



W.P.(MD).No.20806 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED : 26.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.20806 of 2022
and W.M.P(MD)Nos.15095 of 2022 & 21357 of 2023

S.Jahir Hussain

... Petitioner

Vs

1. The Director General of Police,
Tamilnadu, Chennai.
2. The Deputy Inspector General of Police,
Trichy Range, Trichy District.
3. The Superintendent of Police,
Pudukkottai District, Pudukkottai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to proceedings in (i) Rc.No.2008030/A.P.IV(1)/2022, dated 06.05.2022 on the file of the 1st Respondent (ii) Na.Ka.No.B2/M.M.13/2021, dated 09.12.2021 on the file of the 2nd Respondent and (iii) K1/13696/2020 in PR No.34/2020, dated 18.08.2021 on the file of the 3rd Respondent and set aside the same as being arbitrary and illegal and consequently direct the respondent to reinstate the petitioner with back wages.



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For Petitioner : Mr.VR.Shanmuganathan
for Mr.C. Jeganathan

For Respondents : Mr.R.Ragavendran
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned orders in (i) Rc.No.2008030/A.P.IV(1)/2022, dated 06.05.2022 on the file of the 1st Respondent (ii) Na.Ka.No.B2/M.M.13/2021, dated 09.12.2021 on the file of the 2nd Respondent and (iii) K1/13696/2020 in PR No.34/2020, dated 18.08.2021 on the file of the 3rd Respondent and consequently direct the respondents to reinstate the petitioner with back wages.

2.(i).The petitioner was appointed as a Grade -II Police Constable in Tamil Nadu Special Police 3 Battalion at Veerapuram, Chennai in the year 2008. On 02.04.2018, he was promoted as Grade 1 Police Constable and thereafter, he was transferred to Pudukottai Town Police Station and he was serving there during the year 2020. The Petitioner had married one Parveen, daughter of Abbas of Pudukottai on 09.01.2011. The couple are blessed with a daughter and a son. On 05.06.2020, there was a quarrel between the petitioner and his father-in-law, as a result of which, the petitioner preferred a complaint



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to Ganesh Nagar Police Station Pudukottai. As a counter blast the said complaint, the petitioner's father-in-law through his wife Parveen preferred another complaint with false averments to the very same Ganesh Nagar Police Station Pudukottai in Cr.No. 579 of 2020. Again on 08.06.2020, another case was registered against the petitioner for the offenses under Sections 294(b), 353, 323, 427, 506(1) of IPC in Vallathrakkottai in Crime No.124 of 2020 at the instance of Sub Inspector of Police namely Mr.Balasubramanian of Vallathrakkottai police station.

(ii).Both the incidents happened, while the petitioner was on medical leave in the month of June, 2020. The petitioner was arrested by the Ganesh Nagar Police for the Cr.No. 579 of 2020 and was remanded to judicial custody. After that, he was released on bail on 15.08.2020 by the learned Judicial Magistrate, Pudukottai with conditions. While the petitioner was in judicial custody, an order of suspension from service dated 11.06.2020 was served on him. While so, the 3rd respondent visited the petitioner with a charge memo, dated 13.08.2020 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as 'the Rules, 1955') calling the petitioner for submitting his written objections within 15 days, from the date of receipt of the said charge memo. The petitioner



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submitted his explanation contending that the content of charge memo issued against him and the FIRs registered against him were one and the same. For that reason, he requested to keep the departmental inquiry in abeyance till the conclusion of the criminal proceedings.

(iii).Without heeding to his request to keep the departmental proceedings in abeyance, the Deputy Superintendent of Police, District Crime Branch, Pudukottai was appointed as the Enquiry Officer and the petitioner was informed by the Enquiry Officer to appear before him on 23.09.2020. The petitioner appeared before the Enquiry Officer and sought for 7 days time for further proceedings and he was permitted to take photocopies of certain documents referred in Annexure 3 of the said charge memo, except document Nos.3, 12, 13,14 and 16. A preliminary report, dated 04.08.2020 was submitted by the said Enquiry Officer. However, the petitioner was not examined by the said Enquiry Officer in the alleged preliminary enquiry.

(iv).Subsequently, the petitioner was served with another summons, dated 22.10.2020 directing him to appear before the Enquiry Officer on 24.10.2020. The Sub-Inspector of Police, Vallathrakkottai Police Station namely Mr. Balasubramanian and Constable Mr. Sundarraaj were examined on the side of the Department and the enquiry was adjourned to 27.10.2020. On



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27.10.2020, the petitioner's wife namely Parveen and his father-in-law namely Abbas appeared and they were also made to sign typed statements and enquiry was adjourned to 02.11.2020. One Rajkumar was examined on the side of the Department on 02.11.2020 and the matter was adjourned to 11-11-2020. On that day, one Manigandan was examined on the side of the Department and the said person was cross examined by the Enquiry Officer himself and the enquiry was adjourned to 09.12.2020.

(v).After examination of witnesses by the Department, the petitioner submitted a petition for examination of witnesses and also for production of documents as Defense side witness and documents. Following which, on 15.02.2021, the required witnesses were present before the Enquiry Officer. The Enquiry Officer examined those witnesses. The petitioner also produced documents including the location of his cell phone, dated 10.01.2021.

(vi).Thereafter, on 21.04.2021, the Enquiry Minutes in P.R.No. 34/2020 came to be submitted by the Enquiry Officer, where it was concluded that the charges were proved against the petitioner. Further, requiring the petitioner's explanation within 15 days in writing. The petitioner submitted his representation dated 12.07.2021 to the third respondent requesting to discharge him from the alleged charges. But the third respondent rejected the petitioner's



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representation and imposed punishment upon him by his proceedings, dated 18.08.2021, imposing a punishment of postponement of his next increment for 3 years, which shall not operate to postpone his future increments. The petitioner preferred an appeal, dated 22.09.2021 before the second respondent to set aside the said impugned order of punishment, dated 18.08.2021 of the third respondent through proper channel.

(vii).Pursuant to his appeal before the second respondent, he was further served with a show cause notice, dated 28.10.2021 by the second respondent, wherein, the second respondent observed that he found the punishment imposed would not commensurate with the gravity of the delinquency committed by the petitioner and thereby, sought for explanation within 7 days from the date of receipt of the said notice. The petitioner submitted his explanation to the second respondent on 23.11.2021 through proper channel. However, the second respondent, without considering the petitioner's explanation, enhanced the punishment ordering removal from service by his proceedings, dated 09.12.2021.

(viii).Aggrieved by the order of the second respondent, the petitioner submitted a mercy petition before the first respondent to set aside the impugned orders of the second and third respondents. But the first respondent



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rejected the petitioner's mercy petition by his proceedings, dated 06.05.2022 by a non-speaking cryptic order. Challenging the aforesaid orders passed by the respondents No. 1, 2 and 3, this writ petition came to be filed by the petitioner.

3(i).The learned counsel for the petitioner submitted that the first respondent rejected the petitioner's mercy petition without following the procedure mentioned under Rule 15(A)(3) of the Rules, 1955. He further submitted that the first respondent ought to have given valid reasons as contemplated under Rule 15(A) of the Rules, 1955.

(ii).The learned counsel for the petitioner submitted that the first respondent failed to take into consideration that the base for the charge as against the petitioner are the two criminal cases, which ended up in acquittal and without giving an opportunity to produce documents mentioned in the mercy petition, the first respondent had outrightly rejected the mercy petition. The petitioner preferred an appeal before the second respondent, filed his appeal dated 22.09.2021. However, even before the disposal of the said appeal, dated 22.09.2021, invoking the powers under Rule 15(A)(1) of the Rules, 1955, the second respondent has issued a showcase notice, dated 28.10.2021, requiring explanation as to why, the punishment inflicted on the petitioner



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should not be enhanced. The learned counsel for the petitioner submitted that the power under Rule 15(A) ought not to have been invoked unless and until, the appeal, dated 22.09.2021 has been disposed of. Hence, the order of enhancing the punishment imposed on the petitioner, by invoking Rule 15(A) (1) of the aforesaid Rule is without jurisdiction. That apart, the order passed by both the second and first respondents were cryptic and non-speaking orders, which failed to elaborate the reason for inflicting an enhanced punishment on the petitioner than that which was imposed by the third respondent. On such counts, he pressed for allowing the writ petition by quashing the impugned orders.

4.Per contra, the third respondent has filed a counter affidavit and the learned Government Advocate submitted that the first respondent duly followed the procedures, which are all enumerated and mandated by law in the Rules, 1955, while deciding the mercy petition filed by the petitioner/delinquent. He further submitted that Rule 15(A) of the Rules, 1955, provides powers to the first respondent as a Head of the Department to call for any record of any inquiry and review any order at any time either on his own motion or otherwise. That apart, the criminal cases though ended in acquittal,



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does not fully absolve the petitioner from the departmental disciplinary action. No strict proof is required in departmental disciplinary proceedings, as far as the allegation of the petitioner that the first respondent did not grant an opportunity to produce records to him in the mercy petition is concerned. The first respondent carefully went through the petition and other connected records and the explanation submitted by the delinquent and only thereafter, decided that no merit warrants for the intervention to the punishment and declined to interfere with the punishment and rejected the petitioner's mercy petition. The second respondent duly followed the Rules, 1955 and also issued a show cause notice to the petitioner, seeking explanation, as to why, the punishment imposed on him should not be enhanced. And only after the critical consideration of the explanation submitted by the delinquent, modified the punishment vide proceedings, dated 09.12.2001. In view of the same, he submitted that there is no infirmity in the departmental proceedings and pressed for dismissal of the writ petition.

5. Heard, the learned counsel for the petitioner, the learned Government Advocate for the respondents and carefully perused the materials available on record.



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6.In the instant case in hand, a departmental proceeding has been initiated as against the petitioner, who is a Grade 1 Police Constable, for the registration of two simultaneous criminal cases as against him in Cr.No. 579 of 2020 on the file of Ganesh Nagar police Station, at the instance of the complaint lodged by the petitioner's wife and in Cr.No.124 of 2020 on the file of Vallathrakkottai Police Station, which was registered at the instance of the Sub Inspector of Police of Vallathrakkottai Police Station, namely Mr.Balasubramanian. Both the cases registered as against the petitioner culminated in Calendar Cases bearing C.C.No.23 of 2020 and C.C.No.54 of 2020, on the file of the learned Judicial Magistrate No.1, Pudukottai. However in both the criminal cases, the petitioner was acquitted on 15.03.2021 and 15.07.2022 respectively.

7.Pursuant to the registration of the aforesaid criminal cases, the petitioner was suspended on 11.06.2020, following which, he was visited with a charge memo on 13.08.2020 by the third respondent. The petitioner was also arrested and remanded to judicial custody in Cr.No.579 of 2020 and thereafter, he was enlarged on bail on 15.08.2020 by the learned Judicial Magistrate, No.I, Pudukottai with conditions.



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8.The petitioner was visited with a charge memo issued by the third respondent on 13.08.2020, for which, he submitted his explanation on 29.08.2020. The Deputy Superintendent of Police, District Crime Branch, Pudukottai was appointed as the enquiry officer in the disciplinary proceedings and after issuing summons to the petitioner an elaborate enquiry was conducted and finally the enquiry officer concluded by Enquiry Minutes, dated 21.04.2021 that the charges against the petitioner stands proved. The Enquiry Officer proceeded to conclude that the charges stood proved despite the acquittal of petitioner in C.C.No.23 of 2020 on 15.03.2021, by the learned Judicial Magistrate No.I, Pudukottai. The petitioner further submitted his elaborate explanation requesting to discharge him from the alleged charges by representation, dated 12.07.2021. However, rejecting his explanation, the punishment of postponement of his next increment for 3 years, which shall not operate to postpone his future increments, came to be passed by the third respondent vide proceedings, dated 18.08.2021. Challenging the same, an appeal was preferred by the petitioner in time before the second respondent vide appeal, dated 22.09.2021.



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9. Pursuant to the appeal, a show cause notice came to be issued by the second respondent by invoking the powers vested in Rule 15(A)(1) of the Rules, 1955 on 28.10.2021. The second respondent required the petitioner to submit his explanation within a period of seven days, as to why, the punishment inflicted on him should not be enhanced. For better appreciation of the fulcrum of the issue in hand Rule 15(A) of the Rules, 1955 is hereby extracted as follows:

“15.(A).(1) Notwithstanding anything contained in these rules:

(i) the State Government or

(ii) the Head of the Department directly under the State Government, in the case of Government Servant serving in a department under the control of such Head of Department; or

(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be reviewed; or

(iv) any other authority specified in this behalf of the State Government by general or special order, and within such time as may be prescribed in such general or special order may at any time, either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may



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- (a) confirm, modify or set aside the order; or*
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; of*
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or*
- (d) pass such other orders as it may deem fit.*
- (2)No proceeding for review shall be commenced until after:*
- (i) where no appeal has been preferred before the disposal of such appeal or*
- (ii) where an appeal has been preferred before the disposal of such appeal.*
- (iii) An application for review shall be dealt with in the same manner as if it were an appeal under these rules”*

10.The *proviso* to the Rule 15(A) clearly provides that before disposal of an appeal, no power to invoke Rule 15(A) shall be exercised. However, the second respondent before disposing of the petitioner's appeal, dated 22.09.2021 has invoked the power under Rule 15(A) of the Rules, 1955. When the *proviso* to Rule 15(A) mandates it necessary that the power under Rule 15(A) shall not be exercised by the Head of the Department until an



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appeal preferred if any is disposed of finally. Hence, I have no hesitation to hold that the exercise of the power under Rule 15(A) by the appellate authority, ie., the second respondent, before disposing of the appeal preferred by the petitioner is without jurisdiction. It is needless to state that the order passed by the first respondent in the mercy petition preferred by the petitioner, dated 11.01.2022 also came to be rejected by the first respondent vide proceedings, dated 06.05.2022 without following the procedure contemplated under Rule 15(A) of the Rules, 1955. When the *proviso* to Rule 15(A) provides that an application for review shall be dealt with in the same manner as if it were an appeal under these rules, the first respondent failed to follow the procedure mandated by the Rules.

11.Be that as it may, it is significant to observe at this point that neither the Enquiry Officer nor the third, second and the first respondent duly considered that the petitioner was acquitted in both the criminal cases. Having examined 8 prosecution witnesses and marked 12 prosecution side documents, the learned Judicial Magistrate No.I, Pudukottai giving the benefit of doubts, acquitted the petitioner in C.C.No.23 of 2020, dated 15.03.2021 and the the learned Judicial Magistrate No.I, Pudukottai also acquitted the petitioner in



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C.C.No.54 of 2020, vide Judgment, dated 15.07.2022. The learned Judicial Magistrate No.I, Pudukottai acquitted the petitioner for the reason that the prosecution failed to prove the prosecution case beyond reasonable doubt.

12.The Hon'ble Supreme Court in the case of ***G.M.Tank Vs State of Gujarat and another*** reported in ***2006(4) Supreme 740*** has dealt with a similar case and the relevant portion which is applicable to the facts and circumstances of this case is extracted as follows:

“29.The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery



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of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

30. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in [Paul Anthony's](#) case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”



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13.After reading both the Judgments in C.C.Nos.23 and 54 of 2020 on the file of the learned Judicial Magistrate No.I, Pudukottai, I am of the considered opinion that the acquittal in both the criminal proceedings were made after full and complete consideration of the prosecution evidence. The prosecution miserably failed to prove the charges beyond any reasonable doubt. The findings of the learned Judicial Magistrate in both the criminal cases clearly indicate that the charges against the petitioner were not proved. Precisely, the charges stood disproved by the prosecution in both the cases. Reiterating that a fact is said to be not proved, when it is neither proved nor disproved, I further add in the teeth of the findings of the learned Judicial Magistrate No.I, Pudukottai, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar, but identical and the evidence, witnesses and circumstances were all the same. Therefore, precisely observing that allowing the impugned orders to stand would be unjust, unfair and oppressive, I hereby quash the impugned order passed by the second respondent in Na.Ka.No.B2/M.M.13/2021, dated 09.12.2021 and the impugned order passed by the first respondent in Rc.No. 2008030/A.P.IV(1)/2022, dated 06.05.2022. Consequently the matter is



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remitted back to the second respondent to consider the petitioner's appeal afresh and pass appropriate orders in the line of the observations made supra.

14. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No

Index : Yes / No

Internet : Yes

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To

1. The Director General of Police,
Tamilnadu, Chennai.
2. The Deputy Inspector General of Police,
Trichy Range, Trichy District.
3. The Superintendent of Police,
Pudukkottai District, Pudukkottai.



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ORDER IN
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