



W.A.(MD)No.394 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.08.2024

PRONOUNCED ON : 06.09.2024

CORAM

**THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.A.(MD)No.394 of 2021
and
C.M.P.(MD)No.1435 of 2021**

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai- 1.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Deputy Commissioner of Police,
Law and Order, Madurai City.

4.The Inspector of Police,
Thilakarathedal Police Station,
Madurai.

... Appellants

vs

M.Pandi

...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 11.11.2019 passed in W.P(MD)No.16445 of 2018.

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For Appellants : Mr.N.Ramesh Arumugam
Government Advocate
For Respondent : Mr.V.Meenakshi Sundaram

JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

This Writ Appeal had been filed by the respondents in W.P.(MD)No. 16445 of 2018 aggrieved by the order dated 11.11.2019, by which order, the learned Single Judge had allowed the Writ Petition filed by the respondent herein.

2.The respondent herein, M.Pandi, had filed the Writ Petition in the nature of a Certiorarified Mandamus seeking records relating to the impugned order passed by the first appellant in proceedings dated 08.02.2018 confirming the order of the second appellant dated 03.05.2017, modifying the order of the third appellant dated 28.01.2017 and to quash the same and to direct the appellants to reinstate the respondent with continuity of service and back wages and all other attendant benefits. The learned Single Judge had allowed the Writ Petition.



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3. In order to facilitate easier flow of narration, the parties would be referred in the same nomenclature as in the Writ Petition. This would indicate that the appellants would be referred as respondents and the respondent would be referred as Writ Petitioner.

4. The Writ Petitioner was working as Constable in Law and Order in Thilakarthal Police Station, Madurai City. A complaint was given by one Hyder Ali on 05.02.2009, alleging that the Writ Petitioner had assaulted him in Central Vegetable Market, Madurai and extorted a sum of Rs.4,500/-. A case was registered on the said complaint. The Writ Petitioner was arrested and remanded to judicial custody by the learned Judicial Magistrate No.II, Madurai. He was then released on bail. He was then placed under suspension and a charge memo dated 13.11.2009 was issued. The Writ Petitioner had submitted his explanation. However, a domestic enquiry was directed. The Enquiry Officer by report dated 30.06.2010 held that the charges against the Writ Petitioner were proved.



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5. Thereafter, the criminal case which was parallelly pending in S.C.No.47 of 2010 came to its lawful conclusion and by judgment dated 09.09.2016, the learned Chief Judicial Magistrate, Madurai, acquitted the Writ Petitioner holding that the charges had not been proved beyond reasonable doubt. Thereafter, the third respondent in the Writ Petition, the Deputy Commissioner of Police, Law and Order Madurai City, issued a second show cause notice to the Writ Petitioner. The Writ Petitioner submitted his explanation. By order dated 28.01.2017, the third respondent, Deputy Commissioner of Police, Law and Order Madurai City, passed an order dismissing the Writ Petitioner from service. The Writ Petitioner then filed an appeal which came up for consideration before the second respondent in the Writ Petition, the Commissioner of Police, Madurai City, Madurai, who by an order dated 03.05.2017, modified the punishment of dismissal from service into compulsory retirement. The Writ Petitioner then filed a review before the first respondent in the Writ Petition, the Director General of Police, Chennai, who, by order dated 08.02.2018, rejected the review petition. It was under those circumstances, the Writ Petition came to be filed.



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6.The learned Single Judge had taken into consideration the fact that in S.C.No.47 of 2010, the learned Chief Judicial Magistrate, Madurai, had acquitted the Writ Petitioner of all charges by judgment dated 09.09.2016. It had been stated in the order that though this particular judgment had been furnished by the Writ Petitioner in his explanation, the third respondent, the Deputy Commissioner of Police, Law and Order, Madurai City, had not even considered the said judgment and had not given any reasons for not considering the said judgment and had passed an order dismissing the Writ Petitioner from service. It was also found by the learned Single Judge that the second respondent in the Writ Petition, the Commissioner of Police, Madurai city, had erroneously modified the punishment as compulsory retirement, even though he had come to a conclusion that the evidence of the de-facto complainant is contradictory and is doubtful. It was under those circumstances, that the learned Single Judge had set aside the punishment imposed as against the Writ Petitioner and had allowed the Writ Petition, in effect, reinstating the Writ Petitioner into service with continuity of service and back wages and all other attendant benefits. Questioning that particular order of the learned Single Judge, the respondents in the Writ Petition had filed the present Writ Appeal.



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7.Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the appellants submitted that in the domestic enquiry, it had been held that the charges against the Writ Petitioner had been proved. It was insisted that the scales under which the evidence is analysed and is different in a domestic enquiry and in a criminal trial. It was pointed by the learned Government Advocate that preponderance of probabilities are sufficient to hold that the charges are proved in a domestic enquiry. It had also been pointed out that the order of acquittal in the criminal case had been passed in favour of the Writ Petitioner only because it had been held that the prosecution had not proved the charges. It was argued that the nature of charges as examined during the domestic enquiry were quite serious and therefore, the learned Government Advocate insisted that the appeal should be allowed.

8.Mr.N.Meenakshi Sundaram, learned Counsel for the respondent/Writ Petitioner pointed out the facts as narrated above, and stated that the respondents in the Writ Petition should have taken into consideration the judgment in S.C.No.47 of 2010 dated 09.09.2016, passed by the learned Chief Judicial Magistrate, Madurai, whereby, the Writ



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Petitioner had been acquitted of all charges. In fact, it had been held by the learned Chief Judicial Magistrate that the charges had not been proved beyond reasonable doubt. It is the contention of the learned Counsel for the respondent that this particular judgment was not taken into consideration while passing the order of punishment in the first instance dismissing the Writ Petitioner from service and while modifying the said punishment into compulsory retirement. It was contended that the the order of the learned Single Judge had been passed only after taking into consideration all the above factors.

9.We have carefully considered arguments advanced.

10.The facts are not in dispute. The Writ Petitioner was working as Constable in Law and Order, Thilakarthidal Police Station at Madurai. A complaint was given by one Hyder Ali on 05.02.2009 that the Writ Petitioner had assaulted him in Central Vegetable Market, Madurai, and had extorted a sum of Rs.4,500/-. In relation to this, a FIR had been registered and the Writ Petitioner was arrested and later released on bail.



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11. There were two separate proceedings initiated against the Writ Petitioner. The first was the domestic enquiry and the second was the trial in the criminal case. In the domestic enquiry, the Enquiry Officer filed a report on 30.06.2010 holding that the charges levelled against the Writ Petitioner were proved. The Writ Petitioner then filed W.P.(MD)No.11178 of 2010 seeking restraint from passing further orders and to await the result of the criminal trial. That Writ Petition was allowed. Thereafter, the trial in S.C.No.47 of 2010 proceeded and by judgment dated 09.09.2016, the Writ Petitioner was acquitted of all charges by the learned Chief Judicial Magistrate, Madurai. This judgment was brought to the notice of the respondents in the Writ Petition by way of explanation to the second show cause notice issued to the Writ Petitioner. It is the grievance of the Writ Petitioner that this particular judgment was not at all considered while imposing punishment as against the Writ Petitioner.

12. It is trite in law to point out that the nature of proof required in domestic enquiry is different from the nature of proof required in a criminal trial.



13.The Hon'ble Supreme Court in **(1999) 3 SCC 679** in the case of

M.Paul Anthony vs Bharath Gold Mines Limited and another, had held as

follows:

“13.As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

14.In a domestic enquiry, the evidence will have to be weighed on the basis of preponderance of probabilities. There need not be strict proof of the charges levelled. On the other hand, in a criminal trial, the charges will



have to be proved beyond reasonable doubt.

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15.The Writ Petitioner was initially inflicted with the punishment of dismissal from service. Later, on appeal, the second respondent in the Writ Petition, Commissioner of Police, Madurai City, had modified the same into compulsory retirement.

16.The Hon'ble Supreme Court in **(1996) 4 SCC 504** in the case of ***Allahabad Bank Officers' Association and another vs Allahabad Bank and others***, had held as follows:

“17.The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the



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government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it.”

17.The Hon'ble Supreme Court in **(2001) 3 SCC 314**, in the case of

State of Gujarat vs Umedbhai M.Patel, had held as follows:

“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.



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(viii) Compulsory retirement shall not be imposed as a punitive measure.”

18.A careful analysis shows that the Writ Petitioner has been inflicted with the punishment of compulsory retirement. As held in the aforementioned judgments, it is not a stigma, but it is only a weeding out dead wood. The nature of proof required in a criminal trial is different from the nature of proof required in departmental proceedings. The first respondent/Director General of Police had observed as follows while rejecting the review filed by the Writ Petitioner:

“6.....Further, it is seen that the criminal case ended in acquittal only on benefit of doubt. Non examination of certain witnesses will not vitiate the entire disciplinary proceedings. His contention to drop action in the PR is not acceptable, as there is no need to drop action in the Departmental Proceeding even when the criminal case ended in acquittal. Because, a criminal court requires high standard of proof for conviction while such proof is not necessary for finding a person guilty in a Disciplinary Enquiry. In a Disciplinary Proceedings, it is preponderance of probabilities which matters to fix the delinquent's guilt. I find no merit in his claim. The Appellate Authority has already taken a lenient view and modified the punishment which is not excessive. I therefore decline to interfere with the punishment and reject his petition.”



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19.It is thus seen that that the authority had considered the judgment of acquittal passed in the criminal case and only thereafter, had confirmed the decision to compulsorily retire the Writ Petitioner from service. Since all factors had been taken into consideration and also every personnel in the police force has to maintain utmost dignity and should ensure that charges are not levelled against him/her, particularly charges of extortion of money from the general public, we are of the considered opinion that the punishment of compulsory retirement thus indeed serves the ends of justice. We therefore, allow the Writ Appeal and set aside the order of the learned Single Judge. The order of compulsory retirement is maintained by us. No order as to costs.

[C.V.K., J] & [J.S.N.P., J]
06.09.2024

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NCC :Yes/No

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AND

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