

(2014) 01 MAD CK 0044

In the Madras High Court

Case No : W.A. (MD) No. 588 of 2010 and M.P. (MD) Nos. 1 of 2010 and 1 of 2011

B. Adhinarayanan

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 498-A

Citation : (2014) 01 MAD CK 0044

Hon'ble Judges : V.M. Velumani, J;R. Sudhakar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—This writ appeal has been filed as against the order dated 27.07.2010 passed in W.P. (MD) No. 8335 of 2009, wherein the petitioner has sought for a Writ of Certiorarified Mandamus to call for the records relating to the charge memo in P.R. No. 150 of 2001 on the file of the respondent and quash the same.

2. The appellant/delinquent was charged for the offences punishable under Sections 498-A and 307 I.P.C., for causing harassment to his wife and attempting to murder her. On this charge, he was proceeded in S.C. No. 313 of 2007 on the file of the Assistant Principal Sessions Judge, Madurai, besides the departmental proceedings were also initiated for his conduct unbecoming of a police officer and a charge memo was issued on 06.12.2001. With a plea not to proceed with the departmental action, the appellant/delinquent approached the Tamil Nadu Administrative Tribunal and the proceedings were kept in abeyance till the disposal of the criminal case. The said criminal case ended in conviction on 13.12.2007 before the trial Court, against which the appellant/delinquent preferred an appeal in C.A. No. 146 of 2007 before the Additional District and Principal Judge, (Fast Track Court No. 1), Madurai, and in the said appeal, he was acquitted of the charges levelled against him.

3. The appellant/delinquent was terminated from service on 25.01.2008 and thereafter, he was reinstated into service on 23.08.2008, consequent to the judgment of the appellate Court setting aside the conviction and thereby, honourably acquitting him of the charges, by judgment dated 30.04.2008. Despite the judgment of the appellate Court acquitting the appellant/delinquent, the Department pursued the departmental proceedings by appointing an Enquiry Officer and aggrieved thereby, the writ petition was filed challenging the charge memo dated 06.12.2001, primarily on the ground that since the appellant/delinquent has been acquitted by the appellate Court honourably, the question of proceeding further in the departmental proceedings, does not arise.

4. The learned Single Judge of this Court dismissed the writ petition on 27.07.2010, holding that the departmental proceedings need not be quashed merely on the acquittal by the criminal Court as the standard of proof required for holding a person guilty by a criminal Court is quite different from that of the disciplinary proceedings by the Department. The learned Single Judge accepted the principle that strict burden of proof to establish in a criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient.

5. Being aggrieved by the order of the learned Single Judge, the present writ appeal has been filed.

6. Heard both sides and perused the materials available on record.

7. The learned Counsel for the appellant/delinquent pleaded that the acquittal by the appellate Court is honourable and the said fact is disputed by Mr. B. Pugalendhi, learned Special Government Pleader stating that on the lacuna pointed out in the investigation, the appellate Court came to this finding. Nevertheless, we go by the sound principles laid down in ever so many decisions that mere acquittal by the criminal Court does not ipso facto entitle a delinquent to seek quashing of departmental proceedings.

8. The Honourable Apex Court in *The Deputy Inspector General of Police and Another Vs. S. Samuthiram*, , held as follows:

As we have already indicated, in the absence of any provision in the service rule 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 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.

(emphasis supplied.)

9. The learned Counsel for the appellant faced with such a situation, pleaded, on instructions, that he may be permitted to withdraw this writ appeal with a liberty to participate in the departmental proceedings and put forth his plea that the acquittal in the criminal Court is honourable and the departmental proceedings on the same set of charges need not be pressed.

10. Accordingly, the writ appeal stands dismissed, giving liberty to the appellant/delinquent to plead for dropping the departmental proceedings as sought for above. The respondent - Department is entitled to pursue the departmental proceedings and consider all the legal issues raised by the appellant/delinquent including the plea of honourable acquittal by the appellate Court. The respondent is directed to complete the departmental proceedings within a period of eight weeks from the date of receipt of a copy of this order, subject to the appellant/delinquent co-operating with the enquiry. Consequently, M.P. (MD) No. 1 of 2010 is dismissed and M.P. (MD) No. 1 of 2011 is closed. No costs.