

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.7024 of 2007
(O.A.No.5482 of 2002)

R.Ravi

.. Petitioner

-vs-

1. Director General of Police
Law & Order
Chennai 600 004

2. Superintendent of Police
District Police Office
Thanjavur

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of removal from service passed by the second respondent herein in his proceedings in P.R.41/97 under rule 3(b) dated 23.6.97 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential monetary and service benefits.

For Petitioner :: Ms.P.Anitha for Mrs.G.Bala

For Respondents :: Mrs.M.E.Rani Selvam
Additional Government Pleader

ORDER

The petitioner-Mr.R.Ravi, who was removed from service by the impugned order dated 23.6.97 passed by the Superintendent of Police, Thanjavur in P.R.No.41 of 1997 under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, filed O.A.No.5482 of 2002 before the Tamil Nadu Administrative Tribunal on the ground that the petitioner was unable to attend the enquiry due to his mental illness. Therefore, the Deputy Superintendent of Police, Armed Reserve, Thanjavur, who conducted an ex parte enquiry, ought not to have held the charges proved. Subsequently, the matter came on transfer to this Court and renumbered as the present writ petition.

2. Learned counsel for the petitioner, assailing the impugned order, submitted that after the petitioner joined the police service as Grade II Police Constable on 25.5.88, he received 25 awards for his efficient service. That shows he was not subjected to any major punishment, except a minor punishment inflicted under Rule 3(a) of the Tamil Nadu Police Subordinate Service Rules, during his past nine years of service. However, when he fell ill on 30.9.96, after obtaining four days casual leave, he went to his native place. Thereafter, he was unable to report for duty on 5.10.96 due to his family problem. Subsequently, he suffered mental illness. Therefore, he was unable to report for duty as directed in the desertion order. In view of that, his absence from duty was neither wilful nor wanton, but due to his family and mental problem. This aspect has been completely lost sight of by the disciplinary authority while prosecuting the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules. It was also further claimed by the petitioner that the disciplinary authority, taking note of only one fact that he being a member of the disciplined force was expected to maintain and conduct himself in accordance with the police manual, rules and regulations, had overlooked one another important fact that he is also a human being subject to human pain, suffering and disease. As the petitioner suffered mental illness and also family problem, he was unable to report for duty for 21 days. Within sixty days from the date of receipt of the desertion order, however, he appeared before the Superintendent of Police in person and prayed for posting. But the second respondent wrongly condemned the petitioner as a deserter without giving him any posting order. Therefore, the impugned order cannot stand to any reason, since the Apex Court also has held that every absence need not be treated as desertion. Except the 21 days of absence, that too due to ill-health, the disciplinary authority ought to have seen that he has reported for duty. Therefore, he should not be treated as a deserter for imposing the major penalty. As the petitioner has been visited with a major penalty only for not reporting for duty within 21 days, the impugned order is liable to be set aside.

3. Learned Additional Government Pleader for the respondents submitted that the writ petition itself is not maintainable, since the petitioner, who remained unauthorisedly absent for 21 days even after the order of removal was passed against him by the second respondent on 23.6.97, again remained dormant for about five long years in challenging the same before the Tribunal. That clearly shows that the case of the petitioner cannot be trusted. After he was removed from service for his desertion on the ground that he was unauthorisedly absent for 21 days, he should have approached the authority challenging the said order within a reasonable time. But he has filed the review only in the year 2001 without there being any reason whatsoever. Therefore, the petitioner, who had not challenged the impugned order of removal dated 23.6.97 for about five long years, cannot come to this Court.

4. This Court finds merits in the submissions made by the learned Additional Government Pleader for the respondents. When the petitioner was already issued with the order of removal on account of his unauthorised absence for 21 days by order dated 23.6.97, for no reasons he can sleep over the matter for about six long years to challenge the same. Therefore, this Court finds no merits in the writ petition. Accordingly, the writ petition is dismissed. No costs.

ss

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Director General of Police
Law & Order
Chennai 600 004

2. The Superintendent of Police
District Police Office
Thanjavur

1 cc to Government pleader, S. 6357

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