

(2013) 09 MAD CK 0306
In the Madras High Court
Case No : Writ Petition No. 37313 of 2004

K. Selvamani

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 2 LLN 215

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; R. Rajeswaran, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrababu, J.—The petitioner is aggrieved against the order of dismissal from service. The case of the petitioner is as follows:

He was recruited as Police Constable on 15.10.1978. Subsequently, he was promoted as Grade-I Police. He was issued with a charge memo dated 12.08.1999 under Rule 3(b) of the Tamilnadu Police Subordinate Service (Disciplinary Control & Appeal) Rules, 1955. The charge levelled against the petitioner was that he was unauthorisedly absent from duty from 07.08.1998 to 28.08.1998 for 21 days. The petitioner sent an explanation and informed the Authorities that he was suffering from mental depression during that period and therefore, he could not attend the duty. He had also produced a Medical Certificate in support of his contention. Not satisfied with his explanation, an enquiry was conducted and the Enquiry Officer found him guilty of charges. Consequently, the order of punishment of removal from service came to be passed by the fifth respondent on 21.12.1999. The petitioner preferred an appeal before the fourth respondent. That came to be dismissed on 20.02.2000. Further revision filed before the third respondent also came to be dismissed on 27.07.2000. A mercy petition filed before the second respondent also met with the same fate by an order dated 23.12.2000. Thus, the present writ petition is

filed before this court.

2. Though no counter affidavit is filed by the respondents, the learned Special Government Pleader appearing for them argued the matter on instructions and opposed the writ petition.

3. According to the petitioner, the Authority competent to initiate disciplinary proceedings against him is the fifth respondent. Therefore, the charge memo framed by the Deputy Superintendent of Police was without jurisdiction. It is his further contention that the Enquiry Officer has not given sufficient opportunity to the petitioner to put forth his case. The mental illness suffered by the petitioner during the relevant point of time was not taken at all into consideration by the Appellate and Revisional Authorities, while considering his appeal and revision.

4. When the matter was posted before this court for final disposal on 29.07.2013, my Predecessor, in order to find out as to whether the petitioner is mentally sound to function as the police man, has issued a direction to the petitioner to undergo medical examination before a duly constituted Medical Board and further directed the Medical Board to assess the mental fitness of the petitioner as of now and file a report before this Court. In pursuant to the said order of this Court, the petitioner was presented before the Medical Board and on examination of the petitioner, the Professor and Head of the Department of Psychiatry, Kilpauk Medical College Hospital, Chennai-10, has observed in his communication addressed to the Regional Medical Board, Royapettah, Chennai 11 as follows:

The individual reported with Wife

The above individual Mr. K. Selvamani, H/o. Jayalakshmi, worked as Gr-1, PC No. 1908, was referred through Regional Medical Board, Govt. Royapettah Hospital, Chennai-14 On 14.08.2013. From the history given by the individual and the attender he had availed medical leave from 5.8.98 to 5.11.99 (1 year and 3 months) claiming that he was suffering from Depression and he had submitted medical certificate for the same issued by Senior Civil Surgeon ESI Hospital, Ayanavaram.

Since then, he is said to have not joined duty till date and a court case is said to be going on.

History, Psychiatric evaluation and Psychometry reveal that the individual do not suffer from any psychiatric illness at present. He is noted to be a person with average intellectual functioning with good adjustment and high aspirations. There is no evidence of any Depressive illness at present.

Impression: Nil Psychiatric illness at present.

5. Thus, from the report submitted by the Medical Officer, it is seen that the petitioner as on today is not suffering with any psychiatric illness and there is no evidence of any depressive illness on the petitioner at present. This is what the

present state of affairs.

6. Now, under these facts and circumstances, this Court has to consider and find out as to whether the order of the punishment imposed on the petitioner is sustainable, irrespective of the present fact that he is mentally fit to perform the duty as on today, as could be seen from the report submitted by the Medical Officer, as stated supra.

7. The admitted case of the petitioner is that he was not able to attend the duty between 07.08.1998 to 28.08.1998. The reason adduced by the petitioner for his absence was mental illness due to depression. Thus, 21 days of desertion was stated as the reason for issuing the charge memo and thereafter, passing an order of dismissal from service. The correctness or otherwise of the order of dismissal from service on the ground that the delinquent was absented from the duty for a period of 21 days had come up for consideration before the Hon''ble Division Bench of this Court in W.A. No. 58 of 2011, wherein the Hon''ble Division Bench has observed at paragraph Nos. 2 and 3 as follows:

2. The appellant/writ petitioner who was serving as Grade-II Police Constable in the Police Department at Kancheepuram, was proceeded against departmentally on the charge that he remained absent from duty for a period of 21 days. The Enquiry Officer held the charge against the appellant as proved. In view of the finding of the Enquiry Officer, as also the fact that the appellant had earlier deserted the force on three occasions and absented himself from duty on two occasions, the disciplinary authority, viz., the second respondent herein, passed an order of dismissal from service against the appellant. The appellant challenged the same by filing the writ petition, which was dismissed by the learned Single Judge, who held that the appellant, being employed in the Armed Reserve was expected to maintain strict discipline and in view of this past conduct, the punishment of dismissal cannot be termed as excessive or disproportionate.

3. After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority, viz. the second respondent herein, to re-consider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P. No. 1 of 2010 is closed.

8. Thus, the Hon''ble Division Bench by considering the punishment of dismissal

from service as disproportionate, remitted the matter back to the Authorities for reconsidering the same for reconsidering the quantum of punishment imposed on the appellant therein. The above said decision of the Hon''ble Division Bench was considered by a learned Single Judge of this Court in W.P. No. 16415 of 2009 dated 15.06.2011 and the learned Judge has observed at paragraph No. 6 as follows:

6. The learned counsel for the petitioner also relied upon the judgments of the Division Bench of this Court made in W.A. No. 58 of 2011 dated 27.01.2011 and contended that the Division Bench considered the disproportionate nature of punishment of dismissal for desertion and set aside the order of the learned single Judge upholding order of termination and remitted the matter to the department to reconsider the matter with regard to the quantum of punishment and to take a decision within six weeks. The learned counsel also produced the order passed by the learned Single Judge which was reversed in the writ appeal, wherein the learned Single Judge refused to interfere with the order of punishment on the ground that the writ petitioner therein absented from duty thrice. The learned counsel further submitted that inspite of desertion thrice, the Division Bench though that the punishment of dismissal from service on the sole ground of desertion is highly disproportionate. When such point was raised by the learned counsel for the petitioner during the course of the argument, the learned Additional Government Pleader appearing for the respondents was directed to ascertain the said fact and file additional counter affidavit as to whether the order made in the writ appeal was implemented or not. The Director General of Police has filed a counter affidavit dated 10.06.2011 wherein it is stated as follows:

It is submitted that PC 1323 R. Ramesh, Armed Reserve, Kanchipuram District was dismissed from service by the superintendent of Police, Kanchipuram District on 27.07.2005 for the delinquency of desertion from 14.12.2004 AN. His appeal against the punishment was rejected by the Deputy Inspector General of Police, Kanchipuram range on 18.08.2005. Aggrieved over this, he filed W.P. 33624 of 2005 before the Hon''ble High Court of Judicature at Madras and the case was dismissed. Then he filed a Writ Appeal No. 58/2011 before the Hon''ble High Court of Judicature at Madras. As directed by the Hon''ble High Court of Judicature, Madras in their order dated 27.01.2011 EX PC 1323, R. Ramesh of Kanchipuram district was reinstated into service and imposed the punishment of postponement of next increment for two years which shall operate to postpone his future increments. He had joined duty on 28.04.2011 FN.

From the perusal of the order of the learned Single Judge, it could be seen that the Authorities, in pursuant to the order made in the above Writ Appeal No. 58/2011 dated 27.01.2011, have modified the punishment of the appellant therein by reinstating him into service however, by imposing the punishment of postponement of next increment for two years. Thus, from the above decisions by the Hon''ble Division Bench as well as the order of the learned Single Judge of

this Court, it could be seen that the order of punishment imposed on the petitioner viz., dismissal from service, cannot be sustained. In fact, a perusal of the order passed by the Appellate Authority as well as the Revisional Authority also would show that there was no independent application of mind of the authorities on the facts and circumstances of the case. At any event, as the very punishment itself is found to be disproportionate by the Hon''ble Division Bench of this Court in an identical case, by following the said decision, I am inclined to allow the writ petition and set aside the impugned order and to remit the matter back to the fifth respondent viz., the Disciplinary Authority to reconsider the decision with regard to the quantum of punishment imposed on the petitioner. While passing such order, the disciplinary authority shall keep in mind of the similar orders passed in W.A. No. 58/2011 and W.P. No. 16415 of 2009 as referred supra. The fifth respondent shall pass such an order within a period of four weeks from the date of receipt of a copy of this order. No costs.