

R.Premkumar Vs. the Deputy Inspector General of Police.

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Court : Chennai

Decided On : Jun-25-2012

Judge : D.Hariparanthaman, J.

Acts : [Indian Penal Code\(IPC\) 1860](#) - Sections 147, 148, 302; Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 - Rule 3(b); [Constitution of India](#) - Articles 226

Appeal No. : W.P.(MD)No.5976 of 2009 and M.P.(MD) No.1 of 2009

Appellant : R.Premkumar

Respondent : The Deputy Inspector General of Police.

Advocate for Def. : Mr.B.Pugalenthi, Spl.G.P, Adv

Advocate for Pet/Ap. : Mr.M.S.Soundararajan, Adv.

Judgement :

PRAYER

Writ petition is filed under Article 226 of the [Constitution of India](#) praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 1st respondent in C.No.C4/AP90/2009 dated 17.06.2009 and the order passed by 2nd respondent in PR.No.93/08 dated 16.04.2009 and quash the same and direct the respondents to reinstate the petitioner in service with all attendant

benefits. (Prayed amended vide Hon'ble Court order dated 18.06.2012 in M.P.1/2011)

ORDER

1. The petitioner joined service as Grade II Police Constable on 15.04.1997 in Tuticorin District. While he was working in Maniyachi Police Station, he was implicated as A9 in a criminal case in crime No.127 of 2008 under Sections 147, 148 and 302 I.P.C. on the file of Srivaikuntam police station. He was placed under suspension, by an order dated 19.07.2008. Subsequently, a charge memo dated 18.08.2008, under rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in P.R.No.58 of 2008, was issued making certain allegations. Six allegations were made in the said charge memo. One of the charges was that he involved in the criminal case and he conspired to murder one Suyambu on 26.04.2008. Enquiry Officer was appointed to enquire into the allegations in P.R.No.58 of 2008. He was issued a memo dated 23.09.2008 by the Deputy Superintendent of Police, Kovilpatti, to appear for enquiry on 29.09.2008 before him, in relation to P.R.No.58 of 2008. He did not appear in the enquiry. Hence, the Superintendent of Police, Tuticorin issued proceedings dated 24.10.2008 treating him as deserter from 29.09.2008 for 21 days, as per P.S.O.90(3)(b).

2. Thereafter, a charge memo in P.R.No.93 of 2008 dated 31.10.2008 was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The allegations made therein is that the petitioner was unauthorisedly absent from 29.09.2008 for 21 days and he became a deserter.

3. Based on the said charge sheet, enquiry was conducted. He did not appear for the enquiry. Seven witnesses were examined and 11 documents were marked. Enquiry Officer held that the charges were proved. Based on the findings of the enquiry officer, he was removed from service by the order dated 16.04.2009 passed by the second respondent. The petitioner preferred an appeal before the first respondent. The appeal was rejected by an order dated 17.06.2009. The petitioner has filed the present writ petition, to quash the order dated 16.04.2009 of the second respondent and order dated 17.06.2009 of the first respondent.

4.Counter affidavit is filed refuting the allegations.

5.It is stated that due opportunity was given to the petitioner and he did not participate in the enquiry. Witnesses were examined and documents were marked and enquiry officer gave his report holding that the charges were proved. After hearing the petitioner on the findings, the impugned order was passed, dismissing the petitioner from service. The appellate authority has confirmed the same by the order dated 17.06.2009. The respondent sought for dismissal of the writ petition.

6.Heard both sides.

7.The learned counsel for the petitioner has vehemently contended that while the petitioner was placed under suspension, he was directed to appear for enquiry in P.R.No.58 of 2008 and he did not appear for the enquiry due to medical reasons. In the said circumstances, the respondents could not proceed as if the petitioner was a deserter, particularly, when he was placed under suspension.

8.The learned counsel further submits that the dismissal is for the alleged unauthorised absence for 21 days treating him as deserter. He has been serving from 1997 and there are no other complaints against the petitioner. The criminal case, based on which the earlier proceeding was initiated in P.R.No.58 of 2008, ended in honourable acquittal. He has produced the judgment dated 12.05.2011 passed by the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi in S.C.No.281 of 2009.

9.In such circumstances, he has submitted that the dismissal from service for absence is opposed to the decision of the Division Bench of this Court dated 27.01.2011 in W.A.No.58 of 2011 R.Ramesh Vs. The Deputy Inspector General of Police. He has sought for reinstatement as per the aforesaid decision.

10.On the other hand, the learned Special Government Pleader submits that in view of P.S.O.90(3)(b), the proceedings initiated in P.R.No.93 of 2008 is perfectly in order. Hence, the petitioner is not correct in stating that the disciplinary action could not be initiated alleging absence during the period of suspension, in view of P.S.O.90(3)(b). The learned Additional Government Pleader as sought for

dismissal of the writ petition.

11.I have considered the submission made on either side.

12.The first submissions of the learned counsel for the petitioner is attractive. But, if the same is viewed in the light of P.S.O.90-(3)(b), the submissions must fail. It is true that in the normal course, no disciplinary action would be initiated alleging that an employee remained absent, if he is placed under suspension. But, P.S.O.90(3)(b) makes it clear that, during the period of suspension, if a police personnel is directed to appear for enquiry in a disciplinary proceeding and if he fails to appear, the department could treat him as a deserter. In view of the P.S.O.90(3)(b), I am of the view that the proceedings in P.R.No.93 of 2008 could not be faulted.

13.As rightly contended by the learned counsel for the petitioner, the petitioner was dismissed on the charge of absence alone and not for any other misconduct. It is also not stated in the counter that his past record from 1997 is bad. It is also not the case of the department that he habitually absent himself from duty. In my view, the judgment of the Honourable First Bench of this Court relied on by the learned counsel for the petitioner squarely applies to the facts of this case. The said judgment is a short one and the entire judgment is extracted hereunder:

Heard the learned counsel for the parties. This appeal is filed challenging the order of the learned single Judge dated 02.09.2008 passed in writ petition No.33624 of 2005.

2.The appellant/writ petitioner, who was serving as Grade-II Police Constable in the Police Department at Kancheepuram, was proceeded against departmentally on the charge that he remained absent from duty for a period of 21 days. The Enquiry Officer held the charge against the appellant as proved. In view of the finding of the Enquiry Officer, as also the fact that the appellant had earlier deserted the force on three occasions and absented himself from duty on two occasions, the disciplinary authority, viz. the second respondent herein, passed an order of dismissal from service against the appellant. The appellant challenged the same by filing the writ petition, which was dismissed by the learned single Judge, who

held that the appellant, being employed in the Armed Reserve, was expected to maintain strict discipline and in view of his past conduct, the punishment of dismissal cannot be termed as excessive or disproportionate.

3. After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority, viz. the second respondent herein, to re-consider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed.

14. Therefore, in the light of the aforesaid judgment of the First Bench of this Court, the impugned orders are quashed and the matter is remitted back to the second respondent to consider the matter with regard to the quantum of punishment imposed on the petitioner in the light of the aforesaid judgment within a period of 8 weeks from the date of receipt of a copy of this order. It is made clear that if the punishment is modified from dismissal to some other punishment, the petitioner is not entitled to wages for the period of non employment and however, he could be granted continuity in service so as to get notional fixation of pay and other benefits.

15. The writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed. Arul

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