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Court : Chennai

Decided On : Aug-02-1957

Reported in : AIR1958Mad216; (1958)1MLJ234

Appellant : R. Venkatapathy

Respondent : The Dy. Inspector-general of Police Western Range and ors.

Judgement :

P.V. Rajamannar, C.J.

1. Two points were pressed on us by Mr. Kumaramangalam in the appeal against the judgment of Rajagopalan, J., dismissing a writ petition filed by the appellant against the order of the Deputy Inspector-General of Police, Western Range, Coimbatore, and the subsequent orders of the Inspector-General of Police and the Government of Madras confirming the order of the Deputy Inspector-General, terminating his probation. The first point was that as the extended period of probation of the appellant terminated on 2nd July, 1951, he should be automatically deemed to have become a full member of that service on and from that day and subsequently if action was proposed to be taken against him, the procedure should be that pertaining to a full member of the service, and the procedure of terminating the probation cannot be availed of. Actually it appears on 11 th July, 1951, a few days after the period of probation expired, notice had been

issued to show cause why his probation should not be terminated. Before, however, these proceedings could be continued and disposed of, there was a criminal trial in which the appellant was involved which ended in his conviction and consequent dismissal from service. The appellant, however, was acquitted on appeal by this Court on 7th May, 1954 and as a result of that he was reinstated in service in June, 1954. On the 19th July, 1954, proceedings were again started when notice was served on him to show cause why the probation should not be terminated. The appellant submitted his explanation. But the Deputy Inspector-General of Police, Coimbatore, held that the charges were proved and on 8th October, 1954, he ordered termination of the probation. His appeals to the Inspector-General of Police and the Government were fruitless. Thereafter he filed the writ petition from which this appeal arises.

2. The contention of Mr. Kumaramangalam was really twofold : firstly, that once the extended period of probation came to an end, the appellant automatically became a full member of the service. We are unable to find anything in the rules to support this contention. It is one thing to say that the period of probation had come to an end on 2nd July, 1951; it is quite another thing to say his probation was found satisfactory, and he was admitted as a full member of the service. Before the latter could be done, there should be a finding by the concerned superior officer that his probation has been found to be satisfactory. Necessarily the determination of this question can only be taken up after the period of probation has come to an end. It is idle to contend that the superior officer has no right even to come to a conclusion whether the probation has been satisfactory and whether he is entitled to be admitted a full member of the service. The second part of learned Counsel's contention was that even assuming that the Deputy Inspector-General of Police could, after the expiry of the period of probation, go into the question whether the appellant should or should not be admitted as a full member of the service, nothing which happened subsequent to the expiry of that period could be taken into account in deciding the matter. We do not agree. Here again the fallacy is that the superior officer is not concerned only with the question whether during the particular period of probation the conduct of the appellant was or was not satisfactory. There is a further obligation on his part to come to a conclusion that the appellant can be admitted as a full member of the service. In

arriving at this conclusion anything which has happened subsequently to the expiry of the period of probation will also be relevant. Take for instance a case when after the expiry of the period of probation the appellant had been guilty of any conduct which would not entitle him to become a full member of the service. We think such conduct can be taken into consideration.

3. The next contention of Mr. Kumaramangalam was based upon a memorandum issued by the Inspector-General of Police advertent to the provisions of G.O. No. 384, Public (Services) dated 10th April, 1954. The question dealt with in that G.O. was whether it is permissible to take an officer's past record into account in disposing of a disciplinary case against him. It was laid down that such record or any part of it could not be taken into account in arriving at a finding on the primary charge but it may be taken into account in the punishment to be awarded in case the primary charge or charges are proved. Of course if there had been anything in the appellant's past record which had been already disposed of but which was taken into accounting the proceedings which culminated in the order of termination of his service in 1954, then the appellant might have a legitimate grievance, though we doubt whether that would have affected the jurisdiction of the officer to pass the order in question. Actually, however, in this case there was no such thing. At no time were the charges which were framed in July, 1951, ever gone into, and it is only in October, 1954, for the first and only time that charges were not only framed but were also found to have been established and action taken on that. There are no merits in this appeal.