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W.A.Nos.4316 & 4317 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.4316 & 4317 of 2019
and C.M.P.Nos.27472, 27275 & 27476 of 2019**

- 1.The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram.
- 2.The Additional Director General of Police,
Law & Order,
Chennai – 4.
- 3.The Deputy Superintendent of Police,
Gummidipoondi Sub-Division,
Gummidipoondi,
Thiruvallur District. ... Appellants in both the appeals

Vs

R.Elakkumanan ... Respondent in W.A.No.4316 of 2019
A MuraliRespondent in W.A.No.4317 of 2019

COMMON PRAYER: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 27.09.2018 made in W.P.Nos.7837 & 7836 of 2013.



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WEB CO In both W.As.

For Appellants : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.J.Danel
Government Advocate

For Respondents : Mr.Ravi Anantha Padmanaban
Senior Counsel Assisted by
Mr.Ranjithrithen

JUDGMENT

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

These Intra-Court Appeals have been filed as being aggrieved against the order of the learned Single Judge, wherein, the learned Single Judge had set aside the order of punishment imposed on the respondent/ delinquent officer with a direction to reinstate them with all consequential benefits.

2. Heard Mr.P.Kumaresan, learned Additional Advocate General, assisted by Mr.J.Danel, learned Government Advocate appearing for the appellants and Mr.Ravi Anantha Padmanaban, learned Senior Counsel, assisted by Mr.Ranjithrithen, learned counsel appearing on behalf of the respondents.



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3. Mr.P.Kumaresan, learned Additional Advocate General would submit that the respondent in W.A.No.4317 of 2019 was charge sheeted for an offence under the Prevention of Corruption Act. The respondents in both the Appeals have also been proceeded with under the departmental proceedings for involving themselves in demanding bribe. He would submit that in an enquiry conducted against them, the enquiry officer after recording evidences of various witnesses had given a finding that the charges framed against the respondents have been conclusively proved. He would submit that based upon the said findings of the enquiry officer, orders have been passed by the Disciplinary Authority by imposing a punishment of removal of service. He would submit that the after the order of dismissal passed by the Disciplinary Authority, the criminal proceedings that was pending against the respondent in W.A.No.4371 of 2019 came to be decided, in which the trial Court had acquitted him. He would submit that the learned Single Judge had erred in wholly relying upon the order of acquittal to come to a conclusion that what was available before the criminal Court was the same material that was available in the disciplinary proceedings and



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therefore, the findings of the enquiry officer could not be sustained and consequently, the order of punishment could also not be sustained.

Accordingly, the learned Additional Advocate General would submit that the learned Single Judge ought to have considered the findings in the criminal case cannot be taken into consideration in dealing with the disciplinary proceedings. He would submit that the disciplinary proceedings, it is enough that disciplinary authority comes to an conclusion that about the preponderance of probability of involvement of the delinquent officers in the charges levelled against him. This aspect has been completely over-looked by the learned Single Judge and therefore, he would seek interference of the order passed by the learned Single Judge and restore the order of punishment imposed on the respondents. In support of his contention, the learned Additional Advocate General would rely upon the judgments rendered in ***B.Jayaraj Vs State of Andhra Pradesh*** reported in **2014 (3) SCC 55**, ***State of Karnataka and another Vs Umesh*** reported in **2022 (6) SCC 563** and ***Civil Appeal No.5930 of 2022*** in ***The State of Rajasthan & Ors Vs Phool Singh***.



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4. Countering his arguments, Mr.Ravi Anantha Padmanaban, learned Senior Counsel appearing on behalf of the respondent would submit that the witnesses who had been examined before the enquiry officer are also the witnesses who were examined during the criminal trial. Even before the enquiry officer, the witnesses who supposedly witnessed about the payment of bribe had deposed contrary to the case of the department. He would take us through the deposition of various independent witnesses to contend that the said witnesses had not supported the case of the department. He would further submit that in spite of them not supporting the case of the department, such witnesses were not treated hostile witnesses. The learned Senior Counsel appearing for the respondents would submit that dehors the findings given by the Criminal Court, a cogent reading of the report of enquiry officer itself will prove that none of the witnesses who had allegedly spoken about the receipt of the bribe by the respondents had deposed that no such incident had taken place. He would submit that in fact, the de-facto complainant upon whose complaint the criminal case was lodged against the respondent in W.A.N0.4317 of 2019 has specifically deposed that it was due



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to a vengeance against the said person they wanted to give a complaint before the Vigilance & Anti Corruption which would cause harassment to the said person and that when they had approached the V& AC officials, they had taken signatures in blank papers. The statement of the de-facto complainant is also corroborated by another witness who is the alleged witness of trap, who had also deposed that signatures were obtained in blank papers. Therefore, the learned Senior Counsel would submit that in the light of the deposition of witnesses not supporting the case of the department, the findings that have been arrived at by the enquiry officer upholding that the charges had been proved would suffer from perversity. Based upon the said findings, the disciplinary authority without even considering the case of the respondents had imposed the punishment of removal from service. He would submit that the disciplinary authority had held that the statements of the witnesses who deposed during the oral enquiry are only an after thought on the possibility of threat by the delinquent. The disciplinary authority had placed reliance upon the official witnesses to hold that he accepts the findings of the enquiry officer. He would submit that there was no error committed by the learned Single Judge in setting aside the order of



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punishment, even if the findings of the learned Single Judge on the judgment of the criminal Court is eschewed. Hence, he would request this Court not to interfere with the orders passed by the learned Single Judge and prays dismissal of these Intra-Court Appeals.

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

6. The charges that had been levelled against the respondents are that they have taken bribe from one Raji who had filed a complaint before the Vigilance and Anti Corruption. Even though under the charge memo, both the respondents have been charged of receiving bribe. Only the respondent in W.A.No.4317 of 2019 was charge sheeted. It is the case of the appellants that the respondent in W.A.No.4316 of 2019 had not directly taken the bribe but on his behalf, the respondent in W.A.No.4317 of 2019 had taken the bribe and therefore, a criminal case had been initiated only against him. We are not inclined to accept this submission for the simple reason that, if it is



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the case as pleaded by the appellants then the respondent in W.A.No.4316 of 2019 could also be roped in the criminal case by making a charge under Section 120 (b) of I.P.C. That is not the case here.

7. Much argument had been made by the learned Additional Advocate General as to the reliance placed upon by the learned Single Judge on the criminal Court judgment acquitting the respondent in W.A.No.4317 of 2019 as bad. In that context, we propose to examine the proceedings initiated by the disciplinary authority without reference to the order of acquittal passed by the criminal Court. An Enquiry Officer had been appointed to enquire into the alleged charges. The Enquiry Officer had examined various witnesses, of which, complainant of the criminal case was the first witness and a witness to the trap was also examined as P.W.5 and P.W.6.

8. From a reading of the deposition of the said witnesses as recorded by the enquiry officer would draw us to the conclusion that both the complainant and the witnesses had only signed in blank papers on the



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instructions of the Vigilance Officers. The enquiry officer after extracting the evidences made by the said witnesses had given a detailed report by concluding that the said witnesses have not spoken the truth and that on all probabilities based upon the evidences of the Vigilance Officers concerned have come to the conclusion that the charges have been proved.

9. In this Context, we are of the considered view that the findings of the Enquiry Officer is wholly perverse for the simple reason that the witnesses who are the complainants and the witnesses to the trap had not stated any such incident before the enquiry officer.

10. A reading of the orders impugned in the Writ Petition namely the orders of removal would also suggest that the disciplinary authority was aware of the fact that the witnesses had not spoken about any incident as alleged in the charge memos. For better appreciation, the relevant paragraph from the order of punishment is extracted hereunder:-

“4. Now a days the public are very alert that they will never sign in a blank paper as contended by the delinquent. The statements of the witness deposed during



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the oral enquiry are only afterthought. There are possibilities of threatention against the complainant by the above said delinquent. More over the statements of V&AC Inspector Tr.Manikandan and Tr.Velansubramani clearly establishes the delinquencies committed by the delinquent.

....

6. Moreover the following Rs.500/- notes were seized form the delingquent.

1)5EE631129

2)4CT62.901

tallied with the notes given by the V&AC Inspector to the PW1 to give the delinquent as bribe and the same was established by the statements of the Inspector Tr.Manikandan which will prove the delinquency committed by the delinquent beyond any doubt. Hence I agree with the findings of the Enquiry Officer and awarded the punishment of "Removed from service".

11. Further, while imposing the order of punishment, the disciplinary authority had solely relied upon the statement of the Inspector Manigandan who had been examined as P.W.8 to impose the said punishment.

12. As held supra, the witnesses who allegedly have been said to



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witness the payment of bribe to the delinquent officers had spoken differently as if no such incident namely demand of bribe and payment of bribe had taken place. The P.W.8, the Inspector of Police attached to the V& AC Department who was also the Trap Laying Officer and his evidence had not been corroborated by the independent witnesses. Hence, the reasons placed upon by the disciplinary authority solely on the evidence of the witness No.8 in imposing the punishment is wholly improper and therefore, had been rightly interfered with by the learned Single Judge. However, on different reasons.

13. In such view of the matter, for the reasons recorded by us supra, we do not see any reasons to interfere with the orders impugned in these Intra-Court Appeals.

14. In fine, these Intra-Court Appeals are dismissed. As a sequel, the appellants are directed to comply with the order passed by the learned Single Judge within a period of eight (8) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently,



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connected miscellaneous petition is closed.

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(R.S.K.,J.) (K.B., J.)
23.01.2024

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

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