

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition No.31006 of 2012

A.K.Balakrishnan

.. Petitioner

Vs.

1. The Additional Director General of Police
Inspector General of Prisons
Office of the Commissioner of Police
Chennai-8

2.The Deputy Inspector General of Prisons
Kovai Circle, Kovai

3.The Superintendent of Prison
Central Prison, Kovai

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records ending with the order of 1st respondent made in proceedings No.1361/ EW1/2011 dated 4.11.2011 confirming the order of 2nd respondent dated 9.11.2010 and made in proceedings No.3246/ MU/2001 and order 3rd respondent dated 19.5.1992 in proceedings No.14058/ Po2/91 and to quash the same and to direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Petitioner

: Mr.Ravishanmugam for
Mr.N.Ishtiaq Ahmed

For Respondents

: Mr.M.S.Ramesh, AGP
Additional Government Pleader

O R D E R

This Writ Petition is directed against the order dated 4.11.2011, whereby and whereunder the first respondent confirmed the order passed by the second respondent.

2. The petitioner was initially appointed as Grade II Warden in the Department of Prisons on 14.12.1981. The petitioner availed medical leave and on his failure to join service, he was directed to appear before the Medical Board. The petitioner appeared before the Medical Board and thereafter he was transferred to Central Prison, Coimbatore. The petitioner was suspended from service by order dated 19.7.1991 on the ground of unauthorized absence. The disciplinary authority initiated proceedings against the petitioner by issuing a charge memo. The petitioner was finally dismissed from service by order dated 19.5.1992. The petitioner filed an appeal challenging the order passed by the disciplinary authority. The second respondent rejected the appeal by order dated 22.12.2000. Challenging the said order, the petitioner filed O.A.No.1850 of 2001 before the Tamil Nadu Administrative Tribunal. On abolition of the Tribunal, it was transferred to this Court and renumbered as W.P.No.49494 of 2006. This Court allowed the Writ Petition and remitted the matter back to the second respondent for fresh consideration. Pursuant to the said order, the matter was once again considered by the second respondent. The second respondent passed an order dated 9.11.2010. The said order was challenged before the first respondent. The first respondent rejected the appeal by order dated 4.11.2011. The said order is under challenge in this Writ Petition.

3. The third respondent in his counter affidavit contended that the petitioner was involved in two criminal cases in Crime Nos.371/2007 and 111/1995 and in view of the proved misconduct, the second respondent once again dismissed the appeal.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents.

5. The first respondent while deciding the statutory appeal took into consideration two criminal cases registered against the petitioner in Crime Nos.371/2007 and 111/1994. In view of the fact that those criminal cases were pending, the first respondent was constrained to consider the statutory appeal filed by the petitioner, taking into account the background facts. The first respondent, without making any attempt to consider the issue on the basis of the proceeding initiated against the petitioner, rejected the appeal taking into account the subsequent events relating to the involvement of the petitioner in Crime Nos.371/2007 and 111/1994. Even in the counter affidavit filed by the third respondent, it was indicated that the involvement of the petitioner in two criminal cases subsequently made the appellate authority to reject the appeal.

6. The learned counsel for the petitioner submitted that the petitioner was acquitted by the criminal court and as such the involvement of the petitioner in two criminal cases is no more available to the first respondent.

7. While dismissing the statutory appeal, the first respondent was influenced by the involvement of the petitioner in two criminal cases. Now that those two cases ended in acquittal, necessarily the appeal should be considered on its own merits.

8. In the result, the impugned order dated 4.11.2011 is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to consider the appeal purely on merits and in the light of the judgments in C.C.No.173/2008 (Crime No.371/2007) on the file of Additional District Sessions Judge/Special Court for NDPS Cases, Coimbatore dated 28.9.2012 and C.C.No.90/1994 (Crime No.111/1994) on the file of Judicial Magistrate, Avinasi. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

ajr

To

1. The Additional Director General of Police
Inspector General of Prisons
Office of the Commissioner of Police
Chennai-8

2.The Deputy Inspector General of Prisons
Kovai Circle, Kovai

3.The Superintendent of Prison
Central Prison, Kovai

1 cc to Mr. Isthia Ahamed, Advocate, Sr. 6433
1 cc to M/s. Government Advocate, Sr. 6662

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