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Court : Chennai

Decided On : Oct-08-2012

Judge : M. Jaichandren

Appeal No. : Writ Petition No.26118 of 2009

Appellant : G. Perumal

Respondent : The Commandant, Tamil Nadu Special Police V Battalion, Chennai and Another

Advocate for Pet/Ap. : For the Petitioner: S. Venkatramani, M. Muthappan, Advocates. For the Respondents: R1, R2, R. Ravichandran, Additional Government Pleader.

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondents in connection with the impugned order passed by the 1st respondent in PR No.88/2000, dated 20.12.00 and by the 2nd respondent in RC No.134665/AP3(1)/2009, dated 23.10.09 and quash the same.)

1. Heard the learned counsel for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. It has been stated that the petitioner had entered the service, as a directly recruited Grade-II Police Constable, by way of a selection conducted by the Tamilnadu Uniformed Services Recruitment Board, on 15.9.1997. After undergoing the training, the petitioner had been serving in the Tamilnadu Special Police V Battalion, Avadi, Chennai, and he was stationed at the Tihar Jail, at Delhi. While so, he had received a telegram from his native place stating that his mother was unwell. In response to the said information received by the petitioner he had visited his native place, on 24.12.1999. He had stayed back at his native place, as his mother was in a serious condition. Therefore, he did not report for duty, after 24.12.1999. As a consequence, departmental proceedings had been initiated against the petitioner, in PR.No.62/2000, under Rule 3(b) of the Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, for the alleged delinquency of `desertion'.

3. It has been further stated that the petitioner had submitted an explanation to the charge levelled against him. However, the punishment of reduction in time scale of pay for one year, with cumulative effect, had been imposed on him, by an order, dated 1.5.2000. The petitioner had been directed to report for duty. However, as he was suffering from mental illness due to the seriousness of his mother's ill-health he had not reported for duty.

4. It had been further stated that the petitioner had been undergoing psychiatric treatment for his mental illness. Thereafter, he had reported for duty, on 4.8.2000, along with the necessary medical certificate. However, a departmental action had been initiated against him in PR.No.88/2000, for the delinquency of `desertion'. He was issued with a charge memo stating that he had committed the delinquency of `desertion'. In spite of the explanation submitted by the petitioner the enquiry officer had found that the charge levelled against the petitioner had been proved. The petitioner had been directed to appear before the medical board, on 5.10.2000. The medical board had issued a fitness certificate, on 15.12.2000, stating that the petitioner could be posted where no fire arms are available. It had also been stated that, after a period of three months of service, the petitioner could be given a normal posting. However, an order of punishment of removal from service had been passed, on 20.12.2000, removing the petitioner from service.

The petition submitted by the petitioner, to the Director General of Police, on 23.2.2009, requesting him to revoke the order of removal from service, had been rejected, by his order, dated 23.10.2009. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. A counter affidavit had been filed on behalf of the respondents denying the averments and allegations made by the petitioner in the affidavit filed in support of the writ petition. It had been stated that the petitioner had been removed from service based on the charge of 'desertion'. The reasons stated by the petitioner for his unauthorized absence from duty could not be accepted by the respondents. No proper reasons had been shown by the petitioner for his absence from duty, without obtaining the necessary permission from the authorities concerned. Therefore, the impugned orders passed by the respondents are sustainable in the eye of law.

6. At this stage of the hearing of the writ petition the learned counsel appearing on behalf of the petitioner had placed before this Court a decision of the Division Bench of this Court, dated 27.1.2011, in W.A.No.58 of 2011, wherein it had been held that the punishment of dismissal from service imposed on the appellant therein, based on the charge that he had remained absent from duty, for a period of 21 days, is disproportionate and excessive in nature. He had also placed before this Court an order, dated 15.6.2011, made in W.P.No.16415 of 2009, wherein similar views have been expressed by a learned Single Judge of this Court. The learned counsel had further submitted that this Court may be pleased to set aside the impugned orders of the respondents and to remit the matter back to the first respondent to pass appropriate orders, in view of the order passed by the Division Bench of this Court, dated 27.1.2011, in W.A.No.58 of 2011.

7. In view of the submissions made on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, and in view of the decisions cited supra, this Court finds it appropriate to set aside the impugned orders of the respondents and to remit the matter back to the first respondent to pass an appropriate order, taking into consideration the views expressed by a

Division Bench of this Court, in its order, dated 27.1.2011, in W.A.No.58 of 2011. The first respondent shall pass orders, as directed by this Court, as expeditiously as possible, by following the relevant procedures established by law. The writ petition is ordered accordingly. No costs.

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