

WP(MD)No.20576 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.20576 of 2018

D.Felix Suresh Peter

.. Petitioner

v.

1.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Home (Pol.IV) Department,
Fort St.George, Chennai – 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai.

3.The Additional Director General of Police,
Law and Order, Tamil Nadu,
Chennai – 600 004.

4.The Commissioner of Police,
Tirunelveli,
i/c The Deputy Inspector General of Police,
Tirunelveli.

5.Mahendran,
Enquiry Officer,
Additional Superintendent of Police,
Headquarters, Tirunelveli District,
Tirunelveli.

.. Respondents



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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 order passed by the first respondent in G.O(D)No.313, Home (Pol-IV) Department, dated 03.04.2018, G.O(D)No.780, Home (Pol-IV) Department, dated 23.06.2017; the order passed by the second respondent in R.C.No.162364/AP2(1)/2015 dated 16.12.2016; the order passed by the third respondent in R.Dis.No.168724/AP2(1)/2014 dated .03.2015; the order passed by the fourth respondent in P.R.No.33/2012, Tirunelveli District/C1/15123/2011-Tirunelveli Range, dated 27.05.2014; the enquiry report submitted by the fifth respondent in Punishment Roll No.33/2012 dated 21.11.2013, and quash the same.

For Petitioner : Mr.K.Jeyamohan

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader
for R.1 to R.4

No appearance for R.5



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ORDER

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The petitioner is an Inspector of Police. The fourth respondent / Commissioner of Police has issued a charge memo as against the petitioner in PR.No.33/2012 that he failed to investigate the case in Crime No.41 of 2011 on the file of Sendamaram Police Station properly. The case in Crime No.41 of 2011 was registered u/s.174 CrPC for 'woman missing'. The case was later altered into Section 302 IPC and the victim was found dead. The charge against the petitioner is that the petitioner / investigation officer, without proper investigation and without taking steps to find the real accused, arrested the father and a relative of the deceased, by obtaining a confession statement by intimidation. The Deputy Superintendent of Police, Puliyangudi, found the same and initiated the proceedings.

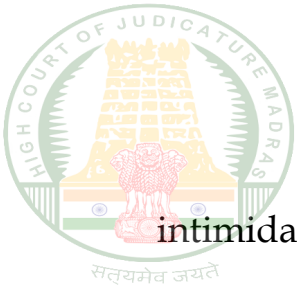
2.The fifth respondent / Enquiry Officer [Additional Superintendent of Police] gave a report dated 21.11.2013 that the charge was proved. The fourth respondent / disciplinary authority [Superintendent of Police] accepted the enquiry report and by order dated 27.05.2014, imposed a



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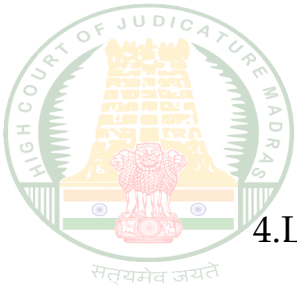
3.Learned Counsel appearing for the petitioner submitted that when the petitioner served as Inspector of Police, Kadayanallur, he held additional charge of the post of Inspector of Police, Sendamaram. The charge against the petitioner was that he has not properly investigated the case in Crime No.41 of 2011 on the file of the Sendamaram Police Station and without taking steps to find the real accused, he arrested the father and a relative of the deceased, by obtaining a confession statement by



intimidation. The petitioner's Counsel refuted this allegation and submitted

that the deceased had a love affair with one Ramesh @ Sudukkattu Ramesh.

The deceased's father, Vellapandy, warned both of them. However, she continued the relationship even after her marriage. Therefore, the deceased's father and the elder brother of the deceased murdered her. The deceased's father gave a voluntary confession statement before the VAO, Sendamaram and VAO, Veerasigamani Village. It is a case of honour killing and both the accused persons were arrested and remanded to judicial custody. All these facts have been noted in the Grave Crime Report as well. Being the supervisory officer, the Deputy Superintendent of Police, Puliyangudi, examined the same. While so, the very same Deputy Superintendent of Police, who earlier supervised the petitioner's investigation, took up further investigation on the orders of the Superintendent of Police, arrested Ramesh @ Sudukattu Ramesh, the deceased's lover and one Chelladurai. The Deputy Superintendent of Police, Puliyangudi, filed the charge sheet against these two accused, by letting off the accused arrested earlier by the petitioner.



4.Learned Counsel appearing for the petitioner pointed out Chelladurai, one of the accused in the murder case, died during the trial and the other accused, Ramesh @ Sudukattu Ramesh, was acquitted by the trial Court vide judgment dated 10.09.2015. Even before that, departmental proceedings was initiated against the petitioner that the two accused arrested by the petitioner were innocent and the other two persons arrested and charge sheeted by the Deputy Superintendent of Police were the real accused.

5.According to the learned Counsel, based on the materials collected by the investigation agency then, the petitioner has arrested the father and relative of the deceased, for which, he cannot be penalized. He has also pointed out that in the departmental proceedings, the fifth respondent served as both the Enquiry Officer as well as Presenting Officer. Therefore, he prayed for appropriate orders.

6.Learned Additional Government Pleader appearing for the respondents, reiterating the facts of the case, submitted that the trial Court



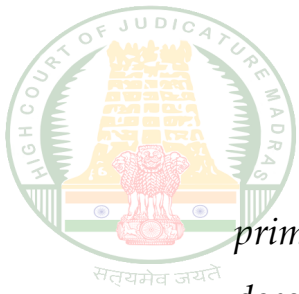
acquitted the accused by extending the benefit of doubt and not on merits.

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 Additional Government Pleader 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.

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

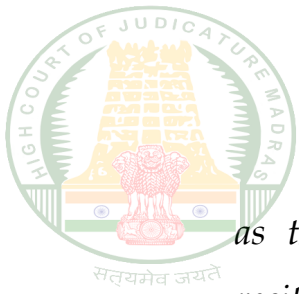
8.The observations made by the Hon'ble Supreme Court in *Heem Singh's* case (supra) regarding the scope of judicial review in disciplinary proceedings is extracted as under:-

“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



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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



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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."

9.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 proceedings, except in cases of mala fide or perversity.

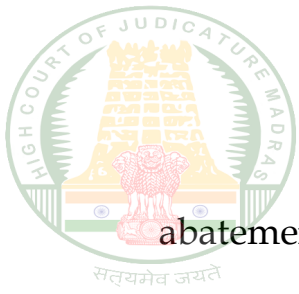


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10. In the case on hand, the petitioner has not raised any such plea of lack of jurisdiction or mala fide or perversity. However, the petitioner contended that the fifth respondent acted both as Disciplinary Authority as well as Presenting Officer in the enquiry proceedings. It appears that the fifth respondent was appointed as an Enquiry Officer and based on his report, the fourth respondent / Disciplinary Authority imposed the punishment. Therefore, on this ground, this Court is not inclined to entertain this writ petition.

11. With regard to the other ground raised by the petitioner that the criminal case ended in acquittal, it is by now well-settled in law that acquittal in a criminal case does not *ipso facto* operate as a bar for initiating or continuing departmental proceedings against a public servant. The standard of proof in a criminal trial is proof beyond reasonable doubt, whereas in a departmental enquiry, the requirement is only that of preponderance of probabilities. Therefore, the outcome of a criminal case, particularly an acquittal, cannot automatically result in the closure or



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abatement of disciplinary proceedings unless the findings in the criminal case conclusively negate the allegations forming the subject matter of the disciplinary action.

12. In the present case, the petitioner / delinquent officer, who was the Investigating Officer (IO) at the initial stage of the criminal case, had arrested and shown two persons as accused. Subsequently, upon change of investigation, the successor IO released those individuals and proceeded to file a charge sheet against two different persons. The trial eventually culminated in the acquittal of the latter. Even prior to the conclusion of the criminal trial, disciplinary proceedings had been initiated against the petitioner / first IO on the ground that the initial course of investigation reflected serious lapses, lack of due diligence, and a possible dereliction of duty.

13. The petitioner now seeks to rely upon the ultimate acquittal recorded in the criminal case as a ground to claim that the departmental enquiry cannot be pursued. This contention is misconceived. The charges in

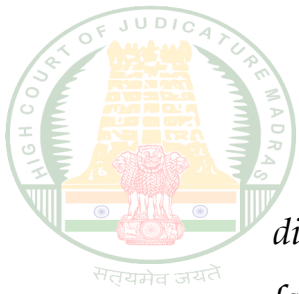


the departmental proceedings relate to the conduct of the officer during the period when he was in charge of investigation — specifically, the manner in which he exercised his authority under the Criminal Procedure Code in identifying and arresting the accused persons. These acts are independent of the later development wherein a different set of accused were prosecuted, and it cannot be whitewashed by the eventual acquittal.

14.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



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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.

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



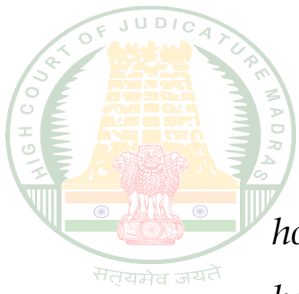
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decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, 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



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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."

15. In *Re Union of India v. Bihari Lal Sidhana* [(1997) 4 SCC 385], *Deputy Inspector General of Police v. S. Samuthiram* [(2013) 1 SCC 598], and in several other decisions, the Hon'ble Supreme Court has reiterated that departmental proceedings can go on irrespective of the outcome of the criminal case, especially where the charge is one of dereliction of duty, abuse of power, or failure to act in accordance with established procedure.

16. In the case at hand, the scope of the disciplinary proceedings is confined to whether the officer acted *bona fide*, applied his mind, and followed due process while exercising his powers. The departmental enquiry is therefore perfectly maintainable in law and cannot be stifled merely on the ground of acquittal in the subsequent criminal trial, which did not even pertain to the individuals initially arrested by the officer.



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17.It appears that in the departmental proceeding, the Department has examined seven witnesses, marked twelve documents and the petitioner / delinquent officer has marked seven documents. The accused arrested by the petitioner were examined as PW3 & PW5. The then VAO of Sendamaram [PW2], in the preliminary enquiry, gave a statement that he and the then VAO of Veerasigamani Village were forced to put their signature on the statements alleged to have been recorded from Vellapandy and Chelladurai. Though he turned hostile subsequently, the then VAO of Veerasigamani Village [PW4] has supported the department's version. PW3 in the preliminary enquiry has deposed that he was tortured by the delinquent officer and was made as an accused, however, he turned hostile during the oral enquiry. PW5, in the oral enquiry, has deposed that he was tortured and was falsely implicated as accused in Crime No.41 of 2011 on the file of the Sendamaram Police Station.

18.It appears that PW3, Vellapandy / father of the deceased had initially lodged a complaint before Puliyangudi Police Station about the



missing of his daughter. He was later arrested by the delinquent officer. It

also appears that the Deputy Superintendent of Police has issued certain

instructions to the delinquent officer as follows:-

- to enquire the antecedents of the accused;
- to enquire more witnesses to establish the immoral conduct of the accused;
- to collect the cell phone contacts of accused and deceased and establish the facts whether any more accused involved in the murder;
- to collect more witnesses and to highlight the motive between the accused and deceased other than the deceased family members to strengthen the case;
- to enquire the people of the surrounding area since there was no eye witness cited in the case.

19.However, the delinquent officer has failed to carry out the same. Taking note of all these aspects, the Disciplinary Authority has imposed the punishment and this Court, in the above discussions and following the ratios referred supra, is not inclined to interfere with the same.



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Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

Index : Yes / No
NCC : Yes / No
Internet : Yes
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27.01.2025

To

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Government of Tamil Nadu,
Home (Pol.IV) Department,
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