

(2017) 04 MAD CK 0021
In the Madras High Court
Case No : 21798 of 2016

C.Isaivani

APPELLANT

Vs

Director

RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

Constitution of India, Article 14, Article 21 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Sched

Citation : (2017) 04 MAD CK 0021

Hon'ble Judges : S.S.Sundar

Bench : SINGLE BENCH

Advocate : S.S.Sundar

Judgement

1. This Writ petition has been filed challenging the impugned charge memo issued to the petitioner by the second respondent vide his proceedings dated 21.10.2016 (served on 01.11.2016).

2. The case of the petitioner as stated by him in the affidavit filed in support of this petition are as follows:- 2.1.The petitioner joined in the

respondent Department as Grade-I Police Constable on 15.04.1997. However, the petitioner was appointed as Sub-Inspector of Police on

18.01.2008, by way of direct recruitment and was holding the same post till this Writ Petition is filed. A false trap was laid against the petitioner as

if the petitioner demanded illegal gratification in order to avoid executing the Non Bailable Warrant. As a result, the petitioner was arrested by the

Vigilance and Anti Corruption Wing on 10.08.2012 and the case was registered in Crime No.4 of 2012 for the offences under Sections 7 and

13(1) (d) r/w Section 13(2) of Prevention of Corruption Act, 1988.

2.2. Consequently, the second respondent placed the petitioner under suspension as per Rule 3(e)(1)(ii) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, vide proceedings dated 10.08.2012.

2.3. The criminal case was taken on file in Special Case No.7 of 2013, by the Chief Judicial Magistrate Court, Pudukottai. Though the petitioner made a representation dated 07.01.2013, to the second respondent and requested him to revoke the order of suspension, the second respondent did not consider the petitioner's representation. The petitioner, therefore, was constrained to file a Writ Petition earlier in W.P. (MD) No.1569 of 2016, before this Court. This Court was pleased to dispose of the Writ Petition by order dated 30.01.2014, with a direction to consider the petitioner's case in the light of Government Order vide G.O.Ms.No. 40, Personnel and Administrative Reforms (N) Department, dated 30.01.1996. However, by order dated 21.02.2014, the second respondent rejected the petitioner's request for revocation of suspension.

Once again, the petitioner filed W.P.(MD) No.11535 of 2014 challenging not only the order of suspension dated 10.08.2012, but also the order rejecting the petition filed by the petitioner to revoke the order of suspension. This Court dismissed the Writ Petition by order dated 22.09.2014, on the ground that the public servant has to keep up moral standard and that it would be against public policy to interfere with the order refusing to revoke the suspension.

2.4. By order dated 18.12.2015, the petitioner was acquitted from the Criminal Case by the Chief Judicial Magistrate, Pudukkottai. Since the petitioner was exonerated from the criminal case in Special C.C.No.7 of 2013, the petitioner submitted a fresh representation dated 06.01.2016 to the respondent and a further representation dated 07.01.2016 to the Director General of Police, requesting them to revoke the petitioner's suspension in view of the order of acquittal passed by the Chief Judicial Magistrate Court, Pudukottai. Since the respondent did not come forward to consider the petitioner's representation, the petitioner was constrained to file one more Writ Petition in W.P(MD) No.17765 of 2016. This Court, by order dated 19.09.2016, directed the second respondent to pass orders on the petitioner's representation. It was, thereafter, the petitioner was reinstated in service on 21.10.2016.

2.5. Though the order of suspension was revoked, to the

petitioner's shock and surprise, the first respondent issued a draft charge memo against the petitioner vide proceedings dated 06.04.2016. Based

on the recommendation of the first respondent, the second respondent issued the impugned charge memo dated 21.10.2016 and served the same

on the petitioner on 01.11.2016.

3. The petitioner challenged the impugned charge memo on the following grounds: (a) The charge memo issued to the petitioner vide proceedings

dated 21.10.2016 is per se illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India; (b) When the Criminal Court has

considered the issue in all perspective, the impugned charge memo is unlawful and against the Police Standing Order 67(2)(a); (c) As per the

Police Standing Order clause 67(4), the respondent cannot initiate departmental proceedings unless a report is sent to the Government within one

month. The first respondent requested for initiating departmental proceedings after a lapse of four months and no report was drawn by the

Departmental Authority. After acquittal in criminal case, the Government is the authority, who could sanction for initiation of departmental

proceedings. Since no sanction is obtained, the second respondent cannot mechanically proceed with the enquiry on the basis of the impugned

charge memo; (d) When the department has not filed an appeal as against the acquittal of petitioner in criminal case, they cannot proceed

departmentally without any sanction or authority under law; (e) The first respondent, with vested interest and to humiliate the petitioner has foisted

a false case without any sanction order; (f) Even after the petitioner was made to suffer on account of an order of suspension by placing the

petitioner continuously under suspension for a longer time, the respondent has mechanically accepted the draft charge memo out of pressure and

compulsion. Since the impugned charge memo and the crux of the charges found in the criminal case are one and the same, initiation of

departmental proceedings after the acquittal of petitioner in criminal case is illegal, arbitrary and unsustainable.

4. Mr.G.Thalaimutharasu, learned counsel for the petitioner argued at length and reiterated the grounds raised in the Writ Petition with reference to

the materials produced before this Court in the typed set.

5. The second respondent has filed a detailed counter affidavit inter alia narrating

the entire facts that led to the filing of the Writ Petition.

6. Sum and substance, it is the specific case of the respondent that the criminal case went in favour of the petitioner only by giving the benefit of

doubt to the accused, namely, the petitioner and on other technical grounds. The petitioner was not fully exonerated from the Criminal case.

Though the order of suspension was revoked, the right of department to proceed against the petitioner, departmentally cannot be taken away. The

respondent also referred to the various internal communications indicating that the respondent proceeded to issue the charge memo against the

petitioner purely in public interest. The respondent also submitted that there is no violation of any Rule while initiating departmental action against

the petitioner. It was also contended by the respondent that the petitioner was earlier charged under Rule 3(a) of Tamil Nadu Police Subordinate

Service (Discipline and Appeal) Rules, 1955 and inflicted with the punishment of postponement of her next increment for one year without

cumulative effect. In the counter affidavit, it is also stated that the departmental action was initiated against the petitioner as per the orders of the

Government vide Government letter dated 22.06.2016 and as per the proceedings of the Director General of Police, dated 06.09.2016.

Regarding the contention with reference to the Police Standing Order 67, the respondent has stated in their counter as follows: ""12. It is submitted

that as per PSO 67 sanction to proceed the departmental action against the petitioner is duly obtained from Government through proper channel

by the second respondent. As per the Government letter to Director General of Police, Chennai in Rc.No. 27459/Pol.IVA/2016-2 Home (Pol-

IVA) department, dated 22.06.2016, the Director General of Police, Chennai issued an order to Superintendent of Police, Pudukkottai District to

initiate departmental action against the petitioner. The second respondent not relying the departmental proceedings as mechanical manner. PSO

67(2)(b) states that if certain facts affecting the charge were not placed before a criminal court or a definite aspect of the case was not considered

by it, or if the acquittal was on purely technical grounds like lack of sanction, some technical defect in procedure etc., or the facts found proved by

the court were held insufficient to make out a criminal offence but may make out a departmental irregularity, it is open to the departmental

authorities to institute departmental proceedings into the connected matters.

7. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

8. The main point on which the learned Counsel for the petitioner urged this Court to allow this Writ Petition is on the basis of the acquittal of

petitioner in the criminal case. The reading of paragraphs 37 and 38 in the judgment of the Criminal Court, namely, the Chief Judicial Magistrate

Court, Pudukottai in Special Criminal Case No.7 of 2013, is relevant and hence, extracted as follows: ""37.On the background of settled

proposition of law this court has found that in this case, the sanction is invalid in the eye of law. The necessary ingredient of this trap case the first

demand has not been proved and for the second demand, when the trap was laid, though the evidence of P.W. 9 needs corroboration, the same

has not been corroborated by any other witnesses and the previous motive attributed in this case has not been challenged by the prosecution. As

shadow of doubt shrouded in the investigation, the accused succeeded in creating preponderance of probabilities with regard to the defense case,

and the case is in lack of ingredients of section 20 of the Act. Moreover, the prosecution has deviated the rule 47 of DV & AC manual. 38.On

accounting the aforesaid points which are in favour of the accused, this Court is of the considered view that the prosecution has miserably failed to

prove the demand and acceptance of bribe beyond reasonable doubt and the benefit of such doubt, therefore, will have to be given to the

accused.

9. The order of the Chief Judicial Magistrate Court, Pudukottai, would indicate that the petitioner was acquitted only on the ground that the

prosecution failed to prove the demand and acceptance of bribe, beyond reasonable doubt and by holding that the petitioner should be given the

benefit of doubt. It is also pertinent to mention that the Chief Judicial Magistrate Court, Pudukottai, also found that the sanction alleged to have

been obtained by the respondent is invalid in the eye of law. Hence, the criminal case was also dismissed on a technical ground. It is in the above

circumstances, the contention of the petitioner that there cannot be departmental action after the acquittal in criminal case cannot be accepted. The

learned counsel for the petitioner then relied upon the guidelines issued

regarding the initiation of departmental proceedings where the individual concerned is acquitted by Court. The learned Counsel for the petitioner relied upon Clause 125 of the instructions in cases ended in acquittal by Court. Since the learned Counsel for the petitioner relied upon the above, for convenience, it is extracted as follows:

125.Cases ended in acquittal by Courts -

Fresh Departmental Proceedings - Instituted of. (1) Criminal Proceedings and Disciplinary Proceedings undoubtedly operate in different fields. The

question of continuance of domestic enquiry, after acquittal by a Criminal Court on the same charge, has come up before Courts of Law from time

to time and it has been observed that taking a view that Departmental Disciplinary Proceedings cannot be taken after the Criminal Case ended in

favour of the delinquent can no longer be construed as good law.

(2) Government have therefore ordered:

(i) that, in the case of an Accused Official acquitted by Court of Law, whether on merits or on technical grounds or otherwise, it is open to the

competent Disciplinary Authority to institute or continue disciplinary proceedings against the Accused Official for the same charges from which he

was acquitted by the Court, if the competent Disciplinary Authority is of the view that there are good grounds and sufficient evidence to proceed

with the departmental disciplinary proceedings and

(ii) that, in cases of acquittal of an Accused Official by a Court, the competent Disciplinary Authority is of the opinion that the department

proceedings need not be instituted / continued against him, the competent Authority shall, within one month of the date of the Judgment (exclusive

of the period required for obtaining the copy), shall send a report of such cases to the Government containing justification for the stand taken.

Every case so reported shall be accompanied by a copy of the relevant judgment of the Court.

10. Paragraph 125(2)(i) of the instructions above relied upon by the learned Counsel for the petitioner would clearly indicate that it is not automatic

to drop departmental proceedings in every case where the delinquent was acquitted by the Criminal Court on same charge. The disciplinary

authority is requested to send a report to Government only if he is of opinion that departmental proceeding need not be instituted or continued

against the delinquent. Hence, the argument of learned counsel for the petitioner has no force and cannot be accepted.

11. It is further stated in the counter affidavit that the departmental action against the petitioner has been initiated for the grave charges of demand

and acceptance of illegal gratification of Rs.5,000/- and that the misconduct has brought disgrace and created a bad reputation to the police

department. It is further stated that the witnesses stated in the charge memo are not the same in criminal case. Further, the disciplinary authority has

also stated that the departmental proceedings should be continued in public interest. Hence, this Court is of the view that the charge memo in the

present case cannot be quashed on the ground of acquittal in criminal case. As a result, the Writ Petition is dismissed. No costs. Consequently,

connected W.M.P.(MD)Nos.15583 and 15584 of 2016 are closed.