

Tamil Nadu Vs. the State

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Court : Chennai

Decided On : Nov-19-2014

Judge : D.Hariparanthaman

Appellant : Tamil Nadu

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 29.09.2009
CORAM THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN
W.P.No.7470 of 2007 C.Francis ..Petitioner Versus The Commandant T.N.Special
Police V Battalion Avadi, Chennai 109..Respondent PRAYER : This Writ Petition
came to be numbered under Article 226 of the Constitution of India by way of
transfer of O.A.No.741 of 2002 from the file of Tamil Nadu Administrative Tribunal
with a prayer to call for the records of the respondent in connection with the
impugned order issued in F1/P.R.No.23/2001 dated 17.01.2002 and quash the
same and direct the respondent to reinstate the applicant into service and grant
him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani Senior counsel for Mr.M.Muthappan For
Respondent : Mrs.C.K.Vishnupriya Additional Government Pleader

ORDER

The Original Application in O.A.No.741 of 2002 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as the "Tribunal") is the present writ petition.

2.The petitioner joined the services as Grade II Police Constable on 15.04.1997 in the Tamil Nadu Special Police VIII Battalion, Veerapuram, Avadi, Chennai.

He was sent on deputation to serve in the Special Police Battalion, New Delhi, in March 1999.

However, he did not join duty at New Delhi.

Hence, he was declared as a deserter.

Thereafter, a disciplinary proceeding was initiated for desertion and he was dismissed from service by the respondent by an order dated 15.10.1999 in PR No.21 of 1999.

3.The petitioner preferred an appeal to the Deputy Inspector General of Police, Armed Police, Chennai against the dismissal order.

The appeal was allowed by an order dated 05.09.2000 and the punishment of dismissal was set aside and the punishment was modified into one of postponement of increment for a period of one year without cumulative effect.

The petitioner was transferred to Tamil Nadu Special Police V Battalion, Avadi, the respondent herein, by an order dated 13.11.2000.

4.However, in the meantime, the petitioner was placed under suspension by an order dated 24.10.2000 for having involved in a criminal case.

The suspension order was revoked by the respondent by an order dated 24.10.2001 and he joined duty on the forenoon of 24.10.2001 itself.

5.After joining duty, a charge memo dated 29.11.2001 was issued to the petitioner, by the respondent, alleging that he was involved in a criminal case of murder of one Masilamani on 09.08.1999 along with otheRs.which was registered on the file

of E.3 Korattur Police Station, in Crime No.970 of 1999 under Section 302 IPC, while he was a deserter.

An enquiry was conducted by the Assistant Commandant, Tamil Nadu Special Police V Battalion, Avadi, Chennai.

In the enquiry, three witness were examined and six documents were marked as exhibits.

Based on the enquiry, the Enquiry Officer recorded a finding of guilt.

6. Based on the enquiry report, the respondent passed an order dated 17.01.2002 dismissing the petitioner from service.

7. Aggrieved by the same, the petitioner filed Original Application in O.A.No.741 of 2002 (W.P.No.7470 of 2007) to quash the aforesaid order.

8. While admitting the Original Application on 25.06.2002, the Tribunal granted interim stay.

Based on the stay order, the respondent passed an order dated 04.07.2002, reinstating him in service with effect from 25.06.2002.

It is stated that the petitioner still continues in service.

9. Heard Mr.K.Venkataramani, learned Senior Counsel for the petitioner and Mrs.C.K.Vishnupriya, learned Additional Government Pleader for the respondent.

10. The learned Senior Counsel for the petitioner vehemently contends that the allegation as set out in the charge sheet would not constitute misconduct under the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, read with relevant Conduct Rules.

He further contends that the impugned order was passed without application of mind and that the impugned punishment was imposed not for the charge for which an enquiry was held.

11. Therefore, the core question is whether the allegation made in the charge sheet would constitute a misconduct.

12. The charge made against the petitioner, as framed in the charge sheet is as follows: VERNACULAR (TAMIL) PORTION DELETED
13. Therefore, the allegation made against the petitioner is that he involved in a criminal case of murder.

In fact, in para 9 of the reply affidavit, it is admitted that the petitioner was proceeded against for his involvement in the criminal case.

Para 9 of the reply affidavit is extracted here-under: "9. The charge against the applicant is only for involvement in the criminal case during the period of desertion.

His involvement in the criminal case has been proved".

14. Mr. Durai was examined as a fiRs. witness in the enquiry and Exs. P-1 to P-3 were marked through him.

15. The petitioner was implicated in the murder of one Masilamani that took place on 09.08.1999 at Korattur.

The wife of the deceased Masilamani gave a complaint about the murder of her husband.

Thereafter, investigation was conducted by the Inspector of Police by name Mr. Pannir Selvam.

He sent a letter dated 06.09.1999 to the Inspector General of Police, Armed Police, to take action against the petitioner for his involvement in the criminal case.

It is stated that the criminal case was registered on the file of the Korattur Police Station, in Crime No. 970 of 1999, under Section 302 IPC, alleging that the petitioner along with three otherRs. were involved in the murder of one Masilamani.

The said document was marked as Ex. P-1 in the enquiry.

Mr. Pannir Selvam, the Inspector of Police, investigated the crime and a charge sheet dated 15.09.1999 was laid before the concerned Sessions Court.

One among the four accused was the wife of the deceased, who lodged the complaint.

16.While so, Mr.Durai, the Inspector of Police, wrote a letter dated 30.09.2000 to the respondent, enclosing the index of the charge sheet filed in the criminal case.

Along with the said letter, Mr.Durai also sent an alleged confession statement, given by the petitioner, admitting that he involved in the conspiracy and the murder of the deceased Masilamani.

The letter sent by Mr.Durai was marked as Ex.P-2 and the alleged confession statement was marked as Ex.P-3 in the enquiry.

All these documents were marked through Mr.Durai, who succeeded Mr.Pannir Selvam as Inspector of Police in the Korattur Police Station.

17.The second witness was one Mr.Raju, who was a Junior Assistant in the Tamil Nadu Special Police V Battalion.

He deposed in the enquiry to mark the suspension order dated 24.10.2000 and the letter dated 24.09.2001 written by the respondent to the Inspector of Police, Korattur, requiring them to furnish the stage of the criminal case.

18.One Mr.Srinivasan, Grade I Police Constable was examined as third witness.

The reply dated 26.09.2001 sent by the Inspector of Police to the respondent was marked as Ex.P-6 in the enquiry, through the third witness.

In the said letter, it was stated that the petitioner and other accused were arrested and released on bail on 18.11.1999.

19.The learned Senior Counsel for the petitioner states that the Enquiry Officer was not correct in coming to the conclusion that the petitioner was involved in conspiracy and murder, based on Ex.P-3, the alleged confession.

According to the learned Senior Counsel, the charge itself was not that the petitioner committed the offence of conspiracy and murder.

On the other hand, it is submitted that the charge was that he was involved in a criminal case.

It is further submitted that the Department could not decide in a departmental enquiry as to whether any delinquent has committed the crime of murder.

It has to be investigated and dealt by the Police Department and by the concerned Sessions Court.

Therefore, the charge was not that the petitioner committed murder and on the other hand, the charge was that he was involved in a criminal case.

Involvement in a criminal case, i.e. registration of mere a FiRs. Information Report, investigation thereon etc. could not itself would constitute misconduct.

20. The submissions of the learned Senior Counsel for the petitioner is acceptable to me, since the mere involvement in a criminal case could not constitute misconduct warranting departmental action.

As rightly pointed out by the learned Senior Counsel for the petitioner, conviction in a criminal case alone could be the basis for passing the impugned order as per Rule 3 (c) of the Tami Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955.

21. In my considered view, the charge sheet itself is defective and the involvement in a criminal case could not be the basis for departmental action.

The said view is also supported by a decision of this Court in D.SELVARAJ versus MADRAS METROPOLITAN DEVELOPMENT AUTHORITY AND ANOTHER reported in 1992 (1) LLJ734 In the said case, this Court placing reliance on the decision of the Honourable Supreme Court in GLAXO LAB.

(I) LTD., versus LABOUR COURT, MEERUT reported in 1984 (1) LLJ16 held that unless the commission and omission on the part of the delinquent comes under the enumerated misconducts under the Service Rules, the employer cannot take disciplinary action against the employee.

The other case relied on by the learned Senior Counsel for the petitioner is the decision of this Court in S.DHANASEKARAN versus THE COMMISSIONER OF POLICE reported in 2006 (4) CTC184 Paras 10 and 11 of the said judgment are relevant for the purpose of this case and the same are extracted here-under: "10.In the instance case there was no conviction by the Trial Court and the High Court quashed the criminal proceedings pending on the file of the Judicial Magistrate No.II, Madurai and in such a case the said police officer/who is the petitioner herein should have been allowed to continue in his service as a constable.

The FIRs.and second respondents, the superior officers.working in the Police Department did not respect the law of the land and also their own Police Standing Orders.11.Apart from that, I do not find any misconduct in the case of the petitioner.

It is not a case that the petitioner has indulged in corrupt practice or contracted a second marriage or involved in adultery or involved in any Act questioning his morality".

The said two judgments are squarely applicable to the facts of this case.

22.The further submission of the learned Senior Counsel for the petitioner is that the impugned order proceeds that the petitioner was unauthorisedly absent upto 23.10.2001.

This is also given as a reason for dismissal, when the same was not one of the allegations made in the charge sheet.

Further, as stated above, the petitioner cannot be found fault for unauthorised absent, since he was placed under suspension from 24.10.2000, until the suspension order was revoked and he was restored to service in October 2001.

Hence, the respondent passed the impugned dismissal order without applying his mind.

As rightly pointed out by the learned Senior Counsel for the petitioner, when it was not a forming part of the charge, the dismissal could not be based on such a charge as held by the Honourable Supreme Court in M.V.BIJLANI versus UNION OF INDIA AND OTHERS reported in 2006 (5) SCC88 23.As stated already, the petitioner continues in service.

Moreover, the criminal case also ended in acquittal by the judgment dated 28.03.2002 made in S.C.No.336 of 2000 by the learned Additional District Judge, Fast Track Court I, Chenglepet.

24.In these circumstances, the impugned order is quashed and the writ petition is allowed.

No costs.

TK To The Commandant T.N.Special Police V Battalion Avadi, Chennai 109

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