record Book, as he was suffering from stomach pain and proceeded to hospital without any permission or leave from his superior officers and went to his native place at Chengalpet; and (ii) On the same day i.e., on 18.01.2013, at 11.00pm at Thattanmalai Street, Chinnanatham, near his residence at Chengalpet, he had attempted to enter into the house of one Sumathi, belonging to downtrodden Irula Community and when the same was questioned by her father, the respondent assaulted him and the female members in the family.



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In this regard, Cr.No.37/2013 on the file of Chengalpet Town Police Station, came to be registered against him, for the offences under sections 451, 354, 323, 506(1) IPC r/w sections 3(1)(ix) and 3(2)(vii) of the SC/ST (Prevention of Atrocities) Act, 1989. Admittedly, the criminal case registered against the respondent ended in acquittal on the ground that all the witnesses i.e., PW1 to PW7 except official witnesses, turned hostile and not supported the case of prosecution. However, in the departmental proceedings, the enquiry officer gave a report that the charges were proved, based on which, the disciplinary authority passed the order of removal from service against the respondent and the same was affirmed by the appellate as well as revisional authorities by the orders impugned in the writ petition. All these orders were quashed and the punishment of removal from service clamped on the respondent was modified into one of stoppage of increment for six months without cumulative effect for one year, besides awarding backwages, by the learned Judge in the writ petition filed by the respondent. The said order of the learned Judge is questioned by the appellant authorities in this writ appeal.

7. The law is well settled that the standard of proof required for



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holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. Whereas, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance of probabilities. In the present case, in respect of the second charge, the learned Judge held that since the facts and the evidence in both the proceedings viz., the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case; and therefore, in the light of the criminal court judgment dated 24.04.2015 passed in SC No. 248 of 2013, the punishment imposed on the respondent, based on this charge, is wholly unsustainable. It is to be noted at this juncture that before the order of acquittal passed by the



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criminal court, the respondent was inflicted with the punishment of removal from service, vide order dated 21.08.2014, based on the enquiry report dated 16.07.2013 submitted by the enquiry officer. In such circumstances, this court is of the view that it may not be appropriate to set aside the punishment imposed on the respondent in the departmental proceedings, solely relying on the criminal court judgment, in which, he was acquitted from the charges, on the ground that the witnesses turned hostile and the prosecution failed to prove the guilt beyond reasonable doubt.

8. In respect of the first charge, there is no dispute that the respondent was absent from duty on 18.01.2023. The learned Judge in the order impugned herein, has pointed out that the evidence of N.Ramakrishnan, makes it very clear that the respondent had informed him that he was unwell and therefore, he was taking leave and had requested him to continue to remain in guard duty in his absence. It was also noted by the learned Judge that the deposition of N.Ramakrishnan also makes it clear that he had attempted to inform the superior about the fact that the respondent was unable to report to duty on 18.01.2013 and since the telephone calls



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was not answered by the superior, he continued to be on guard. Having stated so, the learned Judge was of the view that the explanation given by the respondent regarding his absence from duty on 18.01.2013 appears to be reasonable, however, being attached to the Battalion, the respondent ought to have reported to a Government Hospital and to the Medical Officer or approved Hospital before proceeding to take leave, but he had not followed the clear protocol and was absent without availing medical leave; and hence, he deserves the punishment. This court finds no infirmity or illegality in the finding so rendered by the learned Judge.

9. At the same time, the order of the learned Judge modifying the punishment of removal from service into one of stoppage of increment for a period of six months without cumulative effect for a period of one year, needs to be enhanced, having regard to the grave nature of the charges framed against the respondent coupled with the fact that the respondent is serving in a disciplined force, in which, people repose great faith and confidence and hence, he must have impeachable character and integrity and of utmost rectitude. Therefore, this court is inclined to enhance the



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punishment of stoppage of increment from six months to three years with cumulative effect.

10. With the aforesaid modification, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
04.01.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

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Kancheepuram District,
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