

B.Kalaivanan Vs. Deputy Inspector General of Police

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Court : Chennai

Decided On : Mar-06-2013

Judge : S.Tamilvanan

Appellant : B.Kalaivanan

Respondent : Deputy Inspector General of Police

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 06 03.2013
CORAM THE HONOURABLE MR.JUSTICE S. TAMILVANAN W.P. No.50231 of
2006 B.Kalaivanan .. Petitioner -vs- 1. The Deputy Inspector General of Police,
Tiruchirappalli Range, Tiruchirappalli 2. The Superintendent of Police (Disciplinary
Authority), Perambalur District 3. The Deputy Superintendent of Police, (Enquiry
Officer) Ariyalur, Perambalur District .. Respondents Writ Petition filed under
Article 226 of the Constitution of India praying for issuance of writ of certiorarified
mandamus calling for the records pertaining to order of the first respondent
bearing C.not B1/APP.23/2005 dated 12.11.2005, confirming the order of the
second respondent bearing PR C3/PR.25/04 dated 02.12.2004 and quash the
same and consequently direct the respondents to issue posting orders together
with all attendant benefits. For Petitioner : Mr.C.Ravichandran For Respondents :
Mr. S.Navaneethan, AGP O R D E R The Writ Petition has been filed under Article
226 of the Constitution of India seeking an order in the nature of certiorarified
mandamus calling for the records pertaining to the order of the first respondent
bearing C.not B1/APP.23/2005 dated 12.11.2005 confirming the order of the

second respondent in PR C3/PR.25/04 dated 02.12.2004 and quash the same and consequently direct the respondents to grant posting orders together with all attendant benefits.

2. The petitioner has stated that he was appointed as Grade-II Constable on 14.08.1975, under the respondents and was promoted as Grade I Constable in the year 1995. He could not attend his duty during the period between 06.05.2003 to 11.09.2003, as he was suffering from jaundice. While he was working at Padalur Police Station, he joined duty on 11.09.2003 and attended the roll call in the morning despite the medical advice to take complete rest for some more days, however, he was forced to go on medical leave from that day till 08.01.2004. On 09.01.2004, the petitioner appeared before the Superintendent of Police, the second respondent herein with the proof for getting medical treatment, issued by a qualified doctor. The second respondent refused to take the petitioner for the duty, stating that he was absenting from duty for more than 59 days and directed the petitioner to complete the formalities of punishment report (P.R.). The petitioner was issued with a charge memo bearing P.R. No.25/04 under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955 dated 08.06.2004. He submitted his reply dated 24.06.2004 explaining the circumstances under which he was forced to take leave.

3. It is not in dispute that an enquiry was ordered and accordingly, the third respondent, Deputy Superintendent of Police, Ariyalur conducted the enquiry. A copy of the enquiry report dated 28.09.2004 was received by the petitioner on 11.10.2004 and he submitted his written submission dated 25.10.2004 to the second respondent, requesting to give him posting orders. However, in Na.Ka.not C3/T.P 25/2004 dated 02.12.2004 imposing punishment of compulsory retirement from service, was ordered against the petitioner by the second respondent. Hence, the petitioner preferred statutory appeal before the first respondent/Deputy Inspector General of Police, Tiruchirappalli. However, the first respondent without considering the facts of the case sympathetically, confirmed the order passed by the second respondent. Aggrieved by which, the writ petition has been filed by the petitioner.

4. Mr.C.Ravichandran, learned counsel appearing for the petitioner submitted that the respondents have imposed the punishment without following principles of natural justice and also violating Article 311(2) of the Constitution of India and pleaded that the impugned orders passed by the respondents, are liable to be set aside in the light of the following decisions rendered by the Hon'ble Supreme Court and the Division Bench of this Court:

1. State of Mysore vs K.Manche Gowda reported in AIR 196.Supreme Court 506.
2. The Management of Madras Fertilisers Ltd., Manali, Madras vs The Presiding Officer, I Additional Labour Court, Madras and others reported in 1990 (1) LLJ 298.
3. M.V.Bijlani vs Union of India and others reported in 2006 SCC (L&S) 919.
4. K.Elayaperumal vs The Deputy Inspector General of Police, Madurai and others reported in 2009 Writ L.R.

112. 5. Per contra, Mr.S.Navaneethan, learned Additional Government Pleader appearing for the respondents submitted that there is no violation of any principles of natural justice. According to him, it being a uniformed service, the petitioner's unauthorised absence from duty on the ground of alleged jaundice, would not be taken so lightly. Only after issuance of charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955, opportunity was given to the petitioner. Though the petitioner submitted his reply dated 24.06.2004 explaining the alleged circumstances, available in the writ petition, the same were not convincing, hence, enquiry was ordered and the third respondent, Deputy Superintendent of Police, Ariyalur was appointed as enquiry officer. Only as per the findings of the enquiry officer, action was taken against the petitioner by imposing punishment of compulsory retirement that was ordered on 02.12.2004. According to the learned Additional Government Pleader appearing for the respondents, the impugned order needs no interference, since all the legal formalities were complied with by the respondents in imposing the punishment.

6. Mr.C.Ravichandran, learned counsel appearing for the petitioner submitted that the petitioner has received twelve awards towards appreciation of his service which is not disputed by the learned Additional Government Pleader. The learned Additional Government Pleader submitted that the petitioner herein was punished twelve times, however, the said allegation is not admitted by the learned counsel appearing for the petitioner and for which, there is no proof available on record.

7. A Constitution Bench of Supreme Court in the decision in State of Mysore vs K.Manche Gowda reported in AIR 196.Supreme Court 506 in para 7, delivered by Subba Rao J., it has been held as follows: "7. Under Art. 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam v. Bimal Kumar Pandit, Civil Appeal No.832 of 1962 D/-12.2.1963:(AIR 196.SC 1612). If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive." 8. Mr.C.Ravichandran, learned counsel appearing for the petitioner mainly contended that the major punishment of compulsory retirement was given to the petitioner on the ground of earlier punishments without any admission by the petitioner or proof for the same. According to him, only three minor punishments were imposed on the petitioner. Before imposing the punishment, the petitioner was not put on notice on the antecedents of 12 punishments alleged on behalf of the respondents by the learned Additional Government Pleader.

9. A Division Bench of this Court in The Management of Madras Fertilisers Ltd., Manali, Madras vs The Presiding Officer, I Additional Labour Court, Madras and others reported in 1990 (1) LLJ 29.delivered by Nainar Sundaram J., it has been held that in respect of past record of service being taking into consideration by the

Management in order to provide reasonable opportunity and to follow principles of natural justice, the employee should be put on notice about the alleged antecedents, otherwise the alleged antecedents shall not be taken into consideration for imposing punishment.

10. In *M.V.Bijlani vs Union of India and others* reported in 2006 SCC (L&S) 919, delivered by S.B.Sinha J., the Hon'ble Supreme Court has held that disciplinary proceedings being quasi-judicial in nature, there should be some evidence to prove the charge, though it need not be proved beyond reasonable doubt, as required in criminal cases for imposing punishment. The Hon'ble Apex Court held that the disciplinary authority proceeded on a wrong premise, that evidences recorded and inferences drawn were not commensurate with the charges, hence removal of employee from service on the basis of enquiry report was held not sustainable, accordingly, the employee was directed to be re-instated in service with 50% back wages.

11. A Division Bench of this Court in *K.Elayaperumal vs The Deputy Inspector General of Police, Madurai and others* reported in 2009 Writ L.R. 112 delivered by P.K. Misra J.

in para 12, it has been held as follows: "12. For the aforesaid reasons, while setting aside the order passed by the disciplinary authority, we direct that the appellant is deemed to have retired from service on 30.09.2008 (Tuesday). The period during which he was out of service will be notionally counted only for calculating the notional increment and for pension, but no back wages would be paid for the said period." 12. In the instant case, it is not in dispute that the petitioner who was Grade-I Constable under the respondents, was absent for more than 59 days. According to the learned counsel appearing for the petitioner, he was suffering from jaundice, though he has submitted his fitness certificate, the same was not sympathetically considered by the respondents and he was issued with a charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955. It is seen that rule 3(b)(ii) of the said Rules (G.O. Ms. No.847 Home (Police V) dated 15.06.1999) reads as follows: "(ii) After the inquiry of personal hearing referred to in clause (i) has been completed and if

the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, any of the penalties specified in rule 2 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, call upon to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received on his behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed." 13. It is not in dispute that the petitioner has submitted his explanation for the absence stating that he was suffering from jaundice, however, the enquiry officer held that the charges were proved. It is argued on behalf of the petitioner that the compulsory retirement imposed on the petitioner is shockingly disproportionate and without providing opportunity to the petitioner about the alleged previous antecedents, the respondents have imposed a major punishment of compulsory retirement against law. The petitioner could have given reasonable opportunity as the alleged antecedents were taken into consideration by the respondents for imposing the punishments. As per the impugned order passed by the first respondent, the petitioner herein, during his tenure had deserted the force on six occasions and he has availed 133 days medical leave from 06.05.2003 and reported for duty on 11.09.2003 with fitness certificate. He was absenting from 11.09.2003 onwards and after issue of desertion order on 03.10.2003, he did not appear before the Superintendent of Police, Perambalur and availed leave on his own accord which was evident that he was not interested to serve in the disciplinary force. Learned counsel appearing for the petitioner further submitted that the petitioner could not appear before the second respondent, as directed, only on medical grounds for which proof was placed before the authorities properly, however, major punishment of compulsory retirement was imposed.

14. On a perusal of copy of the impugned orders, it is seen that the grounds raised by the petitioner and the material papers available on record, would show that the petitioner was absent from service due to some medical grounds for which medical

certificate was also submitted by him. As there was unauthorised absence by the petitioner in the uniformed service, this Court would not find fault with the charge memo issued by the second respondent. Based on enquiry report, punishment of compulsory retirement was imposed on the petitioner, however, as contended by the learned counsel appearing for the petitioner, the respondents have relied on the earlier antecedents of similar absence of the petitioner. Though the alleged absence were taken into consideration for imposing compulsory retirement, the petitioner was not put on notice about the same and no opportunity was given to the petitioner to submit his explanation. In the light of various decisions referred to by the learned counsel appearing for the petitioner, this Court is of the view that as contemplated under Article 311(2) of the Constitution of India, principles of natural justice should have been followed by the respondents, since major punishment was imposed, taking into consideration of the alleged antecedents of the petitioner. As per the impugned order passed by the second respondent, confirmed by the first respondent, the petitioner was given punishment of compulsory retirement from service with effect from 12.11.2007, though the date of superannuation of the petitioner would be 30.06.2008. The aforesaid dates are not in dispute, in this writ petition.

15. In view of the decisions referred to above, learned counsel appearing for the petitioner submitted that the petitioner is entitled to get 50% of back wages for the period from the date of compulsory retirement to the date of superannuation. Having applied the ratio laid down, I am of the view that the petitioner is not entitled to get back wages, though there is violation of principles of natural justice, so far as the petitioner was not put on notice about the antecedents, when the same was also considered for imposing major punishment of compulsory retirement. However, considering the facts and circumstances of this case, to meet the ends of justice, I find it just and reasonable to allow the writ petition and set aside the order passed by respondents 1 and 2 and accordingly, it is ordered that the petitioner is deemed to have retired from service only on the date of his superannuation, for the purpose of calculating the notional increment, pension and other benefits. However, it is made clear that the petitioner is not entitled to get back wages for the said period, on the principle of no work no pay.

16. With the above said observation, the writ petition is allowed and the order of the first respondent bearing C.not B1/APP.23/2005 dated 12.11.2005 confirming the order of the second respondent bearing PR C3/PR.25/04 dated 02.12.2004 is set aside. The direction of this Court shall be complied with, within a period of six weeks from the date of receipt of a copy of this order. No order as to costs. vga To
1. The Deputy Inspector General of Police, Tiruchirappalli Range, Tiruchirappalli 2. The Superintendent of Police (Disciplinary Authority), Perambalur District 3. The Deputy Superintendent of Police, (Enquiry Officer) Ariyalur, Perambalur District

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