

S. Saravanan Vs. the Commandant T.N. Special Police Vi Battalion,

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SooperKanoon Citation : sooperkanoon.com/848436

Court : Chennai

Decided On : Mar-26-2010

Judge : R. Subbiah, J.

Appeal No. : W.P. No. 16292 of 2008 and M.P. No. 1 of 2008

Appellant : S. Saravanan

Respondent : The Commandant T.N. Special Police Vi Battalion,; the Inspector of Police, Armed Police And; the Dir

Advocate for Def. : V. Vishwanathan, Additional Government Pleader

Advocate for Pet/Ap. : Venkataramani, Sr. Counsel for; M. Muthappan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R. Subbiah, J.

1. This writ petition is filed to call for the records of the first respondent in connection with the impugned order passed by him in PR. No. 8/2007 dated 28.08.2007 and confirmed by the 2nd and 3rd respondents in C. No. A2/AP1.17/2007 dated 07.12.2007 and RC No. 241200/AP.3(1) /2007 dated 15.05.2008 respectively and quash the same and direct the respondents to

reinstate the petitioner into service and grant him all consequential service and monetary benefits.

2. The petitioner entered the service as a directly recruited Police Constable through a selection conducted by Uniformed Service Recruitment Board and appointed to service on 12.12.2003. After institutional training, the petitioner was directed to serve in the Tamil Nadu Special Police VI Battalion, E. Company, Madurai. The petitioner entered medical leave due to ill health from 04.12.2006 to 18.12.2006 and due to non-recovery from the illness, the petitioner needed further treatment and hence he extended his leave for another 40 days as per the advice of the doctor from 19.12.2006 to 29.01.2007. As he could not recover from illness, he had been directed to go to Madras to take treatment by the doctors at First med Apollo Hospitals, Chennai. While, the petitioner was undergoing treatment in the hospital, due to non-reporting for duty on 29.01.2007, he was declared as 'deserted' and the desertion notice was sent to him. As he was not available in Madurai and undergoing treatment at Madras, the notice was served on his father who is an illiterate and who could not communicate the same to the petitioner. Since he was continuously undergoing treatment at Madras, none of the proceedings issued by the disciplinary authority viz., the Commandant, Tamil Nadu Special Police VI Battalion were served on him. It seems that those documents have been served on his parents who could not convey the same to him. After recovery from illness, he came to know that he was removed from service by the orders of the first respondent in PR. No. 8/2007 on 28.08.2007. On coming to know about his removal from service, immediately, he filed an appeal to the second respondent. The said appeal was rejected by the second respondent, confirming the order passed by the first respondent by an order dated 07.12.2007. After full recovery from the illness, when the petitioner made an appeal to the third respondent on 13.12.2007, the third respondent had also dismissed the said appeal. Aggrieved over the same, the present writ petition is filed.

3. The learned Counsel appearing for the petitioner submitted that none of the proceedings was served on the petitioner at the relevant point of time, since the petitioner was taking treatment at Madras, but all the proceedings were served only to the father of the petitioner who is an illiterate person. Therefore, the father

of the petitioner could not communicate the same to the petitioner. Since the orders were passed without affording opportunity to the petitioner to put forth his explanation, the impugned order passed by the respondents are liable to be quashed.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that all the proceedings were duly served on the father of the petitioner at his residence at Madurai. Under such circumstances, at this length of time, the prayer sought for by the petitioner cannot be entertained.

5. Heard the learned Counsel on either side and perused the entire materials available on record.

6. It is an admitted fact that the desertion notice and subsequent proceedings of charge memo were not served on the petitioner and it was served only on the petitioner's father who is an illiterate person and who could not communicate the same to the petitioner. Hence, considering the submissions made by the learned Counsel appearing for the petitioner, I am of the opinion that proper opportunity should be given to the petitioner to put forth his explanation. Under such circumstances, it would be appropriate to remit the matter to the first respondent for fresh enquiry after affording an opportunity to the petitioner. Accordingly, the impugned order passed by the first respondent in PR. No. 8/2007 dated 28.08.2007 and confirmed by the 2nd and 3rd respondents in C. No. A2/AP1.17/2007 dated 07.12.2007 and RC No. 241200/AP.3(1) /2007 dated 15.05.2008 respectively are hereby quashed and the matter is remitted to the first respondent to conduct fresh enquiry by affording opportunity to the petitioner. The entire exercise shall be completed by the first respondent within a period of 12 weeks from the date of receipt of a copy of this order.

7. In the above terms, the writ petition is allowed. No costs. Consequently, connected M.P. is closed.