
(2013) 09 MAD CK 0236

In the Madras High Court

Case No : Writ Petition No. 17315 of 2007 and O.A. No. 1245 of 2003

R. Raman

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0236

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : G. Bala, for the Appellant; R. Rajeswaran, Special Government Pleader (W), for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrababu, J.—The writ petition is the transferred O.A. No. 1245 of 2003 filed on the file of the Tamilnadu Administrative Tribunal wherein the petitioner has challenged the order of dismissal from service. The case of the petitioner is that he joined police service as Police Constable on 25.10.1993. He absented from duty on 04.01.1999 continuously for a period of 21 days and he was declared as deserter by the fifth respondent and a disciplinary action was initiated against him in P.R. No. 60/1999. The petitioner was imposed with punishment of stoppage of increment for two years without cumulative effect by proceedings of the fifth respondent dated 09.07.1999. Since the petitioner was ill due to non function of his left leg and hand, he was not able to report duty in pursuant to the said order. However, the petitioner was further issued with another charge by alleging that he absented himself from duty even after the order made in P.R. No. 60/99. His absent was neither willful nor wanton but only due to his ill-health. The petitioner was served with charge memo. on 05.05.2000. In pursuant to the disciplinary proceedings, the fifth respondent passed the final order imposing an extreme punishment of removal from service on 05.06.2000. The petitioner had neither deserted nor absented from duty prior to these two occasions. Only due to the sudden ill health, he could not attend the

duty. After exhausting all the departmental appeal remedies, the present challenge is made before the Tribunal.

2. The said petition was resisted by the respondents by filing a counter affidavit. They have supported the order of removal from service by contending that the petitioner was unauthorisedly absent and he has deserted duty.

3. The learned counsel appearing for the petitioner has submitted that the petitioner is aggrieved against the quantum of punishment imposed on him and the punishment of removal from service is shockingly disproportionate to the charge levelled against the petitioner. He further submitted that the issue involved in this case with regard to the quantum of punishment is directly covered by the decision of the Hon"ble Division Bench in W.A. No. 58/2011 dated 27.01.2011. Thus, he submitted that the punishment has to be modified.

4. Per contra, the learned Government Pleader appearing for the respondents submitted that the order of punishment came to be passed only after considering all the rules and procedures and also following the due process of law.

5. Heard both sides.

6. The issue involved in this case is as to whether the punishment imposed on the petitioner viz., the removal from service is a proportionate punishment for the charge of deserting the duty for a period of 21 days. The said issue was considered by the Hon"ble Division Bench in W.A. No. 58 of 2011 dated 27.01.2011, wherein it is 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.

7. It appears that in pursuant to the order passed by the Hon"ble Division Bench in the said writ appeal, the Authorities have modified the punishment as the one of postponement of next increment for two years. The above said fact is also noted down by a learned single Judge of this Court in his order made in W.P. No. 16415 of 2009 dated 15.06.2011 at paragraph No. 6 which is extracted hereunder:

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.

8. The learned single Judge after following the above said order of the Hon''ble Division Bench and also considering the other decisions of the Apex Court set aside the order of punishment of termination of service and remitted the matter to the Authorities for considering the case only with regard to the proportionality of the punishment in the light of the order passed in the writ appeal and the consequential order passed by the Authorities therein. The relevant paragraph No. 10 of the learned Single Judge''s order is extracted hereunder:

10. Considering the facts and circumstances of this case and the order passed by the Division Bench holding that the order of dismissal from service for desertion is highly disproportionate and a lesser punishment should be imposed and the said order having been implemented by imposing a lesser punishment of postponement of one increment for two years in the case of one Ramesh, who was the appellant in W.A. No. 58 of 2011 dated 27.01.2011, I am of the view that the interest of justice would be met by setting aside the order of the respondents and remitting the matter to the second respondent to consider the said issue of proportionality of the punishment alone in the light of the additional affidavit filed by R3, dated 10.06.2011 and pass fresh orders, within a period of eight weeks from the date of receipt of a copy of this order.

By following the order of the Hon''ble Division Bench as well as the order passed by the learned single Judge as stated supra, this writ petition is allowed and the impugned order of the fifth respondent further confirmed by the respondents 1 to 4 are set aside and the matter is remitted back to the fifth respondent, for considering the issue of proportionality of the punishment alone in the light of the orders passed in Writ Appeal No. 58 of 2011 dated 27.01.2011 and W.P. No. 16415 of 2009 dated 15.06.2011 and to pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.