

T.Suresh Kumar Vs. Commandant of Tn Special Police Xi Battalion

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Court : Chennai

Decided On : Jun-24-2014

Judge : S.Rajeswaran

Appellant : T.Suresh Kumar

Respondent : Commandant of Tn Special Police Xi Battalion

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

24. 06-2014 CORAM THE HONOURABLE MR. JUSTICE S.RAJESWARAN
W.P.No.15712 of 2012 T.Suresh Kumar .. Petitioner vs. 1.The Commandant, TN Special Police XI Battalion, Rajapalayam. 2.The Dy. Inspector General of Police, Armed Police, Trichy 12. 3.The Inspector General of Police, Armed Police, Trichy 12. 4.The Director General of Police, Dr.Radhakrishnan Salai, Mylapore, Chennai-4. 5.The Secretary to Government, Home Police (II) Department, Fort St. George, Chennai-9. .. Respondents Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the respondents 1 to 4 in connection with the impugned orders passed in PR No.1098 u/r 3(b) dated 11.5.99, C.No.A2/ 2583/ 2003 dated 3.7.2003, C.No.Estt(2)/17681/IG/2003 dated 7.1.2004, RC No.PR-III(1)/154545/2004 dated 17.8.2004 Memo No.22882/memo3(1)2007 dated 13.2.2007 and Na.Ka.No.T2/9314/2009 dated 30.9.2009 respectively and quash the same. For Petitioner : Mr.Venkataramani, Senior Counsel for Mr.M.Muthappan. For

Respondents : Mr.Vijayakumar, Additional Government Pleader.

ORDER

The petitioner prays for the issuance of a Writ of Certiorari, calling for the records of the respondents 1 to 4 in connection with the impugned orders dated 11.5.1999, 3.7.2003, 7.1.2004, 17.8.2004, 13.2.2007 and 30.9.2009 respectively passed by them and to quash the same.

2. The case of the petitioner is that the petitioner is a Grade II Police Constable and he was posted to service in XI Battalion, Rajapalayam and has been serving there without any complaint whatsoever. The petitioner was on casual leave from 31.5.1998 to 9.6.1998 for a period of 10 days. After visiting his native place, all of a sudden, he fell ill and due to stress and strain, he got himself admitted in a private nursing home and based on the recommendations of the Medical Officer, he applied medical leave for a period of 21 days from 10.6.1998 to 5.7.1998. Even after taking treatment, he was not fully recovered and hence he could not report for duty. As there was no one to help the petitioner, he could not report the matter to the higher officials, and hence he was declared as a deserter for his absence from 5.7.1998 to 31.7.1998 and he was issued with the desertion order dated 31.7.1998. On 5.8.1998, when he reported for duty before the Commandant along with the medical certificate, he was taken back for duty. Again from 19.8.1998 to 23.8.1998, he applied casual leave with permission to visit his village and he fell ill during that period, along with the medical certificate, once again he applied for medical leave from 24.8.1998 to 20.9.1998. He was not able to report for duty on 21.9.1998, as he could not recover fully from the illness. Hence once again he was declared as a deserter by orders of the Commandant on 4.12.1998. Therefore, a departmental enquiry was conducted and he was issued with a charge memo by the Enquiry Officer. The Enquiry Officer, found the charges proved against the petitioner and finally, the petitioner was removed from service by an order dated 11.5.1999 and a copy of the same was also served to the petitioner on 3.6.1999. The petitioner was issued with an order of removal of service without giving him a copy of the enquiry report. The enquiry report was not furnished to the petitioner as he did not attend the oral enquiry. Moreover, the oral enquiry which resulted in

a major punishment has not been conducted in a manner known to law. It is an ex parte, enquiry without giving an opportunity to putforth the petitioner's contention after examination of the witnesses. Besides that the copy of the Enquiry Officer report which is the basis for imposing a punishment was not furnished to the petitioner. If the report had been served on him, he would have represented to the authorities concerned giving the reason for his absence and got himself imposed with a lesser punishment or total exoneration of the charges. Therefore, the petitioner has come up with the above writ petition.

3. I have heard Mr.Venkataramani, learned Senior Counsel representing the petitioner and Mr.Vijayakumar, learned Additional Government Pleader for the respondents. The respondent department has not filed any counter. I have also gone through the affidavit filed in support of the writ petition and other documents available on record.

4. The learned Senior Counsel appearing for the petitioner, at the outset, would submit that desertion order passed by the respondent department in view of the petitioner's absence from duty is illegal and his absence from duty was not deliberate. In fact, such absence for a long period, came up for consideration before this Court in a number of cases and in one case, where the petitioner therein was a Constable, who was absented for duty for a period of 21 days and suffered an order of desertion, was considered by a Division Bench of this Court in W.A.No.58 of 2011 by an order dated 27.1.2011, held that the order of punishment was disproportionate to the charge levelled against the petitioner and in fact, it was shocking to the conscience of the Court. Therefore, the writ petition was allowed and the order impugned was set aside and the matter was remitted back to the Department for reconsideration. With regard to the quantum of punishment imposed on the petitioner therein and to take a decision. However, it was made clear therein that in the event the quantum of punishment imposed on the petitioner is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. Similar orders were passed in another appeal in W.A.No.1608 of 2011 dated 26.2.2013.

5. Therefore, the learned Senior Counsel for the petitioner, while strongly relying on the judgment of the Division Bench viz., W.A.No.58 of 2011 dated 27.1.2011, would submit that the facts in this case are also similar to that of the issues covered in this judgment and the same would squarely apply to the facts of this case.

6. Hence, the learned Senior Counsel appearing for the petitioner prays for setting aside the order of punishment as it is disproportionate to the charge levelled against the petitioner and also request for remitting the matter for re-consideration. In respect of the quantum of punishment, the learned Additional Government Pleader would oppose that in respect of the judgment referred to by the learned Senior Counsel for the petitioner in W.A.No.1608 of 2011 dated 26.2.2013, the petitioner therein, being a Constable, continuously absented from duty for 21 days, cannot be taken into consideration and that the same cannot be compared to the case on hand as in the present case, the petitioner being a Constable deserted his job for more than 22 days and hence prayed for dismissal of the writ petition.

7. I have heard the rival submissions on either side and I have also gone through the citations relied upon by the learned Senior Counsel for the petitioner.

8. Admittedly, the petitioner being a Constable, has deserted the job for more than 21 days and he was away without reporting for duty for a long time and an enquiry was conducted and an order was passed removing the petitioner from service. Admittedly, no enquiry report copy of the Enquiry Officer has been furnished to the petitioner. Moreover he absented himself only due to his ill-health. There was no other complaint against him in respect of his work. On that ground also, the order of punishment is liable to be interfered with. With regard to the quantum of punishment, as rightly contended by the learned Senior Counsel appearing for the petitioner in the judgment in W.A.No.58 of 2011 dated 27.1.2011 referred and relied upon by him, wherein the Division Bench of this Court held as follows:- 2. The appellant/writ petitioner, who was serving as Grade-II Police Constable in the Police Department at Kancheepuram, was proceeded against departmentally on the charge that he remained absent from duty for a period of 21 days. The Enquiry Officer held the charge against the appellant as proved. In view of the finding of

the Enquiry Officer, as also the fact that the appellant had earlier deserted the force on three occasions and absented himself from duty on two occasions, the disciplinary authority, viz., the second respondent herein, passed an order of dismissal from service against the appellant. The appellant challenged the same by filing the writ petition, which was dismissed by the learned single Judge, who held that the appellant, being employed in the Armed Reserve, was expected to maintain strict discipline and in view of his past conduct, the punishment of dismissal cannot be termed as excessive or disproportionate.

3. After hearing the learned Senior Counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority, viz., the second respondent herein, to reconsider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed. 9. Therefore, following the above principle laid by the Division Bench, I am inclined to set aside the impugned order passed against the petitioner herein as the punishment is disproportionate to the charge levelled against the petitioner and consequently set aside the impugned order and direct the fourth respondent herein to reconsider the matter with regard to the quantum of punishment imposed on the petitioner and to take a decision, within a period of six weeks from the date of receipt of a copy of the order. It is made clear that in the event of quantum of punishment imposed on the petitioner is reduced, he shall not make any claim with regard to the wages for the period, as he has not performed his duty, but the continuity of his service will not be affected.

10. The writ petition is allowed on the above terms. No costs. 24-06-2014 Index : Yes/No.Internet: Yes/No.Svn Office to Note: Issue order copy by 1.7.2014. To

1.The Commandant, TN Special Police XI Battalion, Rajapalayam. 2.The Dy. Inspector General of Police, Armed Police, Trichy 12. 3.The Inspector General of Police, Armed Police, Trichy 12. 4.The Director General of Police, Dr.Radhakrishnan Salai, Mylapore, Chennai-4. 5.The Secretary to Government, Home Police (II) Department, Fort St. George, Chennai-9. S.RAJESWARAN,, J.

Svn W.P.No.15712/2012 24-06-2014

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