

Mr.E.Ramanan Vs. the Director General of Police and anr.

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Court : Chennai

Decided On : Apr-24-2012

Judge : Vinod K.Sharma, J.

Acts : Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules - Rule 3(b); Constitution Of India - Article 226

Appeal No. : Writ Petition No.9327 of 2007 (T) O.A.No.1613 of 2002

Appellant : Mr.E.Ramanan

Respondent : The Director General of Police and anr.

Advocate for Def. : Mr.R.Bala Ramesh, Adv.

Advocate for Pet/Ap. : Mr.G.Bala, Adv.

Judgement :

This Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.1613 of 2002 from the file of the Tamil Nadu Administrative Tribunal, with a prayer for the issuance of Writ of Certiorarified Mandamus to call for the records, relating to the impugned order passed by the second respondent in his proceedings RC.No.ADC/A/PR.5/96-1, dated 23.12.1999 and to quash the same and consequently, to direct the respondent to restore the order passed by the second respondent in his proceedings Rc.No.H1/CB/9522/92, D.O.No.1643/96, dated 14/08/1996, with all consequential

service and monetary benefits.

Vinod K.Sharma, J.

ORDER

1. The petitioner joined the Police service as Sub Inspector of Police, on 09th April, 1976 and was promoted as Deputy Inspector of Police in the year 1977 and thereafter, to the post of Inspector of Police, on 16th November, 1980.

2. While the petitioner was working as Inspector of Police, Crime Branch, CID, on 23rd May, 1989, he was served with a charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules').

3. The charge against the petitioner was that, he had violated Rule 23, by marrying one Mrs.Saravathy, while his first marriage was still subsisting.

4. The second charge of the petitioner was of discarding his first wife, by not maintaining her. Departmental enquiry was conducted against the petitioner, in which, the charges were proved. The petitioner was, thereafter, imposed the punishment of compulsory retirement.

5. The petitioner challenged the order of compulsory retirement, by filing O.A.No.1729 of 1989, before the Tamil Nadu Administrative Tribunal (for short, 'the Tribunal'). The application filed by the petitioner was allowed, the order of punishment was set aside and the matter was remitted back to the Authority to pass fresh orders.

6. On 24th January, 1991, the petitioner was again imposed of the punishment of compulsory retirement, by the Inspector General of Police/second respondent.

7. Feeling aggrieved, the petitioner, preferred an Appeal before the Director General of Police, Coimbatore, viz., the first respondent herein. The first respondent dismissed the Appeal.

8. The applicant/petitioner again challenged the order passed by the respondent Nos.1 and 2, by filing O.A.No.1479 of 1992, before the Tribunal. The application was again allowed and the order was set aside with direction to the respondents to pass fresh orders in accordance with law, within six months.

9. It was also ordered by Tribunal, that, till the passing of the fresh orders, the petitioner would be treated to be on duty. The petitioner was reinstated in service, as ordered by the Learned Tribunal on 18th January, 1996 and it was after a period of one year, that the respondent No.2 again passed an order, treating the period of suspension, as also the non duty period as duty period.

10. The submission of the petitioner is that, thereafter, fresh disciplinary action was initiated against the petitioner on the same misconduct on 17th March, 1999, and he was again imposed the punishment of compulsory retirement.

11. After the order of compulsory retirement, a show cause notice was issued to the petitioner, to show cause as to why, the period spent out of employment to be not treated as leave, including extraordinary leave.

12. The petitioner submitted a detailed reply to the show cause notice, but, the respondent No.2 passed the impugned order, treating the period of suspension and non-duty period, as eligible leave, including the extraordinary leave.

13. The petitioner, challenged the impugned order of treating the period of suspension and period of out of service, as the period spent on leave, by submitting that the impugned order, on the face of it, is arbitrary being without jurisdiction, inasmuch as, it was not open to the respondent No.2 to treat the period of suspension and out of service period, as the period of leave, in view of the specific direction of the Learned Tribunal, directing the period be treated as period on duty.

14. The impugned order is also challenged on the ground that the order, on the face of it, is arbitrary, inasmuch as, the petitioner could not be blamed for not attending duty, as it was fault of the respondents to pass the order of compulsory retirement, which was without jurisdiction, which was set aside by the Learned

Tribunal. Therefore, the petitioner cannot be punished for the fault of the respondents.

15. On consideration, I find force in the contentions raised by the learned counsel for the petitioner. It was not open to the respondent No.2 to take a decision, contrary to the specific direction of the Learned Tribunal, after the order had attained finality, having not challenged in this Court.

16. The learned counsel for the petitioner is also right in contending that the petitioner cannot be made to suffer the consequences of the order, which was held to be illegal and without jurisdiction.

17. On the earlier two occasions, the order of compulsory retirement was set aside and thereafter, in pursuance to the order passed by the Learned Tribunal that the petitioner was reinstated in service.

18. The impugned order, therefore, is not only arbitrary, but also, without jurisdiction, therefore, hit by Article 14 of the Constitution of India.

19. The Writ Petition is allowed. The impugned order is set aside. The respondents are directed to treat the period of suspension as well as the period of out of service, as duty period.

20. The petitioner shall also be entitled to consequential benefits.

21. No costs.

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