

A.Varatharajan ... Vs. the Director General of Police, and anr.

A.Varatharajan ... Vs. the Director General of Police, and anr.

SooperKanoon Citation : sooperkanoon.com/905437

Court : Chennai

Decided On : Jul-01-2010

Judge : D.Hariparanthaman, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.12224 OF 2009 AND M.P.NO.1 OF 2009

Appellant : A.Varatharajan ...

Respondent : The Director General of Police, and anr.

Advocate for Def. : Mrs.Lita Srinivasan, Adv.

Advocate for Pet/Ap. : Mr.G.Bala, Adv.

Judgement :

1. The petitioner entered into service as Grade II Police Constable on 16.04.1997. He was also entrusted with the duty of a Driver. On 12.04.2005, he drove the van of his Department bearing registration No.TN46-G-0085, taking the Bomb Deduction and Disposal Squad from Ariyalur to T.Pazalur. While so, the van involved in an accident with a two wheeler, resulting in the death of the rider of the two wheeler. The petitioner took the victim to the hospital and got him admitted. Though treatment was given to the victim for ten days, he succumbed to death. Hence, a criminal case was registered in Crime No.88/2005 under Sections 279, 338 and 304A IPC.

2. The third respondent took departmental action against the petitioner on the same set of facts. It was alleged that the petitioner drove the van rashly and negligently and caused the accident. The petitioner denied the charges alleged against him. Thereafter, an enquiry was conducted. Based on the findings of the Enquiry Officer, the third respondent passed an order dated 29.09.2008 imposing the punishment of reduction in the time scale of pay by one stage for a period of one year without cumulative effect.

3. Against the said order dated 29.09.2008, the petitioner filed an appeal dated 17.10.2008 before the second respondent. However, the second respondent passed an order dated 28.11.2008, confirming the punishment imposed by the third respondent.

4. Thereafter, the petitioner took the matter to the first respondent by filing review petition dated 22.01.2009. The first respondent passed an order dated 01.04.2009, modifying the punishment from reduction in time scale of pay by one stage for a period of one year without cumulative effect to "Black Mark". Para 6 of the order dated 01.04.2009 passed by the first respondent is extracted here-under:

"6.I have gone through the mercy petition, PR file and connected records carefully. A perusal of the PR file shows that the charge against the mercy petitioner is amply proved. However, considering his good track record of service except this punishment, I take a lenient view and modify the punishment into that of "Black Mark"."

5. In the meantime, the petitioner was acquitted in the criminal prosecution in C.C.No.343/2005 on 05.08.2008 by the learned Judicial Magistrate, Ariyalur. However, citing the pendency of the disciplinary action and the criminal proceedings, he was not considered for promotion to the post of Grade - I Police Constable in the year 2005. As the criminal case ended in acquittal, that cannot be cited as a bar for his promotion. However, it is stated that the pendency of disciplinary action is a bar for considering him for promotion. It is also stated that ultimately the same resulted in the punishment of imposition of Black Mark, the same could operate as a bar to consider him for promotion, for the year 2005.

6. In these circumstances, the petitioner filed the present writ petition seeking to quash the order dated 01.04.2009 of the first respondent modifying the earlier orders dated 28.11.2008 and 29.09.2008 of the second and third respondents respectively and for a consequential direction to consider him for promotion to the post of Grade I Police Constable and Head Constable from the date on which his juniors were promoted.

7. Heard Mr.G.Bala, learned counsel for the petitioner and Mrs.Lita Srinivasan, learned Government Advocate for the respondents and perused the materials available on record.

8. The learned counsel for the petitioner submits that the respondents acted mala fide in taking two different stands i.e. one before the Disciplinary Authority and the other before the Motor Accident Claims Tribunal. While the third respondent alleged that the petitioner drove the van rashly and negligently and caused the accident, he took a directly opposite stand before the Motor Accident Claims Tribunal, Perambalur in M.C.O.P.No.495/2005 preferred by the legal heirs of the deceased. The following passage in para 2 of the said M.C.O.P. is extracted here-under:

9. The learned counsel for the petitioner relies on a Division Bench judgment of this Court in TAMIL NADU STATE TRANSPORT CORPORATION (KUMBAKONAM DIVISION-II) LTD., VS. P.KARUPPUSAMY reported in 2008(1) MLJ 694. Paras 23 and 24 of the said judgment are extracted here-under:

"23.Learned counsel for the respondent also garnered support from a decision of the Apex Court in Kali Prasad V. Dy.Director of Consolidation, AIR 2000 SC 3722 : (2006) 6 SCC 640, for a legal proposition that the finding recorded by the civil Court on the question of jurisdictional fact is binding on the parties to the suit. He further placed reliance upon a decision of the Supreme Court in Venkatappa alias Moode v. Abdul Jabbar (2006) 9 SCC 235, in which it was decided that the parties are bound by the pleadings in the statements filed by them and they cannot be permitted to put forth a new case.

24. The principles laid down in the aforesaid rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal Court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur....."

10. In view of the judgment of the Division Bench of this Court referred to above, the impugned punishment is liable to be quashed and accordingly, the same is quashed. Since the bar for promotion is removed, the petitioner is entitled to be considered along with his juniors for promotion to the post of Grade I Police Constable for the year 2005 and for further promotion, if any.

11. The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com