
(2011) 09 MAD CK 0302

In the Madras High Court

Case No : Writ Petition No's. 23214 of 2006 (O.A. No. 3186 of 1996)

V. Vallinayagam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Citation : (2011) 09 MAD CK 0302

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Ramesh, for the Appellant; M.C. Swamy, Special Government Pleader, for the Respondent

Judgement

The Honourable Mr. Justice D. Hariparanthaman

1. The Petitioner is the wife of Late T. Venkatachalapathy. The petitioner's husband was employed as a Police Constable in Narikudy Police Station. He reported sick on 19.08.1974 and he went on medical leave. He was to report duty on 28.04.1975 with fitness certificate. But he did not report to duty on 28.04.1975. Hence, he was declared as a "deserter" and disciplinary action was initiated against him for his unauthorised absence from 28.04.1975 to 27.07.1975. The fourth Respondent -disciplinary authority passed an order dated 09.09.1977 dismissing him from service from the date of desertion.

2. According to the husband of the Petitioner, the Medical Officer recommended leave for taking rest and treatment. Accordingly he was passported on 01.04.1975 on medical leave and he was to report duty on 28.04.1975 with fitness certificate. However, he became sick and took treatment as an outpatient at Government Erskine Hospital, Madurai from 28.04.1975 to 28.07.1975. Narrating the same, though he sent a letter to the Sub-Inspector of Police, Narikudy Police Station, through registered post, the Sub-Inspector of Police refused to receive the same and returned the same to the Petitioner's husband.

3. The dismissal order dated 09.09.1977 of the fourth Respondent was modified

by another order dated 02.11.1977 stating that the dismissal would be given effect from the date of issuance of the order and not from the date of desertion.

4. Against the dismissal order, the Petitioner's husband preferred an appeal before the third Respondent -appellate authority and the same was rejected by the third Respondent by an order dated 02.03.1978.

5. While so, the Petitioner's husband died on 08.01.1980. Hence, the Petitioner made representations dated 27.03.1980, 06.05.1980, 22.09.1980 and 12.03.1991 seeking modification of the order of dismissal so that she could get family pension. However, the second Respondent -Additional Director General of Police passed an order dated 18.07.1994 rejecting her representations.

6. Therefore, the Petitioner filed the Original Application in O.A. No. 3186 of 1996 before the Tamil Nadu Administrative Tribunal seeking to quash the orders dated 09.09.1977, 02.11.1977 of the fourth Respondent and the order dated 02.03.1978 of the third Respondent and the order dated 18.07.1994 of the second respondent.

7. The Tribunal admitted the Original Application on 01.07.1996. The Respondents filed reply affidavit refuting the allegations.

8. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 23214 of 2006.

9. Heard both sides.

10. According to the Respondents, after the expiry of medical leave, the Petitioner's husband should have joined duty on 28.04.1975. However, he did not report to duty and thus, he was declared as a deserter.

11. On the other hand, according to the Petitioner's husband, he was not well and he took treatment as an outpatient from 28.04.1975 to 27.07.1975 and the same is not in dispute. In fact, para 3 of the appellate order dated 02.03.1978 states in the following terms:

3.(i)..... Further it appears that he received treatment in Madurai only as an outpatient.....

In fact, the Petitioner's husband also intimated the Sub-Inspector of Police about his illness and treatment, through registered post. However, the Sub-Inspector of Police refused to receive the said letter and the same was returned. This fact is also admitted in para 3(vi) of the appellate order dated 02.03.1978 in the following words:

3.(vi).... However the Appellant has stated that a registered cover No. 320 was refused by the Sub Inspector and this is available in the P.R. file. Though the Appellant is trying to argue that he asked for a passport through a registered cover it appears that it was received at Narikudy only on 31.07.1975....

12. Furthermore, the Petitioner's husband continued with Heart ailment and he

was directed to appear before the District Medical Officer, Ramanathapuram. Accordingly, he appeared before the District Medical Officer, Ramanathapuram on 19.12.1975 and the District Medical Officer found him unfit for the service and wrote a letter dated 07.01.1976 to the fourth respondent -Superintendent of Police, Ramnad in this regard and the same is extracted hereunder:

In continuation of this office cited, this is to inform you that Thiru Venkatachalapathy PC 2274 Narikudi Police Station was admitted in Govt.H.Q. Hospital, Ramanathapuram on 19.12.75 and discharged on 7.1.76.

He is found unfit for further service and as such necessary requisition may be sent for invalidation.

13. The aforesaid fact is also noted by the appellate authority in his order dated 02.03.1978. In this regard, paras 3(iv) and 4 of the appellate order dated 02.03.1978 are extracted hereunder:

3.(iv) It is a fact that the D.M.O has sent his report dated 7.1.76 and has asked for requisition for issuing invalidation certificate. This has not been suppressed by the enquiry officer and it has been filed as Ex. P.9. This does not mean that the Appellant has already been invalidated from service. The case of this P.C. was examined and since he was found to have absented himself without proper authority from an earlier period, no action was taken on the request of the District Medical Officer.

.....

4... Again he was directed on 6.11.75 to appear before D.M.O. But he appeared only on 19.12.75 thereby becoming a deserter...

14. Thereafter, the Petitioner's husband died on 08.01.1980. When

the treatment taken between 28.04.1975 and 27.07.1975 was not in dispute and also it was not disputed that he communicated the same to the Sub-Inspector of Police, the Respondents are not justified in dismissing the petitioner's husband from service on the ground that he unauthorisedly absented himself from 28.04.1975. In fact, when the Petitioner brought the same to the notice of the second Respondent, the second Respondent passed the impugned order dated 18.07.1994, which reads as follows:

The contention of the Petitioner Tmt. V. Vallinayagam is that her husband was recommended for invalidation but he was treated as deserter unjustly and finally dismissed from service. But this contention does not appear to be correct as seen from para 3(iv) of the appeal proceedings second cited. Hence, no further action is feasible at this end. The request of the Petitioner cannot be considered at the distance of time.

15. The second Respondent also admitted that the Petitioner's husband was recommended for invalidation, due to his heart ailment. Hence, I am of the view that the fourth Respondent is not justified in passing the dismissal order and the

third Respondent also is not justified in confirming the same. It is unfortunate that the second Respondent also has failed to interfere in the dismissal order in the said circumstances.

16. In this context, it is useful to refer to a decision of the First Bench of this Court in *R. Ramesh v. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and Another* in W.A. No. 58 of 2011 (decided on 27.01.2011). For the purpose of this case, the said judgment is extracted hereunder:

Heard the Learned Counsel for the parties. This appeal is filed challenging the order of the learned single Judge dated 2.9.2008 passed in Writ Petition No. 33624 of 2005.

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 his 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.

In the said judgment, the Appellant therein was imposed with minor punishment for his desertion on five occasions and subsequently he was dismissed and in those circumstances, the First Bench set aside the punishment of dismissal and remitted the matter back to the authorities to impose a lesser punishment.

17. However, the learned Special Government Pleader submits that the Petitioner, being the wife of the deceased, could not maintain a writ petition, though no

such plea was raised in the affidavit. In my view, the Petitioner could very well maintain a writ petition, since the impugned orders have prejudicially affected her right to receive family pension. Hence, the submission made by the learned Special Government Pleader has no substance.

18. For the reasons stated above, the impugned orders are quashed. However, taking into account the fact that the Petitioner's husband died on 08.01.1980, no question of reinstating him in service would arise and he is not entitled to backwages. However, the period up to the date of his death could be counted for the purpose of family pension. The Respondents are directed to pay family pension and other retiral benefits to the Petitioner within a period of four months from the date of receipt of a copy of this order.

19. The writ petition is ordered accordingly. No costs.