

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2010

CORAM:

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.2814 of 2007(T)
(O.A.No.2288 of 2001)

G.Robinson

... Petitioner

Vs

1.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

2.The Deputy Inspector General of Police,
Tirunelveli.

... Respondents

PRAYER:-Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus, to call for the records of the first respondent made in his final order L3/P.R.51/2000 dated 13.07.2000 as further confirmed by the second respondent on Appeal in C.No.AP.99/2000 dated 22.11.2000 and quash the same as null and void, illegal and invalid and consequently direct the respondents to reinstate the applicant in service with all service and monetary benefits.

For petitioner : Mr.A.Amalraj

For Respondents : Mr.P.Subramanian, A.G.P.

सत्यमेव जयते
O R D E R

The petitioner filed O.A.No.2288 of 2001 before the Tamil Nadu Administrative Tribunal, seeking to challenge the order dated 13.07.000 passed by the first respondent- Superintendent of Police and confirmed by the order of the second respondent dated 22.11.2000. By the impugned order the petitioner was visited the penalty of compulsory retirement.

2. The Original Application was admitted on 28.03.2001. Pending the Original Application, an order of interim stay was granted. Subsequently, the interim stay was directed to be continued. The respondents did not take any steps to vacate the interim order. On the contrary, they had filed an application for fixing an early date. On notice from the Tribunal, a detailed reply affidavit was filed by the respondents.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P.No.2814 of 2007.

4. It is seen from the records that the petitioner was appointed as a Police Constable Grade II on 23.12.1985. He was subsequently promoted as Grade I Police Constable on 27.08.1997. The petitioner was serving as Grade I Constable at Kollencode since 04.06.1999. He was passported to Armed Reserve, Nagercoil on 04.01.2000. He was also doing escort duty in the Armed Reserve escorting the prisoners. On 08.01.2000 at 7.00 hrs when roll call was conducted, the petitioner was found absent without obtaining any leave or permission. He continued to be absent for more than 21 days. Therefore, he was treated as a deserter in terms of Police Standing Order No.88. The order No.156/2000 treating him as a deserter passed by the first respondent was served on him on 05.02.2000. He was directed to appear before the first respondent in person and can apply for reinstatement if he so desired within two months from the date of his absence. The petitioner reported before the first respondent on 07.02.2000 along with a special report and a copy of medical certificate issued by the Resident Medical Officer, recommending absence from duty for the period of 19 days from 08.01.2000 and 20 days from 27.01.2000 along with a fitness certificate. Therefore, he was taken back to duty on 07.02.2000.

5. For having absented from duty without obtaining leave or permission, a charge memo under Rule 3(b) of the TNPSS (D & A) Rules was framed in P.R.No.51/2000 against the petitioner. The charge against the petitioner was "Gross neglect of duty in having absented without any leave or permission". An enquiry was directed to be conducted by the Deputy Superintendent of Police, Nagercoil. After conducting an oral enquiry and getting the petitioner's reply on the defence enquiry, the Enquiry officer drew up the minute on 14.06.2000 holding that the charge against the petitioner was proved. Agreeing with the findings of the Enquiry Officer, the Disciplinary Authority, viz., the first respondent by his order dated 14.06.2000 directed him to make a further representation. But the petitioner did not make any representation within the stipulated time. Thereafter, the order dated 13.07.2000 awarding the punishment of compulsory retirement from service was passed against him with effect from 14.07.2000.

6. As against the said punishment, the petitioner preferred an appeal dated 09.08.2000. The second respondent declined to interfere with the appeal on the ground that it was time barred and rejected it by an order dated 22.11.2000. It is these two orders, the petitioner challenged in the Original Application and got an order of interim stay.

7. Mr.A.Amalraj, the learned counsel for the petitioner contended that the Supreme Court vide its judgment in Syed Zaheer Hussain v. Union of India and others reported in JT 1999(1) SC 319 set aside an unauthorised absence by a government servant and

directed his reinstatement with 50% of the backwages. It must be noted that it is not a case relating to Police Constable.

8. The learned counsel for the petitioner also placed reliance upon a judgment of the Supreme Court in *State of Mysore v. K.Manche Gowda* reported in AIR 1964 SC 506 for the purpose of contending that a punishment must have proportionality to the gravity of the charges and the past record of the government servant if it is intended to be relied upon for imposing a punishment should be made as a specific charge in the first stage of enquiry itself. If that is not done, then it cannot be subsequently relied upon.

9. He also placed reliance upon a judgment of the Supreme Court in *Union of India and others v. K.P.Tiwari* reported in (2003) 9 SCC 129 to hold that if a person holds an employment under the strength of the interim order, after a long period he should not be disturbed.

10. He further placed reliance upon two unreported judgments of this Court in *S.Varadarajan v. The Secretary to Government* (W.P.No.31386 of 2006) dated 05.02.2009 and *K.Annamalai v. Superintendent of Police* (W.P.No.2347 of 2007) dated 17.12.2009.

11. The *K.P.Tiwari's* case cited supra has been subsequently considered by the Supreme Court and it has no validity. The contention that the stay order the petitioner had obtained before the Tribunal will enure to his benefit also has been diluted by the Supreme Court. Therefore, this Court is not inclined to accept those contentions.

12. The argument of the petitioner that once having declared him as a deserter and was subsequently restored to duty will prevent the department from taking disciplinary action cannot be accepted as a Rule of principle. A person being declared as a deserter will have to prove before the disciplinary authority in case any charges are framed about his absence and in the enquiry that may be held against him.

13. But this Court in more or less identical circumstances in the cases of *S.Varadarajan* (cited supra) and *K.Annamalai* (cited supra) allowed the writ petitions and there was no appeal by the State against those orders.

14. In the light of the above, the petitioner should have a similar benefit. Hence, the writ petition stands allowed and the impugned orders will stand set aside. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

svki

To

1.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

2.The Deputy Inspector General of Police,
Tirunelveli.

1 cc To The Government Pleader, SR.21816

1 cc To Mr.A.Amalraj, Advocate, SR.21328

W.P.No.2814 of 2007

RR(CO)
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