

A. Bhoopathy. Vs. the Deputy Inspector General of Prisons

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SooperKanoon Citation : sooperkanoon.com/928611

Court : Chennai

Decided On : Jul-03-2012

Judge : Vinod K.Sharma, J.

Acts : Tamil Nadu Civil Service Rule - Rule 17(A); [Constitution of India](#) - Articles 226

Appeal No. : WRIT PETITION No. 48480 of 2006

Appellant : A. Bhoopathy

Respondent : The Deputy Inspector General of Prisons

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

Advocate for Pet/Ap. : Mr.S. Selvathirumurugan , Adv

Judgement :

Writ Petition filed under under Article 226 of the [Constitution of India](#) praying this Court to issue a Writ of Certiorari to call for the records on the file of the second and the first respondents in connection with the orders passed by them in their Proceedings No.PO.4/6529/2000 dated 28.4.2000 and No.7545/Mu OU.2/2000 dated 19.12.2000 respectively and quash the same.

ORDER

1. The petitioner joined as Instructor Painting and Sign Board Writing on 23.12.1985. Apart from the regular duties, the petitioner was also orally ordered by the second and third respondents to write banners for the functions organised and presided over by the respondents 2 and 3. The materials for banners were used to be supplied by the Jailor and waste materials used to be thrown away and usable materials used to be stored for future use.

2. The petitioner was issued a Charge Memo under Rule 17(A) of Tamil Nadu Civil Service (Discipline and Appeals) on 31.3.2000 alleging misconduct. The misconduct alleged against the petitioner was of giving wrong information, and on account of non accountable materials i.e., white cloth which was found in the Jail Premises.

3. The petitioner submitted reply to the charge memo on 25.4.2000. On considering the reply filed by the petitioner, the competent authority/the 2nd respondent, imposed a minor punishment of Censure on 28.4.2000. The petitioner, being satisfied with the punishment, did not take any further action.

4. However, on 2.11.2000, the petitioner was served with show cause notice by the 1st respondent, for enhancing the punishment awarded in exercise of suo-motu power under the Rules. On considering the reply filed by the petitioner to the show cause notice, the first respondent enhanced the punishment from censure to that of postponement of two increments without cumulative effect.

5. The petitioner has invoked the writ jurisdiction of this Court to challenge the impugned order, on the ground of jurisdiction of the 1st respondent to take suo-motu action after expiry of six months.

6. It is contended by the learned counsel for the petitioner that the order of Censure was passed by the second respondent on 28.4.2000, whereas, the suo-motu notice though dated 23.10.2000 was in fact signed by the respondent No.1 only on 30.10.2000 i.e., beyond the period of six months.

7. The contention of the learned counsel for the petitioner, is, that after expiry of six months, the first respondent did not have the jurisdiction to reopen the closed

matter, in exercise of suo-motu power, as the limitation prescribed under Rule for suo-motu action is only six months.

8. The writ petition is opposed by the learned Additional Government Pleader, by contending that the show cause notice dated 23.10.2000 was within six months, therefore, it cannot be said to be time barred.

9. However, the learned Additional Government Pleader is unable to deny the fact that the show cause notice dated 23.10.2000 was in fact signed only on 30.10.2000.

10. The question for determination is therefore, is whether it is a date mentioned in the notice or the date of signing of notice which is to be taken as the date of issuance of notice ?.

11. The answer to the question will be that it is the date when the notice is signed and not the date written on the notice, as the application of mind by the competent authority can be said to be on the date when the notice is signed and not drafted.

12. If the date of notice is taken as 30.10.2000, then admittedly, it is barred by limitation, being beyond the period of six months i.e., limitation prescribed under the rules.

13. Consequently, the writ petition is allowed, the impugned order passed by the first respondent dated 28.4.2000 is ordered to be set aside. However, challenge to punishment of Censure deserves to be rejected, as the petitioner being satisfied with the order of punishment, had not challenged it by availing the remedy of statutory appeal or taking other remedies in accordance with law. Therefore, it is not open to the petitioner at this stage to challenge the order of punishment with which he was satisfied. Even otherwise there is nothing on record to show any illegality in the order of Censure, as admitted unaccounted for cloth was found on jail, and his information was found to be wrong on inspection.

No costs.