

(2011) 09 MAD CK 0202

In the Madras High Court

Case No : Writ Petition (MD) No. 10473 of 2007

K. Sheik Abdul Kader

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 294, 379, 427

Citation : (2011) 09 MAD CK 0202

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; D. Muruganantham Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The Petitioner has approached this Court, with a prayer for issuance of a Writ, in the nature of Certiorari, to quash the order dated 23.11.2006, passed by the first Respondent, in awarding punishment of compulsory retirement.

2. The Petitioner was appointed, as Sub Inspector of Police on 19.05.1983. The Petitioner was thereafter, promoted as Deputy Superintendent of Police on 26.02.1999, and had unblemished record of service of 33 years, and 27 days. While the Petitioner was working as Deputy Superintendent of Police, he was issued a Charge Sheet, imputing misconduct.

3. The charges against the Petitioner reads as under:

CHARGE - I: Highly reprehensible conduct in having unnecessarily closed the wine shop of one Tr.Murugan at Kalugumalai on 13.09.2002 by deputing HC 914 Ramarajan and HC 633 Ettappan (Station Writer) of Kalugumalai P.S. to visit his shop unauthorisedly to close the shop and to take away the key of that shop as a result Thiru.Murugan has to incur a heavy financial loss.

CHARGE - II: Highly reprehensible conduct in having interfered in the investigation of Kalugumalai P.S. Cr. No. 79/2002 u/s 147, 148, 452, 294(b), 427, 506(ii) and 379 (NP) Indian Penal Code and given wrong direction to the Investigation Officer to delete some of the real named accused from the case in order to minimize the sections of law

4. The Petitioner denied the charges. The explanation of the Petitioner was not found to be satisfactory, consequently, Enquiry Officer was appointed, who held the enquiry, and found the Petitioner guilty of the charges.

5. The competent authority, agreed with the findings of the Enquiry Officer, proposed punishment of removal from service. The matter was referred to the Tamil Nadu Public Service Commission.

6. The Tamil Nadu Public Service Commission did not agree with the proposal of the Department, in ordering removal from service, instead recommended the punishment of compulsory retirement, by holding, that the charges before the Enquiry Officer was not proved by any positive evidence, but the findings were based of preponderance of probabilities.

7. The Learned Counsel for the Petitioner vehemently contended, that the impugned order cannot be sustained, as before accepting the recommendation of the Tamil Nadu Public Service Commission, a copy of the Report of the Tamil Nadu Public Service Commission was not supplied to the Petitioner.

8. In support of this contention, the Learned Counsel for the Petitioner placed reliance on the decision of the Hon''ble Supreme Court in the case of S.N. Narula Vs. Union of India (UOI) and Others, , wherein the Hon''ble Supreme Court has held as under:

6. We heard the learned counsel for the Appellant and the Learned Counsel for the Respondent. It is submitted by the counsel for the Appellant that the report of the Union Public Service Commission was not communicated to the Appellant before the final order was passed. Therefore, the Appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the Appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The Appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of three months thereafter

9. In view of the Judgment of the Hon''ble Supreme Court, the impugned order cannot be sustained

10. Consequently, this writ petition is allowed, the impugned order is set aside, and the case is remitted back, to the Respondents to re -consider the matter, after supplying the copy of the report of the Tamil Nadu Public Service Commission to the Petitioner, and giving him opportunity to represent against the report of the Commission.

11. It is hoped, that the competent authority would also take into consideration the pleas raised by the Petitioner regarding defect in holding the enquiry and finding of the Enquiry Officer, as referred to above.

12. Fresh order be passed, preferably within three months of the receipt of certified copy of this order.

13. No costs.