

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2010

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.6557 of 2006

M.Dhanapal

... Petitioner/Applicant

versus

The Superintendent of Police
Villupuram District.

... Respondent/Respondent

PRAYER: This writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.7991 of 2000 from the file of the Tamil Nadu Administrative Tribunal with a prayer to call for the records of the respondent in connection with the impugned order issued in C.No.H2/P.R.75/99 dated 15.08.2000 and quash the same and direct the respondent to reinstate the petitioner into service with all consequential and monetary benefits.

For Petitioner : Mr.K.Venkatramani
Senior Counsel for Mr.M.Muthappan
For Respondent : Mr.S.Shiva Shanmugam
Government Advocate

O R D E R

The Original Application in O.A.No.7991 of 2000 before the Tamil Nadu Administrative Tribunal is the present writ petition.

2.The petitioner entered into service as Grade-II Police Constable (Armed Reserve) Villupuram District in the year 1986. He was promoted as Grade-I Police Constable in the year 1994. He received more than 150 rewards. He also completed the Commando training and was serving in the Commando Force.

3.The petitioner states that on 21.09.1999, he was suffering from cold and fever and he was not able to attend the bandobust work. Hence he wanted to consult a Doctor for treatment. Thus, he approached the duty Sub- Inspector Mr.Rajkumar and requested him to issue a sick passport, so as to enable him to go to the Government Hospital for taking treatment. The letter of request for obtaining sick passport was misplaced and hence, after he went into the room of the Sub Inspector, he had to prepare the written request

once again. Hence, he pulled a chair in the vicinity of the Sub-Inspector and took it near to the Writer's table to prepare the written request. He further states that even at the time of entering into the Sub-Inspector's room, he saluted the Sub-Inspector and then only sat near the Writers table to prepare the written request. Further it is stated that the petitioner did not have good terms with the Sub-Inspector and there was some misunderstanding with the Sub-Inspector. Without taking into consideration the illness of the petitioner, the Sub-Inspector refused to receive the written request submitted by the petitioner and refused to give him sick passport for the purpose of treatment. Hence, he left the room of the Sub-Inspector.

4.While so, the respondent issued a charge memo dated 19.10.1999 in P.R.No.75 of 99 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. It is alleged in the charge memo that the petitioner entered into the office of the duty Sub-Inspector of Police (Armed Reserve) on 21.09.1999 at 11.15 am, without wearing uniform. Further it is alleged that without showing any respect to his superior officer, he pulled out a chair, lying in front of the Sub-Inspector and took it near to the writers table which was situated on the opposite side of the Sub-Inspector and sat on it and prepared a petition. He acted in a disrespectful manner. Then, he presented the petition to the Sub-Inspector of Police Thiru. Rajkumar and asked him to issue a sick passport. The Sub-Inspector explained him that since there was law and order problem prevailing in the District, he could not issue sick passport without the orders of the Inspector of Police (Armed Police) or Deputy Superintendent of Police. Thereafter, the petitioner went out of the room suddenly. It is also alleged that the petitioner, who had put in 13 years of service, failed to give respect to his superior.

5.The petitioner submitted his explanation on 17.11.1999 denying the charges levelled against him. His main contention was that since he was not having good terms with the Sub-Inspector, he took vengeance by making a false complaint against him.

6.An enquiry was conducted by the Deputy Superintendent of Police, Villupuram. In the enquiry, four witnesses were examined. The Enquiry Officer submitted his enquiry report on 05.01.2000. The petitioner was also furnished with a copy of the enquiry report dated 05.01.2000 and his comments thereon was also sought. Ultimately, the petitioner was dismissed from service by an order dated 15.08.2000 by the respondent.

7.Aggrieved by the same, the petitioner filed an Original Application in O.A.No.7991 of 2000 to quash the order dated 15.08.2000, dismissing him from service and for a consequential

direction to respondent to reinstate him in service with all consequential benefits.

8. On abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P.No.6557 of 2006.

9. The respondents filed counter affidavit refuting the allegations made in the writ petition.

10. Heard Mr.K.Venkatramani, learned senior counsel for the petitioner and Mr.S.Shiva Shanmugam, learned Government Advocate for the respondent. The learned Government Advocate produced the entire record for perusal of this Court.

11. The learned senior counsel for the petitioner submitted that the entire matter was blown out of proportion. For pulling out a chair, lying in front of the Sub-Inspector and taking it near to the writer's table, which was situated on the opposite side of the Sub-Inspector, to sit on it to prepare a written request seeking sick passport was magnified as a major delinquency and cost his livelihood. The learned counsel further pointed out that the Sub-Inspector did not even receive the written request and he refused to receive the same. It was not the case of the respondent that he was not sick. It was not the allegation that he abused the Sub-Inspector and no other delinquency was made against the petitioner, except pulling out a chair to the Writer's table for preparing a written request seeking for sick passport. Since the respondent refused even to receive the written request, the petitioner quietly left the room as he was not well. Hence, the entire disciplinary action was unwarranted. In any event, dismissal from service is a harsh punishment for the aforesaid delinquency, taking into account that he was suffering from fever and cold and there was no other allegations other than pulling out a chair to the Writers table to prepare a written request seeking for sick passport. The learned senior counsel for the petitioner relied on the following decisions held by the Labour Appellate Tribunal of India (at Lucknow) (in the first case) and the Hon'ble Supreme Court of India (in the other cases) in support of his submissions.

- 1) Panna Lal Pathak and others Vs. Elgin Mills Company, Ltd., [1958 (1) LLJ 100]
- 2) Rama Kant Misra Vs.. State of Uttar Pradesh and Others [1982 (3) SCC 346]
- 3) Ved Prakash Gupta Vs.. Delton Cable India (P) Ltd., [1984 (2) SCC 569]
- 4) Ram Kishan Vs. Union of India and others [1995 (6) SCC 157]

12. On the other hand, the learned Government Advocate for the respondent made submissions based on the counter affidavit. He submitted that since the Police Force is a Disciplined Force, the

disrespect shown to Senior Officer, could not be tolerated and respondent was justified in dismissing the petitioner from service.

13. I have considered the submissions made on either side and perused the records.

14. After the alleged incident, the Sub-Inspector sent a letter to the respondent narrating the incident and requesting the respondent to transfer the petitioner to some other place. The Inspector conducted enquiry based on the aforesaid letter of the Sub-Inspector. The Inspector enquired one Mr.Kurshid Basha, Police Constable and Mr.Raghu Chandran, Grade - I Police Constable, who were present at the scene of occurrence. He recorded their statement. Thereafter, the Inspector sent a report to the respondent to take disciplinary action against the petitioner. While Mr.Kurshid Basha and Mr.Raghu Chandran gave their statement to the Inspector, the Sub-Inspector himself sent a letter on the same day itself to the respondent narrating the incident. In the said letter, he did not seek for any disciplinary action against the petitioner and he only wanted to transfer the petitioner to some other place. Thereafter, a charge sheet was issued as stated above and an enquiry was conducted by the Deputy Superintendent of Police (Armed Reserve) Villupuram. Before, the Enquiry Officer, the concerned Sub- Inspector, Mr.Kurshid Basha and Mr.Raghu Chandran and the Inspector were examined as departmental witnesses. The petitioner also cross-examined them. The Enquiry Officer found him guilty of the charges in his findings dated 05.01.2000. Ultimately, the disciplinary action ended in the order dated 15.08.2000 dismissing the petitioner from service.

15. Even according to the respondent, the Police Constables Mr.Kurshid Basha and Mr.Raghu Chandran were independent witnesses. Therefore, their statement to the Inspector, that were marked in the enquiry, are very relevant. Those statements were made on the same day of the incident and the same are extracted here-under:

"அனுப்ப்தல் - அ.குர்ஷீத்பாஷா
சேமப்படை இரண்டாம் பிரிவு
விழுப்புரம்

பெறுதல் : - கணம் ஆய்வாளர் அவர்கள்
சேமப்படை
விழுப்புரம்

அய்யா,

நான் 21.9.99 ந்தேதி அன்று காலை 11.15 மணிக்கு ஏவன்
அதிகாரி அறையில் கம்பெனி எழுத்தராக பணியில் இருந்தபோது Gr.I 1086

தனபாள் என்பவர் ஏவல் அதிகாரி அறைக்கு வந்து கண்ணியமற்ற முறையில் நடந்து கொண்டும் ஏவல் அதிகாரிக்கு எதிரில் இருந்த நாற்காலியை கேட்காமல் தரதரவென்று இழுத்து போட்டு சிறிது தூரத்தில் எதிரில் அமர்ந்ததார். இச்செயலை அப்போது பணியில் இருந்த ஏவல் அதிகாரி திரு. இராஜ்குமார் அவர்கள் கேட்டும் அலட்சியப்படுத்திவிட்டு சென்றுவிட்டார் என்பதை ஏவல் உதவி ஆய்வாளர் அவர்கள் எழுத்து மூலமாக எழுதிக் கேட்க நான் அப்போது பணியில் இருந்ததன் பொருட்டு இந்த தனி அறிக்கையை தங்கள் சமீபத்திற்கு சமர்ப்பிக்கிறேன்.

அனுப்பதில் - மு.ரகுச்சந்திரன் Gr.I.1508

ஆயுதப்படை முன்றாம் பிரிவு
(V.H.F.வெயிட்டிங்)

விழுப்புரம்

பெறுதல் - கணம் ஆய்வாளர் அவர்கள்

ஆயுதப்படை

விழுப்புரம்

அய்யா,

நான் (Gr.I.1508) 21.9.99-ம் தேதி காலை 11.15 மணிக்கு ஏவல் அதிகாரி அறையில் A.R. V.H.F வெயிட்டிங் பணியில் இருந்த போது Gr.I 1086 தனபால் என்பவர் ஏவல் அதிகாரி அறைக்கு வந்து கண்ணியமற்ற முறையில் நடந்து கொண்டும் ஏவல் அதிகாரிக்கு எதிரில் இருந்த நாற்காலியை கேட்காமல் தரதரவென்று இழுத்து போட்டு சிறிது தூரத்தில் எதிரில் அமர்ந்தார். இச்செயல் அப்போது பணியில் இருந்த ஏவல் அதிகாரி திரு. ராஜ்குமார் அவர்கள் கேட்டும் அலட்சியப்படுத்திவிட்டு சென்றுவிட்டார் என்பதை ஏவல் உதவி ஆய்வாளர் எழுத்து மூலமாக எழுதி கேட்க நான் (Gr.I.1508) அப்போது பணியில் இருந்ததன் பொருட்டு இந்த தனி அறிக்கையை சமர்ப்பிக்கிறேன்."

Those witnesses deposed in the enquiry repeating the above said statements. In the cross examination of Mr.Kurshid Basha, he admitted that the petitioner gave a request seeking sick passport and the Sub-Inspector refused to receive the same. In fact, even the Sub Inspector in his letter to the respondent admitted that he refused to receive the request given by the petitioner seeking sick passport.

16.The aforesaid narration of facts and more particularly, the evidence of Mr.Kurshid Basha and Mr.Raghu Chandran makes it very clear that the pulling of the chair, lying in front of the Sub-Inspector and taking it to the Writers table for writing a written request seeking for sick passport, resulted in the disciplinary action and proved to be fatal to the petitioner. Therefore, I am of

the considered view that the submission of the learned senior counsel for the petitioner that the alleged incident was blown out of proportion, is perfectly correct. Pulling of a chair lying in front of a Superior Officer to sit to write a written request, without permission of the Superior Officer, could not be construed as showing disrespect to Superior Officer and it could be termed as lack of culture, taking into account the lower echelons of service to which the petitioner belongs. But, the Disciplinary Authority imposed the extreme penalty on the ground that the petitioner was serving in the Disciplined Force. While doing so, the respondent failed to take into account the mitigating and extenuating circumstances that existed in this case. Those mitigating circumstances are that the petitioner wanted to take treatment for his illness and that he sought sick passport. This is not disputed by the Sub-Inspector and by the other witnesses. Admittedly, the Sub-Inspector refused to receive the written request of the petitioner seeking for sick passport. It is not the case of the respondent that the petitioner misbehaved by using abusive language and also threatened his superior officer, when he refused to give sick passport. On the other hand, he simply left the place. However, for writing a written request seeking for sick passport, by pulling a chair, cost his livelihood. Hence, the extreme penalty is not warranted.

17. The judgments cited by the learned senior counsel for the petitioner squarely applies to the facts of this case. The relevant passages from those judgments are extracted here-under:

Panna Lal Pathak and others Vs. Elgin Mills Company, Ltd., reported in 1958 (1) LLJ 100

"Coming then to the merits, it would appear that while working in the retail shop of the concern, Sri Pathak could not see eye to eye with Sri Bajpai, the incharge of the shop, with regard to the conduct of the sales there. He used to raise objections every now and then and hamper the smooth running of the shop. He persisted in it notwithstanding the warning of the management and this went on even up to the day prior to the incident. On the morning of the incident the matter was reported to Sri Bell as Sri Pathak had been warned against it and further there was a large accumulation of stock then which he wanted somehow to clear. He felt that the objections of Sri Pathak were calculated to cut down the sales, resulting in loss to the concern. That being the position, it is highly probable that on Sri Pathak going over to his room, on being sent for by him to discuss this matter, he received him coldly and greeted him with the remark "What fresh mischief have you started in

the shop?" as stated by Sri Pathak and not with the polite remark "What is worrying you?" However that be, even according to the management, his only lapse up to the time of his being asked to "shut up" was that he was talking in a loud voice. But that cannot necessarily be attributed to any insolence or insubordination on his part. It may well be that he was trying to impress his viewpoint in the matter under discussion by raising his voice, as some do in the heat of discussion. According to him he was courteous to Sri Bell even after the latter asked him to "shut up," and even otherwise Sri Bell has to thank himself for any discourtesy or indiscipline or insubordination on his part after what had happened. Any such conduct on his part was brought about by Sri Bell's own indiscretion and discourtesy in asking him to "shut up" and if he refused to take this insult lying down and said, by leaning towards Mr. Bell that he would not shut up, it cannot be attributed to wilful insubordination. To hold otherwise would mean that an employee should submit himself to any insult from the management without raising even a word of protest. The conduct attributed to Sri Pathak, even if true, was in the heat of the moment, when he was smarting under the insult of being asked to "shut up," and so it cannot, by any means, be considered as wilful; it would not be a misconduct within the meaning of standing order 23(a). Having regard to the circumstances, the chances are that besides saying "shut up" Sri Bell said also "get out" and it was not merely a case of his asking politely to leave the room. This was adding insult to injury and so, for anything that happened subsequently also Sri Bell himself was primarily responsible. As the Joint Secretary of the Union, if not as a Clerk of the concern, Sri Pathak was entitled to better treatment meted out to him being what it was, he cannot in our opinion, be held guilty of wilful insubordination or disorderly behaviour or indiscipline. Regarding disobedience of orders, the orders said to have been disobeyed by him were the orders to "shut up" and "get out." They were not either legal or reasonable orders, nor did they relate to his duty or conduct as an employee of the mill and so their disobedience will not amount to misconduct under the standing orders as the standing orders cover only the disobedience of lawful and reasonable orders relating to his work or conduct in the mill. Under the circumstances Sri Pathak cannot, in our opinion,

be held guilty of misconduct under standing orders 23(a) or (k)."

Rama Kant Misra Vs.. State of Uttar Pradesh and Others reported in 1982 (3) SCC 346

"8..... the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Therefore, we are satisfied that the order of dismissal was not justified in the facts and circumstances of the case and the Court must interfere."

Ved Prakash Gupta Vs.. Delton Cable India (P) Ltd., reported in 1984 (2) SCC 569

"13..... The charge levelled against the appellant is not a serious one and it is not known how the charge even if proved would result in any much less total loss of confidence of the management in the appellant as the management would have it in the charge. It was argued in the Labour Court that there was no previous adverse remark against the appellant. There is nothing on record to show that any previous adverse remark against the appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal on the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that

the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service."

Ram Kishan Vs. Union of India and others reported in 1995 (6) SCC 157

"11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him."

18. The principles laid down in the cases cited by the petitioner are squarely applicable to the facts of this case. The petitioner did nothing, except pulling the chair to sit and to write a request seeking for a sick passport. No allegation was made that he used abusive language or he did threaten his superior officer, when the superior officer refused to receive his written request. Furthermore, even the concerned Sub-Inspector suggested only for the transfer of the petitioner and he did not seek for any disciplinary action. I am of the considered view, in the circumstances of the case, dismissal of petitioner from service is too harsh a punishment and it requires interference.

19.The learned senior counsel for the petitioner further submitted that more than 11 years have lapsed now and that the petitioner would be satisfied, if he is restored to duty without any pay, with notional fixation of pay.

20.Taking into account the entirety of the circumstances of the case, the impugned order is liable to be quashed and accordingly, the same is quashed. The respondent is directed to reinstate the petitioner in service, without any back wages. Further, the respondent is directed to treat the period of the petitioner's non-employment as "duty" for the purpose of fixation of pay and for granting terminal benefits. The petitioner is further imposed with the punishment of increment cut for three years without cumulative effect, apart from depriving wages for the period of more than 11 years of non-employment. The respondent is directed to comply with this order within six weeks from the date of receipt of a copy of this order.

21.The writ petition is disposed of on the above terms. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

RNS/TK

To

The Superintendent of Police
Villupuram District.

1 cc To M/s.T.Ayngaraprabhu, Advocate, SR.5362.

1 cc To The Government Pleader, SR.5690.

KSK(CO)
RVL 25.06.2010

W.P.No.6557 of 2006

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