

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-3-2009

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.42667 of 2006

V. Moorthy

... Petitioner

Vs.

1. The Superintendent,
Central Prison,
Chennai - 3.
2. Deputy Inspector General of Prisons,
Chennai Range,
Chennai.

... Respondents

Prayer: This writ petition came to be numbered under Article 226 of Constitution of India, by transfer of O.A.No.4054 of 1999 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records in No.4918/po3/98, dated 31.8.1998 of the first respondent and No.1185/m.u/98, dated 2.12.1998 of the second respondent and quash the same and reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.G.Elanchezhian

For Respondents : Mr.P.Subramanian,
Addl. Government Pleader

O R D E R

The prayer in the writ petition is to quash the order of termination passed by the first respondent dated 31.8.1998, confirmed by the second respondent by order dated 2.12.1998 and for a direction to reinstate the petitioner in service with all consequential benefits.

2. The case of the petitioner is that he was selected as Grade-II Police Constable by the Tamil Nadu Uniformed Services Recruitment Board. Petitioner joined duty on 27.3.1998 at Central Prison, Chennai-3. He continued in the said post till 31.8.1998, i.e., the date of order of dismissal from service passed against him.

3. The petitioner was served with a charge memo on 22.4.1998 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and called upon to submit his explanation within fifteen days. Petitioner submitted his explanation on 2.5.1998 and the explanation having been found not satisfactory, the first respondent suspended the petitioner from service by order dated 16.5.1998, pending enquiry into the charges. On 5.6.1998 another charge memo under Rule 17(b) was issued to the petitioner stating that while the Jail Superintendent made inspection on 15.5.1998 in the early morning, the petitioner was found sleeping before the entrance of the old hospital, which is contrary to Rule 126 and 380 of the Tamil Nadu Jail Manual and also Rule 20 of the Tamil Nadu Government Servants Conduct Rules. Petitioner submitted explanation to the said charge memo also. The first respondent by order dated 27.4.1998 appointed the Additional Superintendent of Central Jail, Chennai-3 as Enquiry Officer, who conducted enquiry and submitted the minutes, which was served on the petitioner by the first respondent along with memo dated 16.7.1998 with a direction to offer his remarks within seven days. Petitioner submitted his remarks with regard to the Enquiry Officer's report. Again, the petitioner was summoned for enquiry on 3.7.1998 with respect to the second charge memo wherein he participated and the Enquiry Officer submitted his report, which was also furnished to the petitioner with a memo calling for remarks, for which the petitioner sought for time to submit his remarks. Petitioner further states that by order dated 31.8.1998 he was dismissed from service. The appeal filed before the second respondent was also dismissed by order dated 2.12.1998 and the said orders are challenged in the O.A.No.4054 of 1999, which is now transferred and numbered as the above writ petition.

4. The grounds raised in the writ petition are that the petitioner was not given reasonable opportunity to defend himself before the order of dismissal; that the show cause notice was issued proposing penalty along with enquiry report; that his request for further time to submit remarks for second enquiry report was not granted; that the petitioner was not allowed to cross examine the official witnesses; and that the Enquiry Officer not followed the procedures while conducting the enquiry.

5. The respondents have filed counter affidavit wherein it is stated that for the charge memo dated 21.8.1998 the petitioner was suspended pending enquiry and no final order is passed with regard to the second charge memo dated 5.6.1998 since the petitioner has not filed remarks for the enquiry officer's report, and in the enquiry conducted for the second charge memo, the petitioner failed to attend. The dismissal order was passed for the proven charges issued in the first charge memo. The minutes of the Enquiry Officer was drawn for the two charges and copy of the same was forwarded to the petitioner and he originally sought for seven days time and again

requested further time of seven days and once again requested 15 days time by stating that he could not be in a position to give reply. Since no reply was received, the Disciplinary Authority examined the Enquiry Officer's report carefully and after finding that both the charges are proved, imposed the punishment of dismissal from service by order dated 31.8.1998. The appeal preferred against the said order was also dismissed. The Disciplinary Authority, taking note of the seriousness of the proved charges, passed an order of dismissal and there is no illegality in the said order of dismissal.

6. The learned counsel appearing for the petitioner at the time of argument submitted that the petitioner was a newly appointed person and he was not aware of the rules and procedures of the Prison and hence he cannot be proceeded for the charges levelled against him in the charge memo dated 22.4.1998. The learned counsel fairly submitted that there is no procedural violation during the conduct of enquiry and before passing the order of punishment.

7. The learned Additional Government Pleader appearing for the respondents on the other hand submitted that the charges levelled against the petitioner are serious in nature and in fact the petitioner admitted his guilt by his reply dated 7.4.1998 and 6.7.1998 and pleaded for pardon. The police force being a disciplined force, the department viewed the delinquency committed by the petitioner as serious and passed the impugned order of punishment.

8. I have considered the rival submissions made by the learned counsel for the petitioner as well as respondents.

9. The charges levelled against the petitioner as per the charge memo dated 22.4.1998 are as follows:

"(1) Being an uniformed subordinate, he brought inside the prison, a bottle filled with brandy concealed in the bundle of cloths, meant for washing in the prison laundry, which is prohibited and contrary to rule No.126, 127 and 298 of the Tamil Nadu Prison Manual.

(2) Had a relationship with the prisoner, without thinking and knowing that he is a personnel of the uniformed service and attempted to bring a brandy bottle into the prison concealed in the cloths, which is violation of Rule 147 and 148 of the Tamil Nadu Prison Manual."

The petitioner, when confronted with the above two charges, submitted explanation and admitted the guilt in his reply dated 10.4.1998 and

on 6.7.1998 he pleaded for pardon. In the counter affidavit filed by the respondents it is clearly stated that the petitioner brought into the prison, a bottle filled with brandy, concealed in the cloth meant for washing in the Prison Laundry, which is in violation of Rules 126, 127 and 298 of the Tamil Nadu Police Manual, Volume-II. A departmental enquiry was conducted against the petitioner, though he pleaded guilty and pardon, the charges were held proved.

10. Once the serious charges as extracted above having been admitted and proved, it is for the department to impose appropriate punishment. Admittedly petitioner is a Police Constable, employed in the disciplined force. The charges proved against the petitioner are also serious in nature. The contention that the petitioner was not aware of the rules, cannot be accepted in view of the principle of law that ignorance of law or rule is not an excuse.

11. In the decision reported in (2005) 4 SCC 295 (Bharat Electronics Ltd. v. CCT) in paragraph 8 it is held as follows:

"8. We see no substance in these submissions. Ignorance of law is no excuse. Once the notifications stood quashed, the dealers were bound to collect tax at 6%. Even otherwise, it is difficult to believe that parties in the trade do not know the prevailing rate of tax."

In the light of the above well accepted principle of law and having regard to the fact that the petitioner was posted after the training period was over, the petitioner cannot contend that he was not aware of the rules. Hence I am of the view that the punishment imposed against the petitioner is just and proper and no case is made out to interfere with the said punishment.

There is no merit in the writ petition and consequently the writ petition is dismissed. No costs.

Sd/-

Asst. Registrar.

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Sub Asst. Registrar.

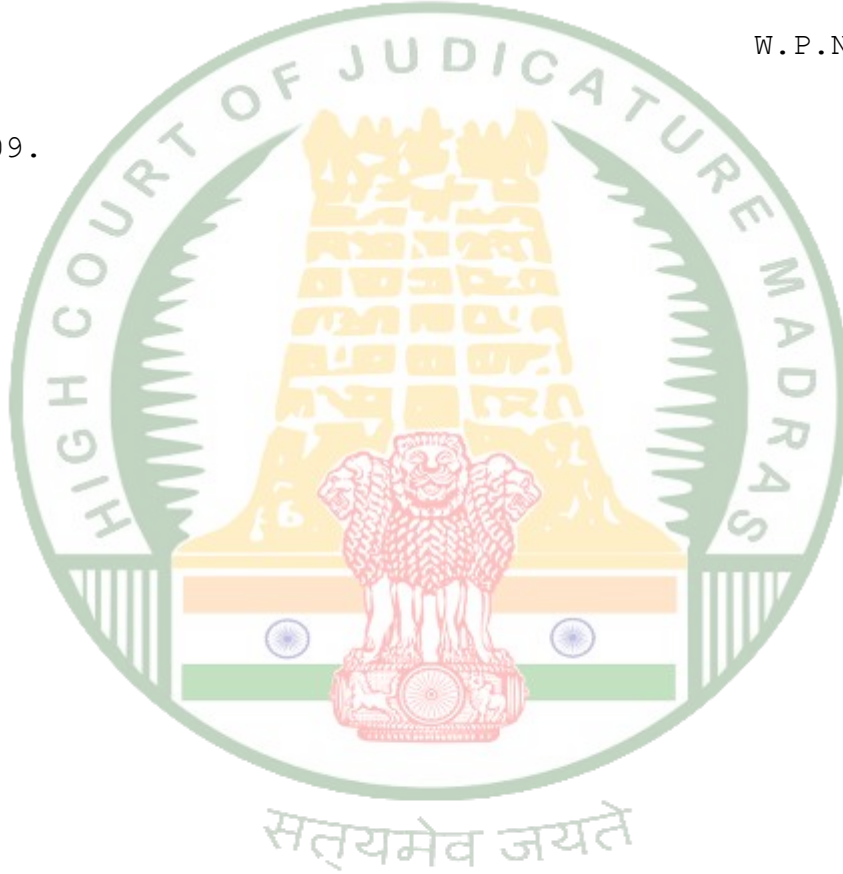
vr

To

1. The Superintendent, Central Prison, Chennai - 3.
 2. The Deputy Inspector General of Prisons, Chennai Range,
Chennai.
- + 1 CC To Mr.G.Elanchezhian, Advocate SR NO.11035
- + 1 CC to the Government Pleader SR NO.11245

order in
W.P.No.42667 of 2006

MA {CO}
TP/4.5.2009.



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