
(2013) 02 MAD CK 0158
In the Madras High Court
Case No : Writ Petition No. 45364 of 2006

K. Arumugham

APPELLANT

Vs

Commander, Coast Guard (Regin) and Another

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 MLJ 712

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; S. Hajamohideen Gisthi, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondents. The writ Petition has been filed under Article 226 of the Constitution of India seeking an order in the nature of writ of certiorarified mandamus calling for the records on the file of the second respondent and quash the same as illegal, incompetent and without jurisdiction and restore the petitioner back to service together with continuity in service.

2. The writ petitioner has stated that he had joined the service of the respondents as an Enrolled Follower (Sweeper), as per the appointment order dated 10.6.1992 by proceedings in DOE/18/92 by the second respondent. At the time of appointment, he was posted at Mandapam Coast Guard and subsequently he was deputed to work in Ship Charlie 138 from 8.30 p.m. on 03.03.2005 to 8.30 p.m. on 4.3.2005. One Bangira was officer in the Ship Charlie 137 and one Ravath were deputed in security work along with the petitioner. At that time Deputy Commanders Dinakaran and Saharkar along with one John Manoj, Assistant inspected the deck and arrested Bangira and Rawath. They were apprehended red-handed and the petitioner was also called upon to explain,

however, for no valid reason, he was also apprehended later. The allegation is that all the three including the petitioner had indulged in illegal selling of diesel. However, the petitioner pleaded innocence and submitted that he had served for over 13 years under the respondents and he had never involved in illegal sale of diesel. The same was denied by the respondents.

3. Mr. V. Raghavachari, learned counsel appearing for the petitioner submitted that the petitioner herein was only a Sweeper and he had not committed any offence, especially by selling of diesel from the deck. However, proceeding was initiated by the respondents and the petitioner was removed from service. The following grounds are raised by the petitioner in this writ petition:

a) That the respondents ought to have seen that the petitioner was no way responsible for the theft in Ship Charlie 137, wherein the alleged offence was committed.

b) That the respondents have failed to conduct an enquiry prior to the dismissal of the petitioner.

c) That the respondents ought to have given an opportunity for the petitioner to place his case, before dismissing him for service.

d) That the act of the respondents is arbitrary and against the statutory provisions.

4. In support of his contention, learned counsel for the petitioner relied on a decision in *State of U.P. v. Jaikaran Singh*, (2003) 3 LLJ 1077SC wherein the Hon"ble Supreme Court has held as follows:

...Having regard to the facts and circumstances of the present case and also taking into account the fact that the respondent had served the appellant organisation for about more than 12 years, we think the ends of justice would be met if the order of dismissal is altered to one of compulsory retirement. Accordingly, this appeal is allowed to the extent indicated above.

5. Per contra, learned Standing Counsel appearing for the respondents submitted that the petitioner and others were caught red-handed, while they were selling diesel illegally from the deck and the petitioner admitted voluntarily his guilt and gave a statement in writing. It is well settled that admission needs no proof, as per Evidence Act. Based on such voluntary confession, respondents were empowered to take action against delinquent officials working under them. According to the learned Standing Counsel appearing for the respondents, having admitted the guilt in writing, it is not open to the petitioner to change his version and to say that he was an innocent person contrary to his admission and pleading guilty. Learned counsel appearing for the respondents drew the attention of this Court to para 5 of the counter wherein the respondents have averred that the petitioner and two other persons have pleaded guilty to the charges that they had illegally sold diesel to third parties. Accordingly as per Rule 24(3) of the Coast Guard (Discipline) Rules, 1983, action was taken and hence

the petitioner herein and other respondents were removed from service. Learned Standing Counsel appearing for the respondents also drew the attention of this Court to the extract of the relevant Coast Guard (Discipline) Rules, 1983 as amended in 2005. As per rule 20 of the Rules, every charge against a person subject to the Act shall be enquired into by the Commanding Officer in the presence of the accused, who would have full liberty to cross examine any witness adducing evidence against him and to call such witness and make such statement as may be necessary for his defence. Where the charge against the accused arises as a result of investigation by a Board of Inquiry convened under Rule 36 of the Coast Guard (General) Rules, 1986 and where the provisions of sub-rule (4) of rule 39 of the principal rules have been complied with, the Commanding Officer may dispense with the above said procedure.

6. In the instant case, according to the learned Standing Counsel appearing for the respondents, the petitioner and two other persons have voluntarily pleaded guilty and hence as per Rule 24, Abstract of Evidence was prepared which could be done either by the Commanding Officer or an officer detailed by him. As per Rule 24(2), the abstract of evidence shall include:

- (a) (i) signed statement or witnesses wherever available or a precis thereof
- (ii) copies of all documents intended to be produced at the trial;
- (iii) a prices of the evidence where signed statements of any witnesses are not available.

7. As per Exhibit 8, the statement was given by the petitioner herein whereby he has admitted that on 3.3.2005, while he was in duty diesel was illegally provided from Charlie 137 and accordingly the other persons Bangira, Rawath and the petitioner had given 300 litres of diesel. The respondents have averred that the petitioner voluntarily admitted that he had committed the offence along with two other persons and requested to forgive him. It is seen that the statement has been given by the petitioner in Tamil, signed by him in English as K. Arumugam E/F09086-Z and English Translation of the statement is also available which is not in dispute.

8. The petitioner has not disputed the fact that he had given the statement in writing admitting the guilt. Learned counsel appearing for the petitioner contended that the statement was not given by him voluntarily. According to him, the petitioner was detained in the ship itself and while he was in detention, the statement was obtained from him. However, it is seen that the petitioner has not disputed that he was kept in open space available in the ship and he was not in any lock-up as argued by the counsel.

9. Learned Standing Counsel appearing for the respondents also drew the attention of this Court to the photographs and other connected records and submitted that there is sufficient evidence available for the offence being committed by the petitioner and others. According to the learned Standing

counsel appearing for the respondents, the Civilians who purchased the diesel have also given corroborative statement for the purchase of diesel. Hence, after having voluntarily given statement admitting the illegal sale of diesel by him and others, it is not open to the petitioner to change his stand and deny the same.

10. Normally in a criminal case, retracted confession is possible and the alleged guilt must be proved beyond reasonable doubt, but in the departmental enquiry to prove the delinquency, preponderance of probability is sufficient. In the instant case, the statement given by the petitioner that he and two other persons had sold the diesel illegally has been admitted by him in writing. Hence, the argument that the statement was given by the petitioner in a compelled circumstance cannot be accepted. In case of difference raised against documentary evidence that burden of proof lies on the petitioner to show that it was obtained from him by threat or coercion. The petitioner having admitted the statement given in writing by him, cannot simply say that it was obtained under threat or coercion, unless it is established as per procedure known to law.

11. In the instant case, as contended by the Standing counsel appearing for the respondents, the alleged offence is serious in nature and the theft of diesel from the deck belongs to Coastal Guard cannot be taken so lightly. Having considered the seriousness of the delinquency, I am of a view that the decision cited by the learned counsel for the petitioner is no way applicable to the facts and circumstances of the case. Learned counsel appearing for the respondents submitted that there was earlier similar incident of committing theft by the petitioner herein, even otherwise the offence is serious in nature. On the aforesaid facts and circumstances, I am of the view that leniency could be shown to the petitioner, as the respondents has established the delinquent which is serious in nature. Showing leniency, will dilute the discipline in the uniformed service, as submitted by the Standing Counsel for the respondents. Hence, I am of the view that there is no merit in this case to show any sympathy in favour of the petitioner. Hence, the writ petition is liable to be dismissed as no merits. In the result, the writ petition is dismissed. Consequently, connected M.P. is also dismissed. No order as to costs.