
(2007) 02 MAD CK 0293

In the Madras High Court

Case No : Writ Petition No's. 21508 and 28575 of 2005

S. Padmanabhan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Citation : (2007) 02 MAD CK 0293

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : Muthukumarasamy for A. Jenasenan, for the Appellant; D. Srinivasan, Government Advocate, for the Respondent

Judgement

P. Jyothimani, J.—The writ petitioner filed the above writ petitions challenging the proceedings of the 2nd respondent/ Director General of Police dated 22.6.2005 in which the 2nd respondent has issued a charge memo against the petitioner and for a direction to the respondents to include the name of the petitioner as Serial No. 1 in the panel for the post of Deputy Commissioner of Police/Superintendent of Police Grade II as approved by the 1st respondent in G.O.Ms. No. 747 Home (Pol.1A) Department dated 25.8.2005.

2. The petitioner was appointed as Sub-Inspector of Police in Category II in the year 1971 and later on, promoted as Inspector of Police in Category II in the year 1984. Then, he came to be further promoted as Deputy Superintendent of Police, Category II, in the year 1996 and thereafter, promoted as Additional Superintendent of Police in the year 2002. The next avenue of promotion to the petitioner is that of Superintendent of Police. In the list of promotees to the post of Superintendent of Police for the year 2003-2004, the petitioner's name was included as Serial No. 2. After the promotion of the person at Serial No. 1, eventhough the petitioner became Serial No. 1 thereafter, inspite of vacancies, he was not promoted and he filed a writ petition in W.P. No. 20116 of 2004 and an order was passed by this Court on 19.7.2004 directing the respondents to consider the claim of the petitioner. Since, the respondents stated that there are

no vacancies, the petitioner was constrained to file another writ petition in W.P. No. 22465 of 2004. However, pending the said writ petition, an order was passed on 29.9.2004 transferring the petitioner from T.S.P. II Battalion, Chennai to the post of Deputy Commandant, T.S.P.VI Battalion, Madurai. As against the same, the petitioner filed W.P. No. 28666 of 2004 and an order of stay was granted. In spite of the order of stay, the petitioner was not permitted to join duty. The order of stay was subsequently made absolute on 20.11.2004. Ultimately, on 3.2.2005, the petitioner was posted back in the same place as Additional Superintendent of Police on reserve in the Tamil Nadu Special Police II Battalion, Avadi and it was in those circumstances that W.P. No. 28666 of 2004 was dismissed as infructuous. However, the petitioner's claim for promotion for the year 2003 was pending.

3. While so, the petitioner was served with the impugned charge memo dated 22.6.2005, served on him on 25.6.2005, consisting of two charges. It is the case of the petitioner that after the original transfer order dated 29.9.2004 was served on him on 4.10.2004, he proceeded on leave for two days and reported for duty on 6.10.2004 along with the letter of the counsel informing about the stay granted by this Court. Charge No. 1 states that the petitioner's absence on 4.10.2004 for the whole day till the issue of the office order dated 5.10.2004 by which time he was relieved on transfer to Madurai was gross negligence of duty. According to the petitioner, he was on duty from the morning of 3.10.2004 till the morning of 4.10.2004 and availed medical leave for two days from the morning of 4.10.2004 till the morning of 6.10.2004 and he had undergone medical treatment in Police Hospital and submitted records to substantiate the same. When he joined on 6.10.2004, he was not permitted to join duty till 5.2.2005. The first charge itself is only to prevent the petitioner from being considered for promotion for the year 2005-2006. The petitioner would also state that he had sent by registered post to the Commandant as well as Director General of Police that he had fallen sick and was taking treatment on 4.10.2004 and 5.10.2004 with medical reports. The second charge states that the conduct of the petitioner in refusing to sign the CTC (charge transfer certificate) when his successor was waiting in the office on 4.10.2004 amounts to deliberate disobedience of the Government Order issued in Police Note No. 40 Home (Pol.II) Department dated 29.9.2004. According to the petitioner, since he had applied for leave from the morning of 4.10.2004, there was no question of his signing the CTC on 4.10.2004 and the second charge is hit by total non-application of mind. Further, as no order of refusal of medical leave has been issued so far, for the absence of the petitioner on 4.10.2004, there was no question of his signing the CTC.

4. Mr. R. Muthukumarasamy, learned senior counsel appearing for the petitioner would submit that eventhough, normally, charge-memo will not be challenged and the scope of judicial review of this Court is limited, he would submit that the factual circumstances of both the charges requires interference by the Court. He would submit that charge No. 1 is basically inconsistent for the reason tht the

petitioner himself admits that he applied for medical leave from the morning of 4.10.2004 till the morning of 6.10.2004 along with medical certificates and the claim for medical leave has not been rejected so far. Therefore, there is no question of relieving the petitioner to Madurai. As far as the second charge is concerned, learned senior counsel would submit that once the petitioner had gone on medical leave on 4.10.2004, there is no question of the petitioner signing the CTC and therefore, the second charge is hit by total non-application of mind. Hence, according to the learned senior counsel, both the charges are perverse on the face of it. It is also the case of the learned senior counsel appearing for the petitioner that the petitioner has been paid salary for the period. Learned senior counsel would also bring to the notice of this Court that eventhough stay of transfer order was granted by this Court, it was in February, 2005 that he was posted back to Chennai and the writ petition itself came to be dismissed as infructuous. It is also the admitted case of the petitioner, as stated by the learned senior counsel, that subsequently, the petitioner himself was promoted as temporary Deputy Commissioner of Police, Armed Reserve, Chennai and he was allowed to retire from service on attaining the age of superannuation by communication dated 31.3.2007 without prejudice to the departmental disciplinary proceedings/writ petitions pending against him. Therefore, according to the learned senior counsel, on the facts and circumstances of the case, nothing survives in the charges framed against the petitioner. Since, the charge itself is in respect of transfer to Madurai and also availing of leave by the petitioner from 4.10.2004 till 6.10.2004 and the same has not been rejected and the petitioner has been allowed to retire from service from 31.1.2007, absolutely nothing survives for consideration on the facts and circumstances of the charges stated above and therefore, according to the learned senior counsel, it is a fit case where the Court should interfere. He would also submit that since the petitioner was allowed to retire on 31.1.2007 and as promotion to the next post namely, Deputy Commissioner of Police, was already given on temporary basis and he was also paid salary, there is no question of including the petitioner in the panel of promotion to the post of Deputy Commissioner of Police/ Superintendent of Police Grade II.

5. On the other hand, learned Government Advocate, Mr. D. Sreenivasan, would submit that as far as the contention of the learned senior counsel for the petitioner that the charge is inconsistent and there is no basis for the charge is concerned, it is not for this Court to decide, but the authorities should decide the same and therefore, the authorities namely, the respondents should be given the liberty to decide the issue since it is not a fit case where as against the impugned charge memo, the Court should interfere.

6. I have heard the learned senior counsel for the petitioner and the learned Government Advocate for the respondents and perused the entire records.

7. On the face of it, as contended by the learned senior counsel for the petitioner, by G.O.Ms. No. 165 Home (Police.1A) Department dated 29.1.2007, the

petitioner, who was given temporary promotion as Deputy Commissioner of Police, Armed Reserve, Chenani was allowed to retire on superannuation on 31.1.2007 without prejudice to the departmental disciplinary proceedings/writ petitions pending against him. The claim of the petitioner for promotion as Deputy Commissioner of Police or Superintendent of Police has been considered by the respondents and it is admitted that the petitioner has been paid salary in the said cadre. In view of the same, there is absolutely no difficulty to come to the conclusion that no orders are necessary in W.P. No. 28575/2005 and the same is dismissed as nothing survives.

8. As far as W.P. No. 21508 of 2005 is concerned, the impugned charge memo, which has been issued revolves around the conduct of the petitioner in applying for medical leave from the morning of 4.10.2004 and admittedly, when the petitioner has made such an application along with medical certificate on the ground that he has been undergoing treatment in the Police Hospital from 4.10.2004 and 5.10.2004 and that plea of the petitioner has not been rejected by the respondents so far and it is also admitted that on 6.10.2004, this Court granted an order of stay in W.P.M.P. No. 34799/2004 in W.P. No. 28666/2004 staying the order of transfer granted against the petitioner to Madurai dated 29.9.2004. Eventhough it is stated that the said order was not implemented, ultimately, it is admitted that in February, 2005, the petitioner was posted back to Chennai. Therefore, the order of stay was in fact implemented and based on the said fact, W.P. No. 28666/2004 came to be dismissed as infructuous on 20.4.2005. The fact that the petitioner had applied for medical leave on 4.10.2004 is not denied. The learned Government Advocate has made his submissions on behalf of the respondents on instructions. Therefore, the question of absenting himself from duty on 4.10.2004 and 5.10.2004 does not does not arise as rightly contended by the learned senior counsel for the petitioner. In view of the same, there is no diffiulty to come to the conclusion that charge No. 1, as such, is prima facie, inconsistent. Charge No. 2 is only consequential to charge No. 1. In the said charge, it is stated that the petitioner has refused to sign CTC on 4.10.2004 when his successor was waiting in his office on 4.10.2004 along with CTC and thereby deliberately disobeyed the Government Order issued in Police Note No. 40 Home (Pol.I) Department dated 29.9.2004. Admittedly, the petitioner had applied for medical leave on 4.10.2004 and 5.10.2004 and therefore, there is no question of the petitioner refusing to sign the CTC and hence, it is not difficult to come to the conclusion that the second charge is also not based on facts.

9. Normally, in case of charges framed against the delinquent, this Court would not interfere, except in cases where there is long delay and laches either in framing the charge or in the conduct of the disciplinary proceedings or in cases where mala fides is attributed and not in other cases wherein it is for the authorities to decide as to whether the charges are true based on the explanation which may be submitted by the delinquent. However, in this case, as I have stated earlier, when the transfer order was passed on 29.9.2004, this

Court has granted an order of stay on 6.10.2004 and it is an admitted fact that the petitioner had applied for medical leave on 4.10.2004. It is not the case of the respondents that the petitioner is not entitled to apply for medical leave nor the application for medical leave by the petitioner has been rejected by the respondents so far. I do not find any purpose will be served by keeping the charges pending against the petitioner. Any charge, which is framed against a delinquent must have some purpose. It is also seen that the petitioner had attained superannuation on 31.1.2007 and he has been permitted to retire by giving promotion as temporary Deputy Commissioner of Police, Armed Reserve, Chennai. That apart, the charges are not severe in nature and actually not imputing to the conduct of the petitioner as a person belonging to the disciplined force. Considering the facts and circumstances of the case, I am of the view that the charges framed against the petitioner by the impugned charge memo dated 22.6.2004 are liable to be set aside. Accordingly, W.P. No. 21508/2005 stands allowed and W.P. No. 28575/2005 is dismissed. No costs.