

A.Muralidharan Vs. the Director General of Police and ors.

A.Muralidharan Vs. the Director General of Police and ors.

SooperKanoon Citation : sooperkanoon.com/923461

Court : Chennai

Decided On : Dec-19-2011

Judge : V.Dhanapalan, J.

Acts : Indian Penal Code (IPC) - Sections 302, 34

Appeal No. : W.P.No.22029 of 2008

Appellant : A.Muralidharan

Respondent : The Director General of Police and ors.

Advocate for Def. : Mr.M.Dig Vijaya Pandian, Adv.

Advocate for Pet/Ap. : Mr.Vijay Narayan, Adv.

Judgement :

Heard Mr.Vijay Narayan, learned Senior Counsel appearing for Mr.R.Parthiban, learned counsel for the petitioner and Mr.Dig Vijaya Pandian, learned Additional Government Pleader appearing for the respondents.

2. Challenging the order of the 1st respondent herein in Proceedings Rc.No.8788/AP.3(3)/08, dated 11.06.2008, confirming the order of the 2nd respondent in Proceedings Rc.No.PR.II(S)/Appeal.31/2007, dated 24.12.2007 and confirming the order of the 3rd respondent in PR.No.91/PR.II(S)/05, dated 02.11.2007, the petitioner has filed this Writ Petition, seeking to quash the same

and for a consequential direction to the respondents to reinstate him in service with all consequential benefits including arrears of pay etc.

3. Facts of the case as put forth by the petitioner in the affidavit, run thus:

3.1. The petitioner was appointed as Grade II Constable in the Police Subordinate Services on 25.10.1984. Thereafter, he was promoted as Grade I Constable in 1996. On 06.10.2000, he received a news about the death of a relative in Bangalore and applied for two days Casual Leave and the same was sanctioned by the Sub-Inspector. He immediately proceeded to Bangalore and on reaching there, he was shocked to know that there was an arrest warrant against him in connection with a murder case filed in Bangalore City Jeevan Bheema Nagar Police Station in Crime No.282/2000 for the offences under Section 302 read with Section 34 I.P.C. The Bangalore Police arrested the petitioner and remanded him to judicial custody. Thereafter, he applied for bail on a number of occasions, but it was rejected. The case ended in acquittal by the Sessions Court, (Fast Track Court No.VII), Bangalore City on 06.11.2007. 3.2. In the meanwhile, on 18.10.2000, the petitioner was suspended from service on the ground that a case under Section 302 r/w Section 34 of I.P.C. was registered on 07.10.2000 and that he had been arrested on 07.10.2000 itself and remanded to judicial custody. During the period of suspension, the Headquarters of the petitioner was fixed at St.Thomas Mount.

3.3. On 12.01.2006, the subsistence allowance of the petitioner was revoked from 07.10.2000 itself retrospectively. In the meanwhile, a Charge Memo was also framed against him and an enquiry was conducted and the Enquiry Officer submitted his report in P.R.No.91/S/05. The charges are as follows: "A" Charge: The delinquent Gr.I PC 2185 Muralidharan while serving in Tambaram Police Station went to Bangalore on 2 days CL on 07.10.2000 and 08.10.2000 to attend a sad news and involved himself in a case of murder reported in Jeevan Beema Nagar, Bangalore on 07.10.2007 vide Jeevan Beema Nagar PS Cr.No.282/00 u/s 302 r/w 34 IPC amounting unbecoming conduct of a Policeman." 3.4. The Enquiry Officer held as follows:

“Having entered on Casual Leave and involved as an accused in specific offence reported in Jeevan Bheema Nagar Police Station thus the charge against the delinquent that he contravened the provisions of Rule 24 of the Tamil Nadu Police Subordinate Service Conduct Rules as per the Statements of Witnesses and the prosecution exhibits filed without any hilt.”

3.5. A reading of the sentence shows that it does not convey any meaning whatsoever and it is not clear as to whether the charge has been proved or not. The said report was forwarded to him and he was asked to give his representation. Eventually, by an order in Proceedings PR.No.91/PR.II(S)/05, dated 02.11.2007 issued by the third respondent, the petitioner was dismissed from service. Shortly after his dismissal, on 06.11.2007, the petitioner was acquitted in the criminal case in S.C.No.40/2001 by the Sessions Court, (Fast Track Court No.VII), Bangalore City. 3.6. Against the order of dismissal from service, the petitioner filed an appeal before the Joint Commissioner of Police, the second respondent, wherein, he specifically took a stand that he has been acquitted in the criminal case, but the Joint Commissioner of Police, by an order dated 24.12.2007 in Proceedings Rc.No.PR.II(S)/Appeal.31/2007, dismissed the appeal stating as follows: “Punishment inflicted is not excessive and no fresh points were raised for consideration. Hence the appeal petition is rejected.”

3.7. A further appeal to the first respondent- Director General of Police was also rejected on 11.06.2008 in his Proceedings Rc.No.8788/AP.3(3)/08. Aggrieved by the said order of the first respondent, having no other efficacious and alternative remedy, the petitioner has approached this court for the above relief.

4. The respondents have filed a counter affidavit, inter alia contending as follows:

4.1. It is true that the petitioner was appointed to the Police Subordinate Services as Grade II Constable on 25.10.1984 and then he was promoted as Grade I Constable in 1996. The petitioner, while working in Tambaram Police Station as if he had received sad news of condolence on 06.10.2000 from Bangalore, went on leave for two days i.e. 07.10.2000 and 10.10.2000 from Bangalore. The petitioner along with his wife and another, were arrested on 07.10.2000 by Bangalore City Jeevan Bheema Nagar Police Station in Crime No.282/2000 for the offences

under Section 302 read with Section 34 IPC and was remanded to judicial custody. The petitioner himself stated that he applied for bail on a number of occasions, but the bail was rejected, which clearly shows that the Courts have disbelieved the plea of the petitioner for grant of bail. The petitioner has stated that the case ended in acquittal by the Sessions Court (Fast Track Court No.VII, Bangalore City) on 06.11.2007. However, a reading of the decision rendered in C.C.No.40/2001 shows that the acquittal was not one of exonerating from the charge of murder, but for the reason that the prosecution has miserably failed to bring home the guilt of the accused 1 to 3 for the offence punishable under Section 302 read with 34 I.P.C. Therefore, the acquittal was not on merits, but for failure on the part of prosecution.

4.2. On knowing the fact that the petitioner was arrested and remanded to judicial custody, he was placed under suspension on 18.10.2000 from service after following the due process as contemplated under law. In fact, the Sub-Inspector of Police, Tambaram Police Station in his letter dated 11.08.2005 reported the entire fact along with the deposition made by the witness to the third respondent herein. Further, during the period of suspension, the Head Quarters was fixed at St.Thomas Mount, since the petitioner was employed within the said jurisdiction.

4.3. Subsequently, a charge memo dated 11.08.2005 was issued to the petitioner setting out the delinquencies committed by him and the Assistant Commissioner of Police, Vadapalani was appointed as the Enquiry Officer to probe into the charges of delinquencies committed by the petitioner, who conducted an elaborate enquiry and submitted his report in PR.91/S/2005. Thereafter, the petitioner was served with Memo dated 04.04.2007 along with enquiry report, calling upon him to submit his further representation, which was acknowledged by the petitioner on 03.08.2007. However, in order to afford one more opportunity to the petitioner, the third respondent herein served another memo dated 20.09.2007, calling him to submit his further representation within seven days on receipt of the said memo, indicating, if he failed on this opportunity, final order will be passed within the stipulated time. Thereafter, the petitioner has submitted his further representation dated 15.10.2007. The third respondent duly considered all the materials pertaining to the charges as against the petitioner, including the further representation made by him and passed an order of punishment of dismissal from the Police Force for proven delinquency in

PR.91/2005, dated 02.11.2007. Aggrieved by the abovesaid punishment order, the petitioner preferred his appeal petition to the second respondent herein. The second respondent, after perusal and careful consideration of the entire records, by an order dated 24.12.2007, rejected the appeal, holding that the order of punishment inflicted is not excessive and no fresh points were raised for consideration. Thereafter, the petitioner filed a Mercy Petition dated 17.01.2008 before the first respondent herein to cancel the punishment imposed on him. The said mercy petition was duly considered by the first respondent and rejected for reasons set out therein, by an order dated 11.06.2008, which has been challenged by the petitioner in this writ petition. 4.4. The order of punishment imposed on the petitioner is not excessive, but only proportionate to the dereliction and delinquency committed by him, which cannot be said as illegal and arbitrary. The disciplinary authority has gone through the report of the Enquiry Officer and all relevant records and only then passed the order of punishment as to the proven charges and hence, it cannot be said that the disciplinary authority simply accepted the findings of the Enquiry Officer. The appellate authority clearly stated that the punishment inflicted is not excessive and no fresh points were raised for consideration and it cannot be said that the appellate authority has not given any proper reason. The mercy petition filed by the petitioner before the first respondent has also been duly considered and dismissed. As the punishment imposed is not excessive and is much proportionate to the gravity of proven charges made against the petitioner, respondents prayed for dismissal of the writ petition.

5. Mr.Vijay Narayan, learned Senior Counsel appearing for the petitioner, submitted that both the appellate authority and the authority who passed the order on the mercy petition, have not applied their mind to look into the judgment of the Criminal Court, which was the basis for initiating departmental proceedings against the petitioner, and therefore, the acquittal in the criminal case will have a bearing on the consideration of the appeal petition as well as the mercy petition and that material fact has been ignored by them and they have passed the impugned orders mechanically; he further contended that from a reading of the order of the Sessions Court, Bangalore in S.C.No.40 of 2001, dated 06.11.2007, it is clear that the petitioner was not involved in the case and that he was acquitted of the charges framed against him in the Criminal Court and therefore, the findings of the

Enquiry Officer are not sustainable in the eye of law; he further stated that there is no discussion about the order of acquittal in the criminal case and no reasoning has been adduced to reject the appeal petition; he further submitted that the petitioner has raised a fresh point before the authorities about the acquittal proceedings in the criminal case and the order of the appellate authority states that there is no fresh point for consideration, and therefore, there is total non-application of mind on the part of the appellate authority before deciding the case and hence, for all these reasons, the impugned orders are vitiated in law and liable to be interfered with. He relied on the following decisions: (i) 2004 (1) SCC 121 (Union of India and others vs. Jaipal Singh):

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view,

committed a grave error, in allowing back wages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside. “

(ii) 2006 (5) SCC 446 (G.M.Tank Vs. State of Gujarat):

“32. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700 p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant had put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February 1986. On the basis of the same charges and the evidence, the department passed an order of dismissal on 21.10.1982 whereas the criminal court acquitted him on 30.1.2002. However, as the criminal court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension.”

and

(iii) 2009 (3) MLJ 417 (Division Bench of Madras High Court) (ONGC Ltd. Vs. P.Surya Rao):

“22. Criminal Case:- The effect of the criminal case and the consequence of conviction and acquittal is the first issue to be considered. The first and primary contention of the respondent employee was that the sanction to prosecute him was given by the appellants on 24.12.1994. It is after the sanction order, charge sheet was filed and the criminal trial was set in motion. The appellants, however, denied the said fact stating that the F.I.R. itself does not disclose that the appellants are responsible for initiation of the case. The sanction order was granted at the behest of the Central Bureau of Investigation. Therefore, the criminal trial was not at the behest of the department. Learned single Judge came to the conclusion that the sanction order and the criminal action under the

provisions of Prevention of Corruption Act 1988 could not be proceeded without the involvement of the disciplinary authority of appellant ONGC. Learned single Judge rejected the appellants' plea that they had nothing to do with the criminal proceedings. (i) The learned single Judge held that the order of dismissal dated 30.7.1999 is based not merely on the conviction by the Special Judge in C.C.No.4 of 1994, but also by virtue of the power of the disciplinary authority invoking the Rule 41(a) of the ONGC, CDA Rules 1994. Therefore, the learned single Judge came to conclusion that the dismissal of the employee was at the behest of the department and therefore, since he was fully exonerated in the criminal case, he should be given appropriate benefit. (ii) On this issue, we are not inclined to accept such finding of the learned single Judge, since the F.I.R. which has been enclosed as a document does not disclose that the complaint was by the appellants. It is based on other reliable information gathered by the C.B.I. with regard to the respondent amassing assets disproportionate to his known source of income. A charge sheet was laid by the CBI and in that case, the respondent was convicted, thereby the respondent was visited with an order of dismissal dated 30.7.1999 as provided and in terms of the proceeding under the CDA Rules, 1994. In the writ petition challenging the order of reinstatement dated 4.9.2002, there is no allegation by the writ petitioner that the criminal proceedings were initiated by the appellants ONGC. Merely because the sanction was sought for by the CBI and granted by the appellants, it does not mean that the action has been taken by the appellants to prosecute the respondent. The order of dismissal and the subsequent order of reinstatement is a necessary action consequent to the conviction by criminal court and acquittal by the High Court of Andhra Pradesh and that is mandate of the Rules and Regulations referred to earlier. We, therefore, hold that the appellants are not responsible for the criminal case initiated against the respondent/employee.” “31. The grievance of the appellants, which apparently appears to be the primary reason for filing the appeal, is on account of the direction issued by the learned single Judge in paragraph 36 of the order. The learned single Judge while specifically holding that the power is vested with the competent authority to decide the issue relating to reinstatement and all consequential benefits flowing therefrom, has passed further direction that the competent authority shall pass orders granting all benefits in terms of Regulation

14. The Apex Court in *Banshi Dhar v. State of Rajasthan and another* reported in (2007) 1 SCC 324 = 2007 (8) MLJ 746 (SC), has held that the question of granting back wages is best left to the competent authority to decide on the merits of each case. Courts do not normally enter into the arena, where the decision is to be taken by the particular authority under the specific rules and regulations prescribed and impose its views as to how the relief should be granted. All that the court is required to do is to ensure that the authority follows the rules and regulations that will apply to the facts of a particular case to avoid an arbitrary, capricious approach to the problem. In this case, the specific direction of the learned single Judge to pass orders in a particular manner may not be justified as Court do not order an authority who is competent to decide the issue to do so in a particular manner. Therefore, the further direction of the learned single Judge has to be interfered with and hence that portion of the order in para 36 directing the appellants to pass orders granting all relief to respondent in terms of Regulation 14 is set aside.” “33. In the result, the Writ Appeal is allowed in part as follows:-

(i) The order of the learned single Judge setting aside the impugned order dated 4.9.2002 is confirmed.

(ii) The specific direction of the learned single Judge in para 36 of the order directing the appellants to pass such orders that would enable the respondent/petitioner to derive all such benefits available to him in terms of Regulation 14 is set aside. (iii) We direct the appellants to pass order in terms of Regulation 14 of the Pay and Allowances Regulations, 1972 and such other rules as may apply, keeping in mind the principles laid down in the Apex Court's decisions in *Hindustan Tin Works v. Its Employees* reported in A.I.R. 1979 Supreme Court 75 = 1978 (2) LLJ 474 (SC) and *Kapoor vs. State of Tamil Nadu* reported in (2001) 7 SCC 231 = (2001) 4 CTC 219 as above and also the decision of the Andhra Pradesh High Court acquitting the respondent honourably, with reasons that will form the basis of the opinion and the order.

(iv) Such exercise shall be done by the appellants within a period of two months from the date of receipt of a copy of this order.

(v) There will be no order as to costs.

(vi) Consequently, connected miscellaneous petition is closed.”

6. Per contra, learned Additional Government Pleader appearing for the respondents submitted that the findings of the Enquiry Officer are based on material facts and the Disciplinary Authority has passed the order of punishment as to the proven charges only after going through the report of the Enquiry Officer and all the relevant records and that the Mercy Petition filed by the petitioner before the first respondent-DGP, has also been duly considered and dismissed. In support of his contentions, learned Addl.G.P. relied on an unreported decision of the Madurai Bench of this Court in W.P.(MD).No.1417 of 2006, dated 17.10.2007, wherein, this Court observed as follows: “13. The contention that the appellate order and revisional order are cryptic and non-speaking is not borne out by records. But on the contrary the orders passed by the appellate authority exhibits an application of mind and relevant factors have been taken into account. With reference to the final submission that the punishment is disproportionate to the gravity of charges levelled against petitioner cannot be countenanced by this Court. It is not the province of this Court to interfere with the punishment imposed on a member of an uniformed services, especially when charges were very serious and same have been proved by satisfactory evidence.”

7. On the above background of pleadings as well as the submissions made by the learned counsel appearing for the parties and on a perusal of the records coupled with the typed set of papers filed along with the Writ Petition, what transpires is that the petitioner-employee was appointed as a Grade-II Constable on 25.10.1984 and promoted as Grade-I Constable in the year 1996. He was arrested in a criminal case in Crime No.282 of 2000, for the offences under Section 302 read with Section 34 IPC and remanded to judicial custody and his bail petitions were rejected. The petitioner was suspended from service by the respondents-Department on 7.10.2000. On 12.1.2006, the respondents revoked the subsistence allowance of the petitioner retrospectively. In the meanwhile, a charge memo was issued and a departmental enquiry conducted against him, whereupon the enquiry officer submitted his report, holding that the charge against the petitioner-delinquent was held proved.

8. It is true that the charge framed against the petitioner was held proved by the Enquiry Officer and based on the said finding of the Enquiry Officer, the petitioner was imposed with the punishment of dismissal from service by the Original Authority, namely, the third respondent herein. The rejection of bail applications of the petitioner might also be one of the factors for his dismissal from service.

9. Thereafter, the significant point to be noted is that the petitioner was acquitted by the trial Court viz., Sessions Court-Fast Track Court-No.VII, Bangalore City, at Bangalore, in S.C.No.40 of 2001 on 6.11.2007. Therefore, the petitioner assails the impugned orders on the very ground that the judgment of acquittal passed by the trial Court at Bangalore, was prior to the confirmation of his dismissal by the respondents 2 and 1 and the aspect of acquittal in the said criminal case was not at all considered by the authorities in proper perspective.

10. Though initially the order of the original authority may not be found fault ,as at the time of imposing punishment on the petitioner the case against him was pending, if we take the orders of the appellate authorities dated 24.12.2007 and 11.06.2008, which were passed much after the acquittal of the petitioner by the trial Court on 06.11.2007, this Court would in unambiguous terms hold that the circumstances have definitely changed and the findings of the appellate authorities ought to have been different from the ones under challenge. The order of the first appellate authority dated 24.12.2007 speaks to the effect that no fresh points were raised for consideration and hence the appeal was dismissed. From this, it is clear that the appeal came to be dismissed as the order of acquittal was not either brought to the notice or taken into consideration of/by the authority, so also was the position before the first respondent in mercy petition. In other words, had the said fact been brought to the notice or taken into consideration of/by the authorities, the punishment of dismissal imposed by the original authority would have been either reversed or modified.

11. Courts do not normally enter into the arena, where the decision is to be taken by the particular authority under the specific Rules and Regulations prescribed and substitute its views as to how the relief should be granted. All that the Court is required to do is to ensure that the authority follows the Rules and Regulations

that will apply to the facts of a particular case to avoid an arbitrary and capricious approach of the problem.

12. In this case, it was incumbent on the part of the respondents/authorities to take note of all the material facts available before them, including the point of the petitioner's acquittal by the Criminal Court at Bangalore, which acquittal was also stated to be final, unquestioned in appeal, and give a clear thought and application thereto, before passing the impugned orders.

13. In the given situation, the respondents 2 and 1, who are the appellate authority and the reviewing authority respectively, had not taken note of the acquittal of the petitioner in the criminal case, which pending case was the basis for dismissal of the petitioner from service. What all the orders of respondent 2 and 1 say is that no fresh points were brought out by the petitioner for consideration. A perusal of the appeal petition filed by the petitioner before the second respondent would specifically indicate in the enclosures column at the end that a copy of the judgment of acquittal by the trial Court was enclosed for the perusal of the appellate authority. Even assuming that the petitioner had not brought the said fact of acquittal to the notice of the said respondents, they, being the complainant in the case against the petitioner before the trial Court, might very well be knowing the said fact and ought to have taken into consideration the said point before passing the orders impugned. This would clearly show the non-application of mind on their part and, hence, the orders impugned, in my viewpoint, cannot be legally sustained.

14. Even the learned counsel for the respondents has not produced any order of appeal before the Karnataka High Court, challenging the judgment of acquittal of the petitioner by the trial Court and, hence, it has to be construed that the said judgment of the trial Court at Bangalore, acquitting the petitioner, has become final and the same stood unquestioned by the State. The respondents-Department cannot place the petitioner under dismissal for the reason that the trial Court granted him only an honourable acquittal on the premise that the prosecution has failed to prove the guilt of the petitioner/accused beyond reasonable doubt and there was no material to substantiate the guilt of the accused. In this connection, it

is to be stated that the said acquittal was passed only based on oral and documentary evidence adduced before the trial Court. The only decision relied upon by the learned counsel for the respondents cannot be made applicable to the case on hand, as, in this case, though the charge levelled against the petitioner is held proved by the Enquiry Officer, the petitioner is acquitted by the criminal court subsequently.

15. In view of my discussion as above, the orders under challenge viz., the order of the second respondent/appellate authority dated 24.12.2007 and the order of the first respondent/reviewing authority dated 11.06.2008 alone are set aside and the matter is remanded to the said respondents for fresh consideration of the appeal and the mercy petition, taking into consideration the acquittal of the petitioner by the trial Court at Bangalore and after giving an opportunity of being heard to the petitioner, and for passing appropriate orders, on merits and in accordance with law. The said exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order.

16. Writ Petition is allowed to the extent indicated above. No costs.

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