

(2012) 01 MAD CK 0045

In the Madras High Court

Case No : Writ Petition (MD) No. 13925 of 2011

C. Pilavadi

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Penal Code, 1860 (IPC) — Section 324

Probation of Offenders Act, 1958 — Section 12, 3, 4, 4(1), 4(3)

Citation : (2012) 01 MAD CK 0045

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : T. Lajapathy Roy, for the Appellant; T.R. Janarthanam, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja

1. The petitioner herein seeks for issuance of a writ of mandamus to direct the respondents to regularize the petitioner's suspension period from

01.02.1995 to 06.02.1999 and provide him with all consequential service benefits within a time-limit that may be fixed by the court. It is the case

of the petitioner that he was appointed as Sweeper on 29.07.1989 and serving in R3- Madurai Government Rajaji Hospital; while-so, he was

implicated in a criminal case registered at Anna Nagar Police Station, Madurai, for an offence u/s 324 IPC, whereupon, he was placed under

suspension on 28.03.1995. Subsequent to filing of charge sheet against the petitioner before the Criminal Court/Judicial Magistrate No. VII,

Madurai, the learned Magistrate, after concluding the trial proceedings, by order dated 07.12.1995, convicted the petitioner for the offence under

Section-324 IPC., sentencing him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-. On appeal before the II

Additional Sessions Court, Madurai, in CrI.A. No. 125 of 1995, by Judgment dated 04.03.1997, the order of conviction passed by the trial court

was confirmed, however, by passing a supervision order u/s 4(3) of the Probation of Offenders Act (hereinafter referred to as the "Act") to

supervise the petitioner for one year by the Probation Officer concerned, the petitioner was released u/s 4(1) of Act. The Probation Officer

Grade-II, Prison Department, Madurai, vide proceedings in C.No. 265:98, dated 15.10.1998, observed that he had supervised the petitioner for

one year and that the petitioner's behavior was good. So observing, he also requested the employer of the petitioner/3rd respondent Hospital to

reinstate the petitioner in service by invoking Section 12 of the Probation of Offenders Act. Thereafter, the 3rd respondent/Employer issued the

notice, dated 12.11.1998, to the petitioner asking him to show cause as to why he should not be removed from service based on the order of

conviction passed by the criminal court. On receipt of the said show cause notice, the petitioner submitted his explanation on 23.11.1998 stating

that he was already released under the Probation of Offenders Act; however, the 3rd respondent, rejecting the explanation, by proceedings dated

27.11.1998, removed the petitioner from service. The order of removal was challenged by the petitioner before the Tamil Nadu Administrative

Tribunal by filing Original Application No. 130 of 1999, wherein, an order of interim stay was granted on 25.01.1999. Consequently, by

proceedings dated 30.01.1999, R-3 permitted the petitioner to join the service. After abolition of the Tribunal, O.A. No. 130 of 1999 was

transferred to the file of this Court and taken up as W.P. No. 38612 of 2006 and the same was allowed on 22.04.2009, setting aside the order of

removal passed against the petitioner. Consequent thereto, by proceedings dated 07.11.2009, the 3rd respondent informed the petitioner that he is

eligible to all service benefits from 30.01.1999 ie., date of proceedings passed by the Hospital, permitting the petitioner to join duty based on the

stay order of the Tribunal. Now, the grievance of the petitioner is that though the order of removal was set aside, the period of suspension from

01.02.1995 to 06.02.1999 was not regularised, thereby, he has been deprived of the service benefits for the said period. The repeated

representations sent by the petitioner to the authorities for regularization of the suspension period and payment of service benefits for the said

period did not yield any outcome, hence, the petitioner has come forward with this writ petition.

2. Heard the Learned Counsel appearing for the petitioner and the learned Additional Government Pleader for the respondents.

The simple issue that needs to be answered in this petition is as to whether the petitioner is entitled to have the service benefits for the period he

underwent suspension ie., from 01.02.1995 to 06.02.1999, particularly when the order of conviction passed against the petitioner by the criminal

court was never disturbed although he was released by the Sessions Court under the provisions of the Probation of Offenders Act?

3. Straight away, it must be pointed out that Section 12 of the Probation of Offenders Act, 1958, does not preclude the Department from taking

action for misconduct leading to the offence or to the individual's conviction thereon as per law, for, the said provision was not intended to

exonerate the person from departmental proceedings. In fact, the tone and tenor of Section 12 is that the offender shall not suffer disqualification, if

any, attaching to a conviction of an offence "under such law". To appreciate the meaning of the words "such law" having regard to Section 12 of

the Act, the decision of the Apex Court in Additional D.I.G. of Police, Hyderabad v. P.R.K. Mohan, (1997) 11 SCC 571 may be referred to,

wherein, it is observed thus:

Such law in the context is other law providing for disqualification on account of conviction. this Court, therefore, held that merely because a

sentence of imprisonment has been substituted by an order passed u/s 12 of the Probation of Offenders Act, 1958, the effect of the conviction is

not obliterated altogether and it would be open to the authorities to take departmental proceedings on the basis thereof. Therefore, the observation

of the appellate court on the interpretation of Section 12 is not correct.

4. In this perspective, it is also relevant to quote below what is observed by the Supreme Court in Union of India and others Vs. Bakshi Ram,),

In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while

invoking the provisions of Section 3 or 4 of the Act does not deal with the

conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; (See Article 311(2)(b) of the Constitution and Tulsiram Patel case: [1985] Supp. 2 SCR 131 at 282). Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12.....

Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.

5. From a reading of the above observations contained in the pronouncements of the Apex Court, it is clear that a person, who has been dismissed or removed from service in view of his conviction by the criminal court, is not automatically entitled to reinstatement upon getting the benefit of release under the probation of offenders Act. In this regard, Section 9(3) and (4) of the Act may be usefully referred to,

9. (3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into

by him, it may forthwith--

(a) sentence him for the original offence; or

(b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.

(4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

The above provision would go to show that, during the period of supervision, the control over the offender is retained by the criminal court and

where it is substantiated that the conditions have been violated by the offender released on probation, the Court can sentence the offender to

undergo the original offence. In other words, the order of conviction passed by the criminal court is not ravaged merely by releasing the offender

on probation. Further, in view of Sections 3, 4 and 6 of the Act, the stigma remains as such and therefore, the finding of the misconduct resulting in

conviction must be treated to be a conclusive proof. To summarise the position - the order of release on probation, which has been made

permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened

criminals, is merely in substitution of the sentence to be imposed by the Court and it will not obliterate the stigma of conviction. Coming to the case

on hand, it is seen that the petitioner herein was convicted by the learned Magistrate and such order of conviction was affirmed by the learned

Sessions Judge, who, instead of sentencing the offender/petitioner herein, however, released him on probation. Therefore, though he was released,

since the conviction part is not set aside, the stigma of conviction is not obliterated. In the departmental proceedings, the delinquent could be

dismissed or removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge. Fortunately, as per the

positive orders passed in the Writ petition challenging the order of removal, the petitioner could get reinstatement. However, not being content with

the reinstatement, the petitioner now seeks for the benefits in respect of the period he underwent suspension. In my assessment, the action of the

Department in not considering the case of the petitioner for service benefits

relating to the suspension period cannot be found fault with for the sole reason that the petitioner still carries the stigma of conviction on him. In other words, the petitioner cannot, as a matter of right, claim for regularisation of suspension period and to grant service benefits for the said period. The case laws relied on by the Learned Counsel for the petitioner in Subramanian, P. v. Joint Registrar of Co-operative Societies (2000 IV CTC 409) and J. Anandharaj v. District Collector (2007 (1) MLJ 445) cannot be applied to the present case as both the case laws are clearly on a different issue as to whether a person, who is released on probation, is entitled to get reinstatement and those decisions do not state that a person convicted by the criminal court, however released under the provisions of the Probation of offenders Act, is automatically entitled to reinstatement and service benefits for the period under suspension despite the stigma of conviction remaining without obliteration. Therefore, I do not find any reason or ground to issue any positive direction to the respondents to consider the claim of the petitioner.

In the result, the Writ Petition fails and it is dismissed as devoid of any merit. No costs. Connected Miscellaneous Petition is closed.