



WP No.28271 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-07-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.28271 of 2015

And

MP No.1 of 2015

P.Arumugam

..

Petitioner

VS.

1.The Deputy Inspector General of Police,
Salem Range,
Salem.

2.The Superintendent of Police,
Namakkal District,
Namakkal.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the orders in (1) Pro.Na.Ka.No.G1/25245/2014 (Salem City PR No.H1/27/2013) dated 05.02.2015 of the second respondent and (2) Pro.Rc.No.B1/61/1328/2015 dated 20.05.2015 (Appeal No.32/2015) of the first respondent and to quash the same.



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For Petitioner

: Ms.M.Vilasini for
Mr.M.Ravi

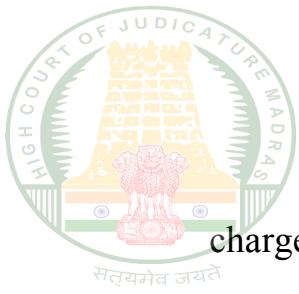
For Respondents

: Mr.L.S.M.Hasan Fizal,
Additional Government Pleader.

ORDER

The order of punishment of postponement of increment for 3 years without cumulative effect imposed by the Disciplinary Authority, which was confirmed by the Appellate Authority, is under challenge in the present writ petition.

2. The writ petitioner was holding the post of Police Constable Grade-I and a criminal case was registered against the writ petitioner in Crime No.765 of 2012 under Sections 294(b), 323, 353, 506(ii) IPC read with Section 4(1)(j) of the Tamil Nadu Prohibition Act. The criminal proceedings were initiated on 14.11.2012. Simultaneously departmental disciplinary proceedings were initiated under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 and a



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charge memo was issued on 15.04.2013. The criminal case ended with an order of acquittal vide judgment dated 29.01.2014. The petitioner furnished the copy of the judgment passed by the Criminal Court and made a representation to drop the departmental disciplinary proceedings. However, the Disciplinary Authority proceeded with the departmental disciplinary proceedings and conducted an enquiry and thereafter passed final orders on 05.02.2015 imposing the penalty of postponement of increment for three years without cumulative effect. The petitioner preferred an appeal, which was rejected by the DIG of Police, Salem on 20.05.2015. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner contended that the Disciplinary Authority/second respondent failed to consider the order of acquittal passed by the Competent Criminal Court of Law and also erred in holding that the charges are held proved. When the charges both in the criminal case and in the departmental proceedings are similar, the order of acquittal made by the competent Criminal Court is to be taken into consideration for the purpose of exonerating the writ petitioner from the



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departmental disciplinary proceedings. In other words, actions under Criminal Law and departmental disciplinary proceedings are on the same set of facts. The respondents have failed to consider the nature of allegation and the facts and circumstances involved in the case. The findings of the Criminal Court was also not considered. Thus the order impugned is liable to be set aside.

4. The learned Additional Government Pleader appearing on behalf of the respondents objected the contentions raised on behalf of the petitioner by stating that the allegation against the writ petitioner was serious. The Deputy Commissioner of Police, Law and Order, Salem, City initiated disciplinary proceedings against the writ petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 for the reprehensible conduct of the petitioner that while attending duty in the Police Control Room on 14.11.2012, he was in a drunken mood and abused Thiru Raghunathan, Special Sub Inspector of Police on duty by using unparliamentary words and assaulted him. Though the colleagues in the Control Room pacified the writ petitioner, the writ



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petitioner did not relent and therefore, the writ petitioner was taken to

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Government Hospital and drunkenness certificate was obtained and a criminal case was registered in Crime No.765 of 2012 in Annadhanapatti Police Station under Sections 294(b), 323, 353, 506(ii) IPC read with Section 4(1)(j) of the Tamil Nadu Prohibition Act.

5. The learned Additional Government Pleader drew the attention of this Court with reference to the deposition made by the witnesses before the Criminal Court. All the witnesses belonged to the Police Department and they have acted contrary to the prosecution and in violation of the Conduct Rules in force. Though the witnesses were also very much present in the Police Control Room when the incident occurred, they have turned hostile and deposed contrarily before the Criminal Court of Law which resulted in the order of acquittal.

6. The manner in which the Police Department officials deposed before the Criminal Court reveals that they acted unbecoming of the public officials. They have joined together and decided to dilute the



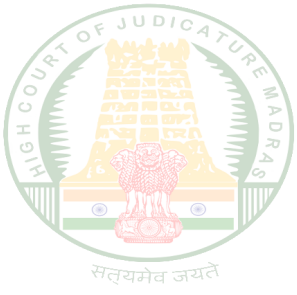
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criminal proceedings in order to help the accused persons. Such a conduct of the public servant under no circumstances be appreciated by this Court.

This Court is of the opinion that the higher officials of the Police Department has to take the serious view of the matter regarding the manner in which the responsible public servant deposed before Criminal Court of Law with reference to the incident occurred very much inside the Police Control Room.

7. The learned Judicial Magistrate made a serious finding regarding the reprehensible conduct of the police officials while deposing before the Court of Law. The findings of the Criminal Court reveals that the Police Department officials have deposed in superficial manner in respect of the incident occurred inside the Police Control Room. Therefore, they have not shown any interest in establishing the prosecution case. They were not even aware of the mahazer prepared and deposed against the prosecution when they are very much working in the Police Department. The learned Judicial Magistrate acquitted the accused persons because of the conduct of the Police Department witnesses.



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8. However, the Disciplinary Authority continued the departmental disciplinary proceedings and conducted an enquiry independently under the Discipline and Appeal Rules. The Enquiry Officer submitted a report holding that the charges against the writ petitioner are held proved. Accepting the report of the Enquiry Officer, the Disciplinary Authority imposed punishment of postponement of increment for three years without cumulative effect. The said punishment was confirmed by the Appellate Authority.

9. With reference to the contention of the writ petitioner that the acquittal is a ground for exoneration, the Apex Court as well as the High Court held in number of judgments that acquittal in a criminal case is not a bar for the continuance of the departmental disciplinary proceedings. The acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings. The standard of proof required to convict a person under the Criminal Law is strict and no such strict proof is required for the purpose of punishment of an employee under the Discipline



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and Appeal Rules.

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10. The preponderance of probabilities are expected to punish an employee and a moral turpitude is sufficient to punish an employee. Thus, the misconduct under the Conduct Rules and the procedures contemplated in the disciplinary proceedings, cannot be compared with the procedures to be followed in criminal proceedings before the Criminal Court of Law. Both the procedures are distinct and different. Thus the ground seeking exoneration from the departmental disciplinary proceedings based on the acquittal order by the Criminal Court of Law is untenable.

11. In the present case, the allegation against the writ petitioner was grave in nature. The Police Department Officials themselves have turned indifferently and deposed before the Criminal Court of Law. Contrary to the mahazer prepared and in violation of the Government Servants Conduct Rules, making a false or incorrect statement before the Criminal Court of Law is also the misconduct under the Government Servant Conduct Rules.



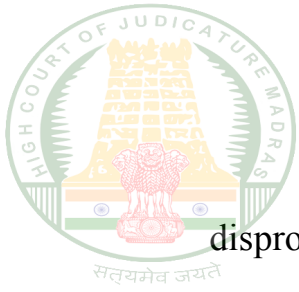
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12. Admittedly, the incident occurred very much inside the Police Control Room and a criminal case was registered. While-so, the police officials turned indifferently and given contrary statements, which resulted in acquittal of the accused in the criminal case.

13. The respondents have to consider the manner of functioning of the Police Department Officials in the Control Room and initiate all appropriate actions to ensure that the departmental officials maintain good conduct at all circumstances and even before the Courts of Law while deposing or giving statements.

14. With reference to the disciplinary proceedings, the respondents have followed the procedures as contemplated under the Discipline and Appeal Rules and there is no infirmity as such. Regarding the quantum of punishment, this Court do not find any excessiveness. The punishment of postponement of increment for three years without cumulative effect imposed on the writ petitioner cannot be construed as



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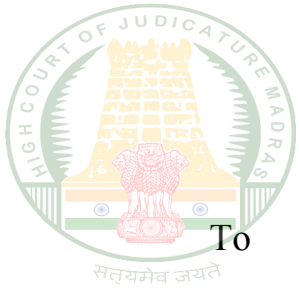
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disproportionate to the gravity of the charges established against the petitioner and thus this Court is not inclined to consider the grounds raised in this writ petition.

15. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes/No.
Internet : Yes/No.
Speaking Order/Non-Speaking Order.
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To

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1. The Deputy Inspector General of Police,
Salem Range,
Salem.

2. The Superintendent of Police,
Namakkal District,
Namakkal.



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S.M.SUBRAMANIAM, J.

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