



WP(MD)No.18856 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.18856 of 2018
and
WMP(MD)No.16701 of 2018

B.Nagarajan

.. Petitioner

v.

1.The Managing Director,
TASMAC,
4th Floor, CMDA Tower – 2,
Egmore, Chennai – 8.

2.The Senior Regional Manager,
TASMAC,
Trichy.

3.The District Manager,
TASMAC,
Thanjavur.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Se.Mu.Na.Ka.No.R1/4507/2017 dated



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20.04.2018, quash the same and consequently, directing the respondent to
reinstate the petitioner in service.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.H.Arumugam
Standing Counsel

ORDER

The petitioner is a Salesman of a TASMACH shop. He was issued with a charge memo, enquiry was conducted and he was terminated from service that the charges have been proved. The order of the disciplinary authority / District Manager, dated 30.06.2017 was challenged by the petitioner before the appellate authority / Senior Regional Manager and the same was dismissed on 31.10.2017. As against the same, the petitioner has preferred a revision before the first respondent / Managing Director and the same was rejected by order dated 20.04.2018. Aggrieved over the same, the petitioner has filed this instant writ petition.

2.Learned Counsel for the petitioner submitted that the disciplinary proceedings was initiated, based on a criminal case registered as against



the petitioner in Crime No.23 of 2012 by the Ammapettai Police Station.

According to him, the criminal case was tried in CC.No.97 of 2012, before the District Munsif cum Judicial Magistrate Court, Papanasam and the same was ended in acquittal on 11.12.2014. The prosecution has failed to prove any material as against this petitioner and therefore, the trial Court has held that there is no material as against this petitioner and has acquitted the petitioner from the criminal case. On the very same set of charges, the Department has conducted enquiry and has imposed with the punishment of termination. Therefore, he prayed for reviewing the order of punishment.

3.He further submitted that persons, who are similarly placed as that of the petitioner, were reinstated into service, however, the petitioner alone has been discriminated and has been terminated.

4.Learned Standing Counsel appearing for the respondents / TASMAL submitted that the petitioner was acquitted in the criminal case, since all the witnesses have turned hostile. However, the shortage of liquor



bottles in the shop has been admitted by the in-charge personnel and they have also paid the amount to the TASMAL. He further submitted that the petitioner is only a contract labour and as such, there is no necessity to conduct an enquiry. However, they have conducted a proper inquiry by issuing a charge memo. Moreover, it is not the case of the petitioner that without furnishing him the copy of the charge memo or without providing him sufficient opportunity, the impugned order has been passed.

5.By referring to the decision of the Hon'ble Supreme Court in *State of Rajasthan and Others v. Heem Singh* [2021 (2) CTC 332], learned Standing Counsel submitted that the scope of the judicial review in disciplinary matters is very limited and that the acquittal in a criminal case is not a ground for reviewing the order of punishment imposed by the authority. Therefore, he prayed for dismissal.

6.This Court considered the rival submissions made on either side and perused the materials placed on record.



7.The observations made by the Hon'ble Supreme Court in **Heem Singh's** case (supra) regarding the scope of judicial review in disciplinary proceedings is extracted as under:-

“33. 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 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 recognized 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. 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 re-appreciate 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."

8.The scope of judicial review in matters relating to disciplinary proceedings is very limited. It is meant to ascertain as to whether due



process was followed and whether a fair opportunity was accorded to the employee concerned. The power of Courts is limited to reviewing the decision making process, rather than the merits of the decision itself. This is to ensure fairness in treatment and not the fairness of the conclusion. The Courts should not interfere with the findings of the fact arrived at in the departmental enquiry proceedings, except in cases of mala fide or perversity.

9.In the case on hand, the petitioner has not raised any such plea of lack of jurisdiction or mala fide or perversity. Therefore, on this ground, this Court is not inclined to entertain this writ petition.

10.With regard to the other ground raised by the petitioner that he has been acquitted from the criminal case, it is a settled position that acquittal in a criminal case, by itself, is not a ground to review the punishment imposed in a departmental proceeding, inasmuch the disciplinary enquiry is not governed by proof beyond reasonable doubt or by the rules of evidence which is governing the criminal trial.



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11. The Hon'ble Supreme Court in *Heem Singh's* case (supra) has discussed about the effect of an acquittal in a disciplinary proceedings as under:-

“34. 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 Association v. Union of India, this Court held:

“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.”

In Inspector General of Police v. S. Samuthiram, a two-Judge Bench of this Court held that unless the accused has an “honorable



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:

“Honourable acquittal:

24.The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . 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.

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25. In *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* [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor* [ILR (1934) 61 Cal 168] which is as follows:

“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 extrajudicial 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”.’”

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 a 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 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.””

12.Since both the grounds raised by the petitioner lack merits, this



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Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
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