



W.P(MD)No.13785 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 30.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.13785 of 2017

M.Balasubramaniam

... Petitioner

Vs

1.The Revision Authority/Joint Registrar of
Co-operative Societies,
Dindigul Region,
Dindigul – 624 001.

2.The Dindigul District Central Co-operative Bank Ltd.,
Rep by its Managing Director,
Co-operative Nagar,
Trichy Road,
Dindigul – 624 005.

...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 entire records relating to the impugned orders passed by the first respondent in his proceedings in Na.Ka.No.7291/2015/Sa.Pa, dated 30.11.2016, confirming the proceedings passed by the second respondent in Na.Ka.No. 168/2004-05/Pa.2 dated 30.12.2005 and quash the same and



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consequently direct the second respondent to grant notional promotion to the petitioner as Assistant Manager and subsequently as Manager on par with his juniors with service benefits including the monetary benefits.

For Petitioner	: Ms.K.Pandipriya
For R1	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For R2	: Mr.D.Shanmuga Raja Sethupathi

ORDER

The petitioner is a retired employee of the Dindigul District Central Co-operative Bank Ltd., Dindigul/ the Second respondent herein. While he was working as a Supervisor at Oddenchatram Branch, he was issued with a charge memo on 02.11.2004 that he has failed in his duty as a Supervisor, while sanctioning of loan amount to 9 persons. The petitioner has offered his explanation on 29.03.2005, however, not satisfied with the same, an enquiry was ordered. Based on the enquiry, a show cause notice along with the enquiry report, dated 26.10.2005 were issued to the petitioner on 22.11.2005. Thereafter, this petitioner was imposed



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with a punishment of "stoppage of increment for a period of six months" on 30.12.2005. A criminal case was also registered as against this petitioner in CC No.107 of 2008 before the learned Judicial Magistrate, Madurai, for the same lapses. The petitioner was acquitted by the learned Judicial Magistrate, Madurai that there is no *mens rea* for this petitioner in the Commission of offence, by an order, dated 20.03.2014. Since the petitioner was not promoted due to pendency of the criminal proceedings, he has made a request for promotion of Assistant Manager/ Manager, by referring the order of acquittal in criminal case and the same was rejected on 17.10.2015. Therefore, the petitioner has filed a revision application before the Joint Registrar of Co-operative Societies, Dindigul/the first respondent herein, under Section 153 of the Tamil Nadu Co-operative Societies Act, 1987, which was also dismissed, by confirming the order of punishment passed by the second respondent Management, vide proceedings in Na.Ka.No.7291/2015/Sapa, dated 30.12.2005. The order passed by the Revision Authority, dated 30.11.2016 is under challenge in this writ petition.



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2. The learned counsel appearing for the petitioner submits that the charges levelled as against the petitioner in disciplinary proceedings as well as in the criminal case are one and the same. He further submits that when the petitioner was acquitted in the criminal proceedings, the order of punishment imposed by the second respondent ought to have been set aside by the first respondent and the petitioner is entitled for notional promotion to the post of Assistant Manager, as he has retired from service on 30.09.2010.

3. The learned Additional Government Pleader appearing for the first respondent submits that since there was a currency as against this petitioner during the preparation of panel for the post of Assistant Manager on 17.04.2006, he was not considered. The petitioner has retired from service on 30.09.2010 on attaining the age of superannuation and he has submitted his representation on 17.10.2015 after his retirement, based on the order of acquittal in the



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criminal case. Merely because he was acquitted in the criminal case, he cannot be exonerated from the departmental proceedings and therefore, the request of the petitioner for notional promotion also cannot be considered.

4.The learned counsel appearing for the second respondent by referring to the judgment passed by the Judicial Magistrate No.III, Madurai in CC No. 107 of 2008 submits that this petitioner was acquitted only on the ground that there is no *mens rea*. The Criminal Court itself suggested that this petitioner can be dealt with departmentally for the lapses committed by him and therefore he cannot take advantage of the order passed by the Criminal Court in CC No.107 of 2008 that he can be exonerated from the charges and he must be promoted notionally as an Assistant Manager.

5.This Court considered the rival submissions made and also perused the materials placed on record.



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6. The petitioner, a retired employee of the Dindigul District Central Co-operative Bank, has approached this Court that he was denied notional promotion, even though he was acquitted in the criminal case by the Judicial Magistrate Court. On the side of the respondents, a stand has been taken that the petitioner cannot take advantage of the acquittal order passed by the Criminal Court in CC No.107 of 2008 as the order of acquittal has been passed on the ground of *mens rea*.

7.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.

8.The Hon'ble Supreme Court in State of Rajasthan and others Vs. Heem Singh, reported in 2021 (2) CTC 332 has



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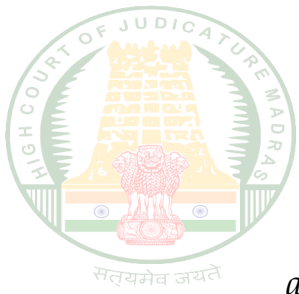
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discussed about the effect of an acquittal in a disciplinary proceedings as under:-

“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



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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



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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 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



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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



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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.””

Therefore, the petitioner cannot take advantage of the order of acquittal passed by the Criminal Court, for the departmental proceedings.

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 for 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.



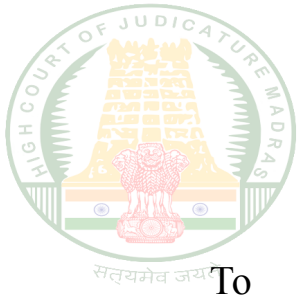
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10.In the case on hand, the petitioner has not raised any such plea of lack of jurisdiction or mala fide or perversity, other than the order of acquittal passed by the Criminal Court. Therefore, this Court is not inclined to entertain this writ petition and accordingly, the same is dismissed. No costs.

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NCC:Yes/No
Index:Yes
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B.PUGALENDHI, J.

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