

M.Ramanathan Vs. the Deputy Inspector General of Police and anr.

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Court : Chennai

Decided On : Jan-10-2012

Judge : P.Jyothimani; M.Duraiswamy, Jj.

Acts : Tamil Nadu Police Subordinate service (Discipline and Appeal) Rules - Rule 3(b)

Appeal No. : W.A.No.2495 of 2010 & M.P.No. 1 of 2010

Appellant : M.Ramanathan

Respondent : The Deputy Inspector General of Police and anr.

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

Advocate for Pet/Ap. : Mr.P.Jayaraman, Adv.

Judgement :

1. The above Writ Appeal is directed against the order of the learned single judge made in W.P.No.48011 of 2006 (T) (O.A.No.4491/2000) dated 28.07.2010.

2. The writ petitioner is the appellant. The appellant filed the writ petition in W.P.No.48011 of 2006 to call for the records of the second respondent in R.P.No.131 of 1998, dated 30.6.1999 and of the first respondent in C.NO.B1/1729/2000, dated 19.5.2000 and quash the same and direct the respondents to reinstate the petitioner in service with all consequential service and

monetary benefits.

3. According to the appellant, while he was serving as Grade I Police Constable in Madurai City, he was served with a charge memo in P.R.No.131 of 1998 under Rule 3(b) of the Tamil Nadu Police Subordinate service (Discipline and Appeal) Rules, for the following charges:- (i) Highly improper act in doing money lending business in Melavasal areas, Madurai during the year 1997 and thereby violated Rule 1 of TNSPO Conduct Rules 1964.

(ii) Violation of Rules 8 and 12 of TNSPO Conduct Rules, 1964 in lending money of Rs.11,000/- to one Muniandi, Madurai Corporation Sanitary Worker which has lead to suspicion that he kidnapped Karuppayee, wife of Muniandi and their two children on 20.09.1997 for not repaying the money to him. (iii) Reprehensible conduct in having illicit intimacy with one Karuppayee wife of Muniandi, a Sanitary Worker of Madurai Corporation which resulted in the ill-treatment of Karyppayee by her husband and presentation of petition in H.1 Thideernagar Police Station on 04.08.1997 by the said Karyppayee. The appellant submitted his explanation denying the charges. Having not satisfied with the explanation submitted by the appellant, the disciplinary authority ordered oral enquiry and appointed the Enquiry Officer. The Enquiry Officer examined 5 witnesses and ultimately found that the charges against the appellant are not proved. When the Enquiry Officer submitted his report before the disciplinary authority, the disciplinary authority, deferred with the findings of the Enquiry Officer, issued a memorandum dated 19.4.1999 to the appellant informing him that he would take suitable decision after considering the Enquiry Officer's report and called upon the appellant to make any representation or submission in writing to the disciplinary authority within 15 days. Along with the memorandum, the disciplinary authority enclosed a copy of the report of the Enquiry Officer. Pursuant to the memorandum issued by the disciplinary authority, the appellant submitted his representation dated 7.5.1999 to the disciplinary authority . The disciplinary authority passed a dissenting minute disagreeing with the findings of the Enquiry Officer and found all the charges levelled against the appellant as proved. Consequently, the disciplinary authority viz., the second respondent, by order dated 30.6.1999, awarded the punishment of compulsory retirement to the appellant.

4. Aggrieved over the order dated 20.6.1999, passed by the second respondent, the appellant preferred an appeal before the first respondent on 7.7.1999. However, the first respondent dismissed the appeal holding that the appeal is time bared.

5. Aggrieved over the order passed by the respondents, the appellant has preferred the writ petition. The learned single Judge also confirmed the orders of the respondents and dismissed the writ petition. Aggrieved over the order of the learned single Judge, the writ petitioner has filed the above appeal.

6. Heard Mr.P.Jayaraman,, learned senior counsel appearing on behalf of the appellant and Mr. R.Vijayakumar, learned Additional Government Pleader appearing on behalf of the respondents.

7. On a careful consideration of the materials available on record and the submissions made by Mr.P.Jayaraman, learned senior counsel appearing on behalf of the appellant and Mr. R.Vijayakumar, learned Additional Government Pleader appearing on behalf of the respondents, it could be seen that the Enquiry Officer after taking into consideration the oral evidences of 5 witnesses, came to the conclusion that the 3 charges levelled against the appellant were not proved. The Enquiry Officer filed his detailed report before the disciplinary authority finding that the 3 charges levelled against the appellant as not proved.

8. It is settled law that in a writ appeal, filed as against the order passed by the respondents pursuant to the report of the Enquiry Officer, this court cannot re-appreciate the evidence. The disciplinary authority by his dissenting minute reversed the findings of the Enquiry Officer. However, prior to reversing the findings of the Enquiry Officer, the second respondent has not given any separate show cause notice to the appellant giving him an opportunity to put-forth his case. The second respondent while enclosing a copy of the report of the Enquiry Officer, sent a memorandum dated 19.4.1997 to the appellant asking him to give his representation or submission, which is not sufficient and is also against the settled principles of law. The second respondent ought to have given a separate show cause notice calling upon the appellant to submit his representation or submission before passing the dissenting minute. Therefore, the order passed by the second

respondent is not valid and is liable to be set aside.

9. That apart, on appeal, preferred by the appellant, the first respondent dismissed the appeal holding that the appeal is time barred.

10. Learned senior counsel appearing on behalf of the appellant relied upon the following judgments in support of his submissions:

(i) 1998 (7) SCC 84 (Punjab National Bank and others v. Kunj Bhari Misra) wherein the Apex court held that whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The principles of natural justice require the authority which has to take a final decision and can impose a penalty to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer. (ii) 2007(5) CTC 157 (A.Lourdusamy v. Deputy Chief Security Commissioner) wherein a Division Bench of this court held that when direct evidence and circumstantial evidence lacks corroboration, the department should not have imposed capital punishment of dismissal from service. (iii) 2010(1) MLJ 977 (S.Setharaman v. Registrar General, High Court). In the above judgement, the Division Bench of this court held that the word "Corroboration" is not a technical term of art, it means by itself no more than evidence tending to confirm, support or strengthen other evidence. "Corroboration" is nothing than the evidence which confirms or supports or strengthens other evidence.

11. It is not in dispute that the second respondent passed the order of compulsory retirement on 30.6.1999. Similarly, it is also not in dispute that the appellant has preferred the appeal before the first respondent on 4.7.1999. The first respondent, while dismissing the appeal as time bared, found that the appellant had obtained a copy of the order dated 30.6.1999 only on 22.7.1999. Even assuming that the appellant had received the copy of the order on 22.7.1999, there is no dispute that he preferred appeal on 4.7.1999. In fact, the appellant had preferred an application in O.A.No.180 of 2000 on the file of Tamil Nadu Administrative Tribunal, Chennai

for a direction to direct the respondents to dispose of the appeal dated 4.7.1999. The Tribunal also directed the first respondent to dispose of the appeal within 10 days. Therefore, it is clear that the appellant has preferred the appeal as early as on 4.7.1999 as against the order passed by the second respondent on 30.6.1999. We are at loss to understand that how the first respondent has come to the conclusion that the appeal is time barred. He has not given any reason for coming to the conclusion that the appeal is time barred. The appellant having filed the appeal on the 4th day from date of passing of the order dated 30.6.1999, it cannot be said that the appeal is time barred. The finding of the first respondent is erroneous and is liable to be set aside.

12. It is pertinent to note that before the Enquiry Officer the complainant was examined as P.W.1, wife of the complainant viz., Karuppayee was examined as P.W.2, the Inspector of Police was examined as P.W.3, the Assistant Commissioner of Police was examined as P.W.4 and another Assistant Commissioner of Police was examined as P.W.5. In order to substantiate and prove the charges levelled against the appellant, the disciplinary authority ought to have examined some other independent witnesses. In the case on hand, excepting the complainant, complainant's wife and the police officers, none was examined to corroborate their evidences.

13. In the judgement relied upon by the learned senior counsel appearing on behalf of the appellant it has been held that in the absence of corroborative evidence, the department ought not have imposed capital punishment of dismissal from service. In the present case, the Enquiry Officer, after taking into consideration the evidences of P.W.1 to P.W.5, rightly came to the conclusion that the charges levelled against the appellant were not proved. However, the disciplinary authority viz., the second respondent, and the appellate authority viz., the first respondent, erroneously awarded the punishment of compulsory retirement. The judgements relied upon by the learned senior counsel appearing on behalf of the appellant squarely applies to the facts and circumstances of the present case.

14. The learned single judge while dismissing the writ petition has not taken into consideration the non issuance of show cause notice, limitation for filing the appeal and also the absence of corroborative evidence to prove the charges levelled against the appellant. As already stated, the order passed by the respondents 1 and 2 are liable to be set aside. Accordingly, the same are set aside. Therefore, we are of the view that the order of the learned single judge passed in W.P.No.48011 of 2006 (T) (O.A.No.4491/2000) dated 28.07.2010 is liable to be set aside. Accordingly, the same is set aside.

15. Further, it is brought to the notice of this court that the appellant had the benefit of interim order pending writ petition and he was allowed to continue and pursuant to the order passed in the writ petition, he continued in the employment till the disposal of the writ petition. Further, in the above writ appeal, an order of status quo was granted in favour of the appellant. Therefore, the appellant continues in the employment till this date. The learned senior counsel appearing for the appellant also submitted that the appellant is due to retire from service by the end of the year 2012. Since we have set aside the order passed by the respondents 1 and 2 and allowed the writ petition, the appellant shall continue in the employment.

16. In the result, the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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