
(2014) 02 MAD CK 0093
In the Madras High Court
Case No : Writ Petition No. 26209 of 2007

J. Palani

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) LabIC 3948

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records of R-5 passed in his C. No. PR88/GI/2004, dated 02.02.2005, imposing a punishment of compulsory retirement from service and consequential order passed by R4 in his Rc.N.B2/173/3324/2005, AP 27/B1/2005 dated 02.05.2005 and the consequential order of R3 passed in his Rc. No. 620/158030/PR.2(2)/2005 dated 10.10.2005 and the consequential order passed by R2 in his Rc. No. 974/234701/PR.2(2)/2005 dated 04.01.2006 and further consequential order passed by R1 in G.O.(2D) No. 563/Home (Pol.VI) Department, dated 26.09.2006, confirming the punishment and quash the same and direct the respondents to reinstate the petitioner in service with all consequential monetary and service benefits. Mr. Ravishanmugam, learned counsel appearing for the petitioner, would submit that the petitioner, while serving as Grade-I Police Constable in Mathur Police Station, was served with a Charge Memo in P.R. 88/2004, dated 02.06.2004 under Rule-3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules (hereinafter referred to as the "Rules") on the allegation that from 29.03.2004 to 18.04.2004, for 21 days, he had absented himself from duty without any leave application or permission and thereby, he became a deserter. Unfortunately, during the course of oral inquiry conducted by the Deputy Superintendent of Police (DSP), Pargur, the said Officer/DSP failed to examine the prosecution witnesses mentioned in Annexure-IV of the charge memo for the reason that the petitioner had dispensed with the examination of those witnesses. According to the learned

counsel, Rule-3(b) of the Rules makes it abundantly clear that evidence shall be recorded during the oral enquiry for the charges not admitted by the delinquent, therefore, when the petitioner denied the allegations levelled against him, even if he did not opt for examination of the prosecution witnesses, it is the duty of the Enquiry Officer to record the evidence during the oral enquiry, but, without scrupulously following the procedure prescribed in the Rules, a perverse finding was recorded by the Enquiry Officer in his report dated 11.10.2004 holding that the charge was proved. Based on the findings of the Enquiry Officer/DSP, Pargur, R-5/Superintendent of Police (SP), Krishnagiri, passed the order of compulsory retirement from service on 02.02.2005. Aggrieved by the grave punishment of compulsory retirement from service, the petitioner filed an appeal petition on 08.04.2005 by taking a ground that the impugned order of compulsory retirement from service is against the Circular Memorandum issued by the Inspector General of Police (Law and Order) in Rc. No. 243881/AP I(1)/90, dated 30.10.1990, wherein, it is stated that when a Head Constable/Police Constable is struck off as a deserter, notice has to be issued directing the delinquent to appear before the Superintendent of Police within two months, whereupon, when the deserter appears, the SP should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. The Circular Memorandum further reads that if the SP is not satisfied, the delinquent should not be taken for duty and if, on the other hand, the SP is satisfied, he can be taken for duty and, in such cases, while disposing of P.R.s, punishment of removal/dismissal from service or compulsory retirement should not be given, however, any other punishment is acceptable. On the strength of this Circular, the learned counsel would add that the present impugned order of compulsory retirement passed against the petitioner runs absolutely contrary to the guideline drawn in the Circular. That is why, based on the said Circular, the petitioner made a plea in the Appeal to allow his prayer by setting aside the impugned order, but, R-4/appellate authority rejected the appeal by order dated 02.05.2005 by simply confirming the punishment of compulsory retirement without even considering the fact that the petitioner was taken back to duty and that the period of absence involved was also a very short duration of three weeks. As against the above order passed in the appeal petition, the petitioner filed a Mercy Petition on 20.05.2005 before the Additional Director General of Police, Law and Order, Chennai-4, however, the said Mercy Petition was also dismissed by way of a non-speaking order on 10.10.2005. Consequently, another petition was submitted before R2/Director General of Police (DGP), Chennai, and by order dated 04.01.2006, the said Authority also dismissed the petition, again, by way of a non-speaking order. Ultimately, the petitioner filed a petition before the Government and, by G.O.(2D) No. 563/Home (Pol. VI) Department, dated 26.09.2006, the case of the petitioner was rejected, thereby, he was put to great prejudice and irreparable loss.

Learned counsel, while continuing his arguments, would add that when the petitioner, after the alleged desertion was taken back to duty on the Department

being satisfied with the Medical Certificate produced by him, imposing a major punishment of compulsory punishment should not have been resorted to. Very unfortunately, none of the authorities at the hierarchy before whom the petitioner further pursued the issue by way of appeal, review and mercy petitions, approached the case of the petitioner with any positive approach that too when the Circular Memorandum dated 30.10.1990 of the Department prescribes clear guidelines for making decisions on issues like the one involved in the case of the petitioner. It is further submitted that this court, in its various decisions viz.,

"(i) Order dated 08.08.2008 passed in W.P. No. 26072/2004 (R. Jayakumar v. Deputy Commissioner of Police, Coimbatore City and another);

(ii) Judgment dated 27.01.2011 rendered in W.A. No. 58/2011, (R. Ramesh v. DIG of Police, Kancheepuram and another);

(iii) Order dated 18.10.2011 passed in WP. 12734/05 in G. Uthirakumar v. SP, Kancheepuram; and

(iv) The decision reported in S. Shanmugarajan Vs. The State of Tamilnadu, The Commandant, The Deputy Inspector of Police and The Inspector General of Police, ."

while dealing with similar instances like that of the present case, quashed the orders of compulsory retirement/removal from service and remitted the matter for re-consideration of punishment with continuity of service and denial of back-wages. Further, in the above decisions, this Court made it clear that the authorities, who decide the appeals, reviews or mercy petitions, should pass speaking orders assigning reasons for arriving at conclusions either way. In the present case, although the petitioner raised specific legal points in his appeal and review petition to substantiate his plea" that the extreme punishment of compulsory retirement is absolutely unwarranted, the respondents mechanically confirmed the punishment of compulsory retirement. Reference was also made to a decision of the Apex Court in Union of India and others Vs. Giriraj Sharma, to highlight the proposition that the punishments like dismissal from service or compulsory retirement from service for overstaying leave period is harsh and disproportionate when there is no willful intention on the part of the delinquent. Again, by, drawing support from a decision of this Court in W.P. No. 5498 of 2006 (Order dated 11.11.2009 in Somasundaram v. The Superintendent of Police, Krishnagiri District and three others), learned counsel would add that, in a similar circumstance, when a police constable went on absence for 21 days without informing the superiors and thereby charged with desertion and consequently was imposed with a punishment of compulsory retirement, this court, while remanding the matter, directed me Disciplinary Authority to decide the matter afresh by taking into consideration various mitigating circumstances that led to the delinquency and impose only such punishment as is necessary, tempered with mercy. In the light of the same, he prayed this Court for passing

similar orders, remanding the matter back to the Disciplinary Authority for taking a lenient view.

2. Per contra, learned Additional Government Pleader would submit that none of the submissions of the learned counsel for the petitioner would in any way help the petitioner for the simple reason that the petitioner's case of desertion is not a solitary instance but he is a chronic deserter on about 5 occasions and viewing in that perspective, this Court can visualize that the Authorities in fact leniently dealt with the case of the petitioner by imposing only a punishment of compulsory retirement and further, there is no scope of remand by applying the ratio laid down in the various decisions referred to by the learned counsel for the petitioner since those decisions are distinguishable on facts and the present case relates to habitual desertion on the part of the petitioner/delinquent. So pointing out, he prayed for dismissal of the writ petition.

3. I have carefully considered the rival submissions advanced on either side.

Even at the first instance, it must be pointed out that this Court is not able to subscribe or endorse the submissions of the learned counsel for the petitioner for more than a couple of reasons. As rightly pointed out by the learned Additional Government Pleader, the petitioner is not the "first time deserter" and the records show that, knowing well that he is a part of the Disciplined Force/Police Department, he became a chronic absentee by deserting on more than four occasions. First time when he deserted the Force during 2001, on 12.05.2001 vide P.R.92 of 2001, he was imposed with a punishment of postponement of increment for one year without cumulative effect. Again, he deserted the Force, and on 17.11.2001 in P.R. 131/2001, he was imposed with a punishment of postponement of increment for one year without cumulative effect. Thereafter, once again, he deserted the Force, and on 07.04.2002 vide P.R. No. 131/2002, he was imposed with a punishment of postponement of increment for one year without cumulative effect. Unfortunately, even for fourth time, he deserted the Force and on 17.11.2003, as per P.R.61/2003, he was imposed with a punishment of compulsory retirement from service, however, it was modified as reduction in time scale of pay by one stage for one year without cumulative effect on 02.09.2004. Even after these incessant instances of desertion and imposition of usual punishments, it seems that the petitioner did not feel sorry to mend his ways. In fact, when the petitioner deserted for the 4th time, it is not known as to why the punishment of compulsory retirement imposed in PR.61/2003 came to be modified. However, even thereafter, when the petitioner did not take any lesson and rather, he continued to relentlessly resort to desertion, he was issued with a charge memo in PR.88/04 under Rule 3(b) of the Rules for absenting from duty for 21 days without any Leave Application or Permission from 29.03.2004 to 18.04.2004. Sadly, the records do not show anything to suggest that he has given any explanation for the fifth-time desertion. The Enquiry Officer/DSP, Pargur, after holding an enquiry found him guilty in his report dated 11.10.2004. Thereafter, the Disciplinary Authority, after

considering the past records as mentioned above, however leniently dealt with the petitioner by imposing the punishment under challenge. Subsequent Appeal, Review, Mercy Petitions, etc. were rightly rejected by the authorities at the hierarchy since the punishment imposed was only a lenient measure. In the above circumstances, it is not even open for the petitioner, who is a chronic deserter and whose action and attitude in fact deserve a severe punishment, to say or allege that the authorities did not properly consider his case or there was any deviation in following the guidelines of the Department. The petitioner never seems to have realized his responsibility as a member of the Disciplined Force/ police department. Further, the plea made by the learned counsel for the petitioner by referring to various decisions of this Court as well as judgment of the Apex Court as mentioned above cannot be considered positively for the reason that those decisions are distinguishable on facts and that any concession to a person having negative attitude like the petitioner, who was not able to mend his ways even after four instances of desertion and after lenient approach towards him by the department, would only amount to granting bonus to the habitual act of desertion and this Court, even by mistake, will not afford to do so. In my considered opinion, the petitioner has received only a better treatment at the hands of the police department inasmuch as his action deserves a more severe punishment than what was imposed.

In the light of the foregoing decision, this Court does not find any good reason or ground for interference. Consequently, the writ petition fails and it is dismissed as devoid of any merit. No costs.