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M.Saravana Kumar Vs. 1.The Commandant,

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Court : Chennai

Decided On : Aug-08-2014

Judge : R.Mahadevan

Appellant : M.Saravana Kumar

Respondent : 1.The Commandant,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 08.2014 CORAM THE HONOURABLE MR.JUSTICE R.MAHADEVAN W.P(MD)No.5738 of 2008 M.Saravana Kumar ... Petitioner Vs. 1.The Commandant, T.S.P., IX Battalion, Manimuthar, Tirunelveli District. 2.The Deputy Inspector General of Police, Armed Police, Trichy - 12, Tiruchirapally District. 3.The Director General of Police, Chennai. ... Respondents Prayer Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent issued in the reference P.R.No.3/2005, dated 11.07.2005 and the impugned order of the second respondent issued in reference C.No.A2/10254/2006, dated 08.12.2006 and the impugned order of the third respondent issued in the reference R.C.No.53117/AP3(1)/2007 dated 20.02.2008 and quash the same and direct the respondents to reinstate the petitioner in service together with back wages and all the attendant benefits. !For Petitioner ... Mr.K.Vellaiswamy ^For Respondents ... Mr.R.Velmurugan Govt. Advocate :

ORDER

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent issued in the reference P.R.No.3/2005, dated 11.07.2005 and the impugned order of the second respondent issued in reference C.No.A2/10254/2006, dated 08.12.2006 and the impugned order of the third respondent issued in the reference R.C.No.53117/AP3(1)/2007 dated 20.02.2008 and quash the same and direct the respondents to reinstate the petitioner in service together with back wages and all the attendant benefits.

2. Facts in nut-shell leading to the filing of this writ petition, are as follows:

2. 1. The petitioner joined as the Grade II Constable on 01.03.2003 and posted at IX Battalian. In the year 2005, he was promoted as Nayak. At that time, he was issued with a charge memo in P.R.No.3/2005 alleging certain allegations, based on which, the charges were framed. On conducting the enquiry, a final report was submitted, holding that the charges against the petitioner, were proved. In the meantime, he was placed under suspension. Ultimately, the first respondent passed the final order removing him from service on 11.07.2005. Against which, he filed an appeal to the second respondent and the same was also dismissed on 23.09.2005. Alleging that the said appeal was rejected without considering his representation, he filed W.P.No.10712 of 2005, wherein this Court while setting aside the order passed by the second respondent dated 23.09.2005, remanded the matter for fresh consideration. Thereafter, the second respondent, by his order dated 08.12.2006, dismissed the appeal filed by the petitioner. Challenging the same, the petitioner filed a mercy petition before the third respondent, who, in turn, by order dated 20.02.2008, dismissed the same. Aggrieved over the same, the petitioner is before this Court. 2.2. The respondents filed the counter affidavit denying the allegations made by the petitioner and contended that the impugned orders are sustainable in law as the delinquencies are very serious in nature involving moral turpitude and hence, the punishment of removal from service would be in commensurate with the delinquencies committed by him.

3. The learned Counsel for the petitioner submitted that the charges levelled against the petitioner were not proved and hence, the order of removal from service would not meet the ends of justice, since the said order has not been passed on consideration of the materials available on record. He further contended that the Enquiry Officer, without considering the evidence available on record, had simply held that the charges levelled against him, were proved, based on which, the first respondent passed the order of removal from service and thereafter, the appeal was filed before the second respondent, who rejected the same and challenging the same, he preferred a writ petition before this Court in W.P.No.10712 of 2005, wherein the matter was remitted to the second respondent for fresh consideration. It is the specific stand of the petitioner that though the matter was remitted to the second respondent, the case of the petitioner has not been considered in detail and once again, the appeal was rejected. Further, the mercy petition filed before the third respondent also came to be rejected without assigning any valid reasons and hence, he prayed for setting aside the impugned orders passed by the respondents.

4. In support of his contentions, he placed reliance on the following decisions: (i) Pradyat Kumar v. C.J.

of Calcutta reported in AIR 1956 SC285 (ii) U.P.State v. Mohd. Nooh reported in AIR 1958 SUPREME COURT86 (iii) P.Sreeramulu v. State reported in AIR 1970 ANDHRA PRADESH114 wherein it is held as follows: ?.4. ... The enquiry officer having thus clearly given a finding on the charges even before the enquiry started had also proceeded to indicate the punishment. The ratio of the decision was set out by Krishna Rao, J., at page 257: ?.The above facts clearly indicate that the Enquiry Officer had already prejudged the issue and can never be expected to maintain an open mind during the course of the enquiry. In other words, the Enquiry Officer gave his judgment even before the trial, rendering the whole trial a mere farce. We are therefore justified in coming to the conclusion that the enquiry officer in the present case has not started his enquiry with an open mind but that he has prejudged the very issue before him.?.?.

5. Per contra, the learned Government Advocate appearing for the respondents, reiterating the averments in the counter affidavit, contended that the charges levelled against the petitioner are serious in nature and the Enquiry Officer has correctly found him guilty and the first respondent has passed the order of removal from service as the said punishment is tenable in law. Also, he pointed out that the appeal as well as the mercy petition filed by the petitioner were rightly dismissed confirming the finding of the first respondent and therefore, no interference is warranting at the hands of this Court.

6. I have considered the rival submissions and perused the materials available on record.

7. It is relevant to reproduce the charges framed against the petitioner, thus: ".(i) Highly reprehensible and unbecoming conduct of a police person in having entered into the house of one Sudalaimuthu, door No.H39, PWD quarters, Manimuthar on 12-04-2005 at 2330 hrs with ulterior motive and attempted to molest his wife Tmt.Subbulakshmi while she was sleeping. (ii) Highly reprehensible and unbecoming conduct of a police person in having entered into the house of one Ramasamy door No.H80, PWD quarters, Manimuthar and attempted to molest his wife Tmt.Selvi on 12/13-04-2005 night at 0130 hrs.".

8. After framing the charges, the Enquiry Officer conducted the enquiry and examined the witnesses concerned and the documentary evidence as well. Accordingly, he arrived at a conclusion that the charges were proved and based on the report of the Enquiry Officer, the first respondent passed the order of removal from service. The appeal filed before the second respondent was rejected, aggrieved against which, he filed a writ petition in W.P.No.10712 of 2005, wherein this Court remanded the matter to the second respondent for fresh consideration. On remand, the second respondent once again dismissed the appeal filed by the petitioner, consequent to which, the petitioner filed a mercy petition before the third respondent, who in turn, confirmed the order of removal from service, by dismissing the mercy petition.

9. Though the learned Counsel for the petitioner placed reliance upon the decisions of the Honourable Apex Court in Pradyat Kumar v. C.J.

of Calcutta reported in AIR 1956 SC285and U.P.State v. Mohd. Nooh reported in AIR 1958 SUPREME COURT86 they are not relevant to the issue before this Court. Likewise, the decision of the Andhra Pradesh High Court in P.Sreeramulu v. State reported in AIR 1970 ANDHRA PRADESH114 is cited by the petitioners out of context.

10. A perusal of the preliminary report submitted by the Assistant Commandant, TSP IX Battalian, Manimuthar, to the Commandant, would show that there were several occasions, on which, the petitioner had committed the acts affecting the moral turpitude. One such incident is that the petitioner misbehaved with one M.Selvi, daughter of S.Muthiah, who is the local resident and she had also preferred a complaint to the higher officials, however, she had not pressed the same. Likewise, the wife of one Ramasamy, had also come across the bitter experience because of the petitioner's condemnable activities. The third instance is that the petitioner tried to molest the modesty of the wife of one S.Sudalaimuthu and a complaint had been sent in this regard. Out of the three incidents, the charge memo has been issued based on the two complaints made by S.Sudalaimuthu and Ramasamy. No doubt, the petitioner had got three antecedents to his credit, which would weaken his case.

11. More so, all that could be seen from a glance over the charges levelled as against the petitioner, is that the petitioner, having lost his conscious that he has been rendering the services in a disciplined force, had conducted himself in a manner which would clearly emphasise his attitude towards the society. Such kind of practice should be cut at its root, which, in my considered opinion, is the need of the hour. In a growing society like ours, if the conduct of the petitioner is viewed lightly, it would lead to a sorry state of affairs.

12. It is not in dispute that the enquiry had been conducted after examining the witnesses and considering the documentary evidence available before the Enquiry Officer. Thereafter, the first respondent passed the order of removal from service, as against which, the petitioner moved an appeal before the second respondent and it was also rejected. Alleging violation of principles of natural justice, the petitioner filed a writ petition in W.P.No.10712 of 2005, before this Court and the

matter was remitted to the second respondent for fresh consideration. The second respondent, on remand, rejected the appeal filed by him. Later, he preferred a mercy petition before the third respondent, which would not end in his favour.

13. Considering the grave nature of the charges put forth against the petitioner and taking into account the impugned orders passed by the respondents, this Court feels that the petitioner is not at all desirable to be a part of the disciplined force and therefore, the punishment imposed on him is sustainable in law. Accordingly, the writ petition fails.

14. In fine, this writ petition stands dismissed. No costs. To 1.The Commandant, T.S.P., IX Battalion, Manimuthar, Tirunelveli District. 2.The Deputy Inspector General of Police, Armed Police, Trichy - 12, Tiruchirapally District. 3.The Director General of Police, Chennai.

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