
(2009) 04 MAD CK 0504

In the Madras High Court

Case No : Writ Petition No. 39098 of 2006 and M.P. No. 1 of 2008

K. Ramalingatn

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 3

Citation : (2009) 04 MAD CK 0504

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K. Shanmugam, for the Appellant; P. Subramanian, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the order of punishment dated 30.4.1999 passed by the Respondent and to direct the Respondent to reinstate the Petitioner in service.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) Petitioner was initially appointed as Grade-II Police Constable in the year 1969 and posted at Cuddalore. During the year 1994 he was promoted as Grade-I Police Constable and posted at Jeyamkondan and in January, 1998, he was further promoted as Head Constable and posted at Maruvathur and he was working as such till 17.4.1998.

(b) On 17.4.1998, the Petitioner was placed under suspension and was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, on the allegation that he had received illegal gratification of Rs. 2,200/- from one Periyasamy, I.D. arrack seller, on 23.9.1998 at 13.00 hours, for not taking legal action against him under the Tamil Nadu Prohibition Act.

(c) The Enquiry Officer conducted enquiry and submitted his report on 30.4.1999. The Petitioner was served with the report of the Enquiry Officer, along with a show cause notice on 3.5.1999, requiring him to submit his further remarks. On 14.5.1999 Petitioner submitted his remarks before the Respondent and on 15.6.1999, Petitioner was served with the impugned order of punishment of dismissal from service.

(d) The said order of punishment was challenged by the Petitioner on the grounds that though the said order was served on him on 15.6.1999, it had been approved and signed by the Respondent on 30.4.1999 itself, the date on which the enquiry report was signed and submitted by the Enquiry Officer and this shows the pre-determination of the issue on the part of the Respondent; that the Respondent has not considered the explanation and further remarks of the Petitioner before passing the order of punishment; that when the complainant and other witnesses turned hostile during oral enquiry, reliance placed by the Respondent on the statements recorded in the preliminary enquiry is unsustainable and contrary to the decisions of the Honourable Supreme Court; and that the approval of the punishment even before getting the remarks of the Petitioner for the Enquiry Officer's report, establishes the pre-determined mind on the part of the Respondent.

3. The Respondent filed counter affidavit contending that the complainant Periasamy appeared before the Deputy Superintendent of Police, Perambalur on 12.4.1998 and gave a statement against the Petitioner about the alleged bribery of Rs. 2,200/- in the presence of witnesses. On ascertaining the truth of the statement, the Deputy Superintendent of Police, Perambalur, issued a charge memo against the Petitioner on 17.4.1998 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, in P.R.25/98. During the course of oral enquiry, the witnesses have turned hostile and that was because all the witnesses are connected with the day to day administration of the Petitioner in Maruvathur Police Station. Hence, relying on their statements recorded during the preliminary enquiry, the order of punishment was issued on the Petitioner. With regard to the difference in the time of occurrence in the charge memo and in the statement of witnesses, it is stated that the time quoted is not accurate time and only approximate time. The word "about" has been used both in the charge memo as well as in the statement of the witnesses. It is further stated in the counter affidavit that the witnesses have on their own appeared before the Deputy Superintendent of Police at his camp office and gave statement voluntarily and no force was used on them to obtain their preliminary statements. It is also stated that the Petitioner has not exhausted the remedy of appeal to the higher authorities and directly approached the Tribunal and hence the writ petition is not maintainable.

4. The learned Counsel appearing for the Petitioner submitted that the Respondent, having failed to prove the allegation made against the Petitioner during the oral enquiry, is not justified in relying on the statements obtained

from the witnesses during the preliminary enquiry, which was not recorded in the presence of the Petitioner, and the matter in issue is concluded by the decisions of the Honourable Supreme Court and by this Court. The learned Counsel also submitted that since the order of dismissal is in violation of the principles of natural justice, the Petitioner is entitled to challenge the order without filing departmental appeal.

5. The learned Additional Government Pleader appearing for the Respondent relying on the statements contained in the counter affidavit submitted that the witnesses having turned hostile during the oral enquiry, the department was not having any other option except to rely on the statements made by the witnesses during the preliminary enquiry.

6. I have considered the rival submissions of the learned Counsel for the Petitioner as well as the learned Additional Government Pleader appearing for the Respondent.

7. The original application filed before the Tribunal challenging the order of dismissal was ordered to be numbered by the Tribunal by granting waiver of appeal remedy to the Petitioner in M.A. No. 4198 of 1999 dated 28.7.1999. The original application was also admitted by the Tribunal on 25.8.1999 and at this stage, it is not proper to dismiss the writ petition on the ground that the Petitioner has not availed the alternate remedy, particularly when the Petitioner has obtained permission from the Tribunal to waive the appeal remedy.

8. Now the issue to be decided in this case is as to whether the Respondent was justified in relying on the statements made by the witnesses during the preliminary enquiry, which was not substantiated, admittedly during the oral/regular enquiry.

9. Whether the statements made during the preliminary enquiry, not corroborated by cross examination can be validly relied on by the Disciplinary authority, was considered by the Honourable Supreme Court in the decision reported in Union of India (UOI) and Others Vs. Mohd. Ibrahim, . The Honourable Supreme Court held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons, examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal, which was upheld by the High court and there is no error in the order setting aside the dismissal order.

10. A Division Bench of this Court by judgment dated 22.2.2005 in W.P. Nos. 29862 & 32581 of 2002 (The Deputy Inspector General of Police, Villupuram and Ors. v. V. Vanniaperumal and Ors.) upheld the order of the Tribunal, which set aside the order of removal from service. Paragraphs 6 and 8 of the judgment can be usefully referred to, which read thus,

6. We have carefully considered the relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants. It is also

relevant to note that apart from the applicants two more officers have also been implicated along with them.

They are one Sattanathan, Sub-Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW.3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P. Ws. 1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.

7. ...

8. In our case, we have already referred to the fact that the prosecution witnesses viz., P. Ws. 1, 2, 4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court referred to above, after full-fledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that "since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry Officer, ...". We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed.

The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others, .

11. The above referred decision of the Division Bench was followed by me in the order dated 15.2.2006 in W.P. No. 27019 of 2005 {B. Bals Murugan v. The Inspector General of Police, Madurai-2 and Two Ors.}, wherein the order of punishment was set aside.

12.I have also followed the above decisions and allowed similar writ petition and the same is reported in T. Pitchai Vs. The Deputy Inspector General of Police, Tirunelveli Range, The Superintendent of Police and The Director General of Police, by setting aside the order of dismissal with a direction to reinstate the

Petitioner therein with all service benefits.

13. In the decision reported in H.C. Lenin Vs. The Commissioner of Police and The Additional Director General of Police (L and W), , A. Kulasekaran, J., has taken a similar view following the decision of the Honourable Supreme Court reported in Kuldeep Singh Vs. The Commissioner of Police and Others, , wherein the Honourable Supreme Court in paragraphs 32 and 33 held thus,

32. In State of Mysore v. Shivabasappa Shivappa Makapur, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of die delinquent, since the witness had been offered for cross-examination after he acknowledged having made the pre-vius statement, the rules of natural justice were sufficiently complied with.

33. In Kesoram Cottton Mills Ltd. v. Gangadhar and State of U.P. v. Om Prakash Gupta the above principles were reinterated and it was laid down that if a previous staement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.

Following the above decisions, similar writ petitions in W.P. No. 14193 of 2006, W.P. No. 23378 of 2007 and W.P. No. 7257 of 2008 were allowed by me by orders dated 9.4.2007, 9.4.2008 and 23.7.2008 respectively. The Director General of Police, implemented the order dated 9.4.2007 made in W.P. No. 14193 of 2006 by issuing circular in Na. Ka. No. 79697/Con.3(I)/2007, dated 25.4.2007, and ordered that the charges cannot be held proved only on the basis of the statement given during preliminary enquiry, and whether charges are proved or not, is to be determined only on the basis of the statements made during the oral enquiry. The Disciplinary Authorities as well as Enquiry Officers were directed to keep the same in mind while conducting enquiry and disposing of the disciplinary proceedings.

14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry offier''s finding of guilt on the part of the Petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the Petitioner cannot be said to be validly proved. Hence the Petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him.

15. In the result, the writ petition is allowed. The impugned order of dismissal from service dated 30.4.1999 is set aside. The Petitioner has reached the age of superannuation as early as in the year 2005 and therefore the matter cannot be

remitted back at this distance of time. The question of reinstatement in service also do not arise since the Petitioner reached the age of superannuation as stated supra in the year 2005 itself. Insofar as back-wages from 30.4.1999 till the date of retirement is concerned, the Petitioner is not entitled to the same on the principle of "no work, no pay". The Respondent is directed to give all other service benefits, sanction pension and terminal benefits to the Petitioner, within a period of three months from the date of receipt of copy of this order.

The writ petition is ordered on the above terms. No costs. Connected miscellaneous petition is closed.