

M. Suresh ... Vs. the Deputy Inspector General of Police, and anr.

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Court : Chennai

Decided On : Jun-28-2010

Judge : N.Paul Vasanthakumar, J.

Acts : Constitution Of India - Article 226

Appeal No. : WRIT PETITION NO.1811 OF 2006

Appellant : M. Suresh ...

Respondent : The Deputy Inspector General of Police, and anr.

Advocate for Def. : Mr.R.Murali, Adv.

Advocate for Pet/Ap. : Mr. Ravi Shanmugham, Adv.

Judgement :

1. The prayer in the writ petition is to quash the orders dated 9.1.2001 and 3.6.2004 passed by the second respondent and direct the respondents to reinstate the petitioner in service with continuity of service.

2. The brief facts necessary for disposal of this writ petition are as follows:

a) The petitioner joined as Grade-II Police Constable on 8.1.1975 and received 42 rewards. While the petitioner was working in Tirupattur Town Police Station, on 17.8.1991, he took medical leave. The District Forest Officer, Vellore Division reported to the Superintendent of Police, Vellore on 11.12.1991 that the petitioner

was roaming with two others near Kattukottai Saragam (Division) with some ulterior motive. The petitioner was complicated in a forest offence case in S.T.O.R.No.108/91-92, which was registered on 11.12.1991 on the basis of the complaint given by the Forester, Anaicut. The accusation was that the petitioner concealed sandal wood. The petitioner was issued with a charge memo under the service rules in P.R.No.84/95 on 9.6.1995 for the above said allegations. The said charge memo was challenged by the petitioner by filing Original Application No.3868/1995 and an interim stay was granted insofar as the departmental proceeding was concerned on 14.7.1995. b) In the criminal case (forest offence case), charge sheet was filed before the learned Judicial Magistrate (Special Court), Tiruppattur in C.C.No.1527/1992 under Section 36(E) of the Tamil Nadu Forest Act , 1882 and Rule 3(1) of the Tamil Nadu Sandal Wood Possession Rules, 1970. The learned Judicial Magistrate convicted the petitioner for the said offences and sentenced to undergo imprisonment for two years and also imposed a fine of Rs.3,000/-. The petitioner challenged the said conviction and sentence by filing Criminal Appeal No.8 of 2002 before the learned Additional District and Sessions Judge, Vellore. The said conviction and sentence was confirmed by the learned Additional District and Sessions Judge, Tirupattur. c) The petitioner having aggrieved about the said judgments filed Criminal Revision Petition before this Court in R.C.No.172 of 2003. On 10.3.2004, this Court allowed the said criminal revision partly and set aside the imprisonment and released the petitioner and one Panneerselvam, Police Constable under Section 4 of the Probation of Offenders Act, 1958. During the pendency of the criminal appeal, on 2.11.2000, the second respondent issued a show cause notice and called upon the petitioner as to why he should not be dismissed from service from 17.8.2000, on the date on which he was convicted by the learned Judicial Magistrate. The said show cause notice was challenged by the petitioner by filing Original Application No.8585 of 2000 before the Tamil Nadu State Administrative Tribunal, which was dismissed by the Tribunal, by order dated 18.12.2002. The petitioner submitted his explanation to the show cause notice and stated that the criminal appeal filed by him was pending against the conviction and sentence. The second respondent after considering the said plea, by order dated 9.1.2001, dismissed the petitioner from service stating that the petitioner had been convicted and therefore, he cannot be

retained in service. d) According to the petitioner, P.R.No.84/1995 was also dropped without further action, while he was dismissed from service. After release of the petitioner under the Probation of Offenders Act, 1958 by this Court on 10.3.2004, the petitioner submitted a representation on 19.4.2004 before the first respondent and prayed for reinstating him in service. On 3.6.2004, the second respondent rejected the said request. Therefore, the petitioner has challenged the said two orders in this writ petition and prayed for reinstatement contending that as per Section 12 of the Probation of Offenders Act, 1958, if a person is released under Section 3 or 4 of the said Act, he will not suffer any disqualification and therefore, the petitioner is entitled to be reinstated, as the dismissal order passed on 9.1.2001 is based on the conviction made by the criminal Court.

3. The respondents herein filed a counter affidavit stating that after perusing the factual aspects submitted that in Criminal R.C.No.172 of 2003, this Court only set aside the imprisonment/sentence alone and not the conviction. It is also stated in the counter affidavit that Rule 66(2) of PSO Volume-I gives discretion to the authority to deal with a Police Officer sentenced with fine only or released under the Probation of Offenders Act, 1958 either to dismiss, remove or compulsorily retire or any other lesser punishment. Applying the said rule, the request submitted by the petitioner was again negatived and no case is made out to interfere with the said order.

4. The learned counsel for the petitioner submitted that the petitioner having been dismissed based on conviction and he having been released under the Probation of Offenders Act, 1958, the respondents are bound to consider the request made by the petitioner seeking reinstatement by cancelling the order of dismissal. The learned counsel for the petitioner also relied on a decision of this Court reported in 2000 (IV) CTC 409 (P.Subramanian vs. Joint Registrar of Co-operative Societies) , in support of his contention.

5. The learned Government Advocate for the respondents, on the other hand, submitted that the petitioner was issued with the charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate (Discipline & Appeal) Rules independently, for conducting enquiry and he has challenged the charge memo and the petitioner

was issued with a show cause notice on 2.11.2000 and without submitting any reply to the show cause notice, he filed Original Application No.8585 of 2000, which was dismissed by the Tamil Nadu State Administrative Tribunal on 18.12.2002 and the charge memo in P.R.No.84/95 was closed because of the dismissal order passed based on the conviction order passed by the criminal Court on 9.1.2001. The learned Government Advocate also submitted that the criminal Court released the petitioner under the Probation of Offenders Act, 1958 has taken note of the fact of removal of the petitioner from service already. The leniency was shown due to the said fact and the petitioner having availed the benefit under the Probation of Offenders Act, 1958 by not undergoing the sentence cannot now turn around and say that his dismissal order also to be set aside.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

7. Initiation of disciplinary proceedings against the petitioner in P.R.No.84/95 apart from registering of forest offence case in S.T.O.R.No.108/91-92 on 11.12.1991 is admitted by the petitioner in his affidavit. The said criminal case was investigated and charge sheet was filed in C.C.No.1527/1992 and after full trial, the petitioner was convicted by the learned Judicial Magistrate for offence under Section 36(A) (E) of the Tamil Nadu Forest Act, 1882 and Rule 3(1) of the Tamil Nadu Sandal Wood Possession Rule, 1970 are not in dispute. Even after the conviction, the petitioner was issued with the show cause notice, for which also, the petitioner has not given any reply and challenged the show cause notice before the Tribunal in Original Application No.8585/2000, which was dismissed on 18.12.2002. The appeal filed by the petitioner before the Assistant Sessions Court was also dismissed by confirming the conviction and sentence. In the Criminal Revision Case filed by the petitioner, this Court also confirmed the conviction. This Court in Criminal R.C.No.172/2003 held that two Courts having believed the evidence adduced by the prosecution, it is not necessary to go into the said evidence and re-appraise the evidence. This Court also took notice of the fact that the learned counsel for the petitioner only prayed for leniency in punishment. The said portion of the submission and order passed in Criminal Revision Case is extracted hereunder. " 11. However, the learned counsel for the petitioner would pray for

leniency, since the occurrence has taken place in the year 1991 and the accused have lost his job and they are not likely to get it back. Hence they may be released under Probation of Offenders Act. The learned counsel also relied on decision of this Court reported in 1985 LW (crl) 325 (Andiappan and others vs. The State by the Forest Range Officer, Burgur) wherein it has been held that where there is a minimum period of sentence contemplated under the Act, Probation of Offenders Act would apply. Following the same, I set aside the imprisonment and release the petitioners under Section 4 of the Probation of Offenders Act.

12. With this modification in sentence, the revision is dismissed."

8. From the said order passed in criminal revision case, it is evident that this Court was apprised of the dismissal order passed by the department and the petitioner relied on the said fact for showing leniency. This Court considered the said fact i.e., only insofar as the sentence, instead of sending the petitioner to prison, he was ordered to be released under Section 4 of the Probation of Offenders Act, 1958. The decision cited by the learned counsel for the petitioner is not supporting the case of the petitioner in any manner. In the said case, viz., 2000 (IV) CTC 409 (P.Subramanian vs. Joint Registrar of Co-operative Societies), this Court taking note of the order passed by the learned Sessions Judge, set aside the conviction and directed to refund the fine amount and let off the accused person under Section 3 of the Probation of Offenders Act, 1958. Here, the conviction imposed against the petitioner is not set aside and the leniency was shown to the petitioner only in respect of sentence after noticing the fact of dismissal of the petitioner from his service. The order passed by this Court in the criminal revision filed by the petitioner is not challenged or modified. Hence the petitioner is not entitled to make a submission seeking cancellation of the dismissal order, as the said submission is contrary to the submission made by the petitioner before this Court in the said criminal revision case and get him released under the Probation of Offenders Act, 1958.

9. This Court is bound to consider under what circumstances the petitioner was released under Section 4 of the Probation of Offenders Act, 1958 by the criminal court as the wrong doer's background, crime committed whether he deserves to

be released under the Probation of Offenders Act, 1958 on the facts and circumstances of a given case. The said principle is explained by the Honourable Supreme Court in the decision reported in 2000(3) Supreme 749 = 2000(5) SCC 82 (Dalbir Singh v. State of Haryana). In paragraphs 7 to 10, it is held as follows:-

" 7. The conditions for applying Section 4 of the PO Act have been delineated in the commencing portion of the provision in the following words:

4. When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct....

8. Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is the nature of the offence.

9. Thus Parliament has left it to the court to decide when and how the court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the court to be expedient. The word expedient had been thoughtfully employed by Parliament in the section so as to mean it as apt and suitable to the end in view. In Blacks Law Dictionary the word expedient is defined as suitable and appropriate for accomplishment of a specified object besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabri a three-Judge Bench of this Court has considered the word expedient. Learned Judges have observed in para 21 thus: (SCC p.145) Again, the word expedient used in this provisions, has several shades of meaning. In one dictionary sense, expedient (adj.) means apt and suitable to the end in view, practical and efficient; politic; profitable; advisable, fit, proper and suitable to the circumstances of the case. In another shade, it means a device characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right(see Websters New International Dictionary).

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word expedient is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account the circumstances of the case including the nature of the offence.... This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

10. The argument of the petitioner that he is entitled to get reinstatement under Section 12 of the Probation of Offenders Act, 1958 also cannot be accepted in the light of the judgment of the Supreme Court reported in 1987 (Supp) SCC 39 (Tripathi Ram v. V.K.Seth), as the petitioner was dismissed earlier. In the above said decision the Supreme Court held thus, "The question raised in this appeal as to whether or not the appellant who was convicted for a criminal offence should have been heard by the disciplinary authority before imposing the punishment is concluded against the appellant by a decision of a five Judge Bench of this Court in Union of India v. Tulsiram Patel. As a matter of fact the case of Tulsiram Patel which has been dealt with in para 149 [SCC p. 513, SCC (L&S;) p. 787] onwards was very similar to the facts of the present case. Under the circumstances, so far as this point is concerned, the appellant cannot succeed. Learned counsel for the appellant has, however, called our attention to the fact that the appellant was released on probation by the learned Magistrate who recorded the order of conviction. It is contended with justification that having regard to Section 12 of the Probation of Offenders Act, 1958, the punishment of dismissal from service which would disqualify him from future government service should not have been imposed. Section 12 of the Probation of Offenders Act, 1958 reads thus: Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence. Since it is

statutorily provided that an offender who has been released on probation shall not suffer disqualification attaching to a conviction of the offence for which he has been convicted notwithstanding anything contained in any other law, instead of dismissing him from service he should have been removed from service so that the order of punishment did not operate as a bar and disqualification for future employment with the government. Under the circumstances, the impugned order of dismissal is converted into an order of removal from service. Subject to this modification the appeal fails and is dismissed. There will be no order as to costs."

11. Taking note of the facts and circumstances of the case and having regard to the order passed in the criminal revision case and the judgment of the Supreme Court, I am of the view that the petitioner has not made out a case warranting interference of the order passed by the second respondent. Hence, the writ petition is dismissed. No costs.

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