

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.11779 of 2007
(O.A.No.5643 of 2002)

S.Stalinkumar

.. Petitioner

Versus

The Deputy Commissioner of Police
Armed Reserve Coimbatore City

... Respondent.

Prayer: Original Application No.5643 of 2002 filed before the Tamil Nadu Administrative Tribunal, on abolition, transferred to the file of this Court and renumbered as Writ Petition No.11779 of 2007, seeking for a writ of Certiorari, to call for the records on the file of the respondent in connection with the order passed by him in his proceedings PR F4/306/2000 dated 19.09.2002 served on 24.09.2002 and quash the same and direct the respondent to reinstate the applicant in service with all service and monetary benefits.

For Petitioner : Mr.S.Selvathirumurugan

For Respondents: Mr.K.Rajendra Prasad
Government Advocate

O R D E R

This Writ Petition has been filed by the petitioner against the order of dismissal dated 19.09.2002 passed by the respondent.

2. The petitioner, who was working as a Police Constable, Armed Reserve, Coimbatore City, was placed under suspension on 25.03.2000 in connection with registration of a case against him in Crime No. 6 of 2000 under Section 178 of Cr.P.C. altered into Section 498-A and 306 of IPC. The said case came to be registered against the petitioner at the instance of parents of one Abitha, who died by consuming poison. According to the complainants, the petitioner married the said Abitha during the subsistence of the marriage of the petitioner with one Nalini and due to the harassment meted out to the said Abitha by the petitioner, she committed suicide. Subsequently, a charge memo was issued to the petitioner on 02.05.2000 containing two charges. As against the charge memo, the petitioner filed O.A. No. 7378 of 2000. Thereafter, an

enquiry officer was appointed before whom 18 witnesses were examined and 19 documents were marked on behalf of the prosecution. The petitioner attended the oral enquiry, however, he failed to attend on 04.09.2000 and 05.09.2000 on which dates PWs 15, 17 and 18 were examined. At this stage, the Tribunal passed final order on 15.12.2001 observing that the result of the departmental enquiry shall abide by the result of the criminal prosecution. Thereafter, in the Criminal case in S.C. No. 245 of 2001, the petitioner was acquitted on 07.03.2002 by the learned Sessions Judge, Coimbatore. According to the respondents, the acquittal of the petitioner relates to the first charge contained in the charge memo and for the second charge viz., for having married the deceased Abitha while the first marriage was subsisting, which is in violation of the Tamil Nadu Government Servant Conduct Rules. In connection with this charge, a notice dated 05.07.2002 was sent to the petitioner calling for his explanation within ten days, which was acknowledged by the petitioner on 15.07.2002, but he did not submit his explanation. Therefore, again a notice dated 08.08.2002 was sent calling upon the petitioner to submit his explanation within two days, which was also acknowledged by the petitioner on 19.08.2002, however, the petitioner did not submit his explanation. Thereafter, the enquiry officer submitted his report holding that the charge against the petitioner as proved. On the basis of the same, the respondent passed an order of dismissal dismissing the petitioner from service on 19.09.2002 and it was also acknowledged by the petitioner on 24.09.2002.

3. The learned counsel for the petitioner submits that the petitioner was not given adequate opportunity to defend his case and it is in violation of the principles of natural justice. When serious charges were levelled against the petitioner, he ought to have been given adequate opportunity to defend the case and failure to do so vitiates the order of dismissal.

4. The learned Government Advocate appearing for the respondent would contend that the Original Application, which stood transferred to this Court as writ petition, itself is not maintainable inasmuch as, as against the order of dismissal, an appeal remedy is available. The petitioner without exhausting such remedy has filed the Original Application before the Tribunal. Further, the petitioner has not chosen to submit his explanation to the notices sent to him twice, in such circumstances, the respondent, taking note of the grave charges levelled and proved against the petitioner, is wholly justified in passing the order of dismissal.

5. I heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents. The petitioner, a police constable working in Armed Reserve, Coimbatore City, was charged for having

contracted second marriage while the first marriage was in subsistence and for having abetted the suicide of his second wife Abitha. In fact, in order to comply with the principles of natural justice, notices were sent twice to the petitioner calling for his explanation but the petitioner failed to submit the same within the time stipulated. Therefore, the respondent, on analysis of the factual aspects and also taking note of the report of the enquiry officer, came to the right conclusion that the charge against the petitioner is proved. The respondent also concluded that the petitioner who was employed in a disciplinary force has committed a grave misconduct for which the appropriate punishment would be dismissal from service. Such a conclusion arrived at by the respondent, in my view, is wholly justified and it does not call for any interference by this Court.

6. In view of the same, this Writ Petition is dismissed. No costs. At this point of time, the learned counsel for the petitioner has pleaded that as per Rule 15 (A) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, he may atleast be permitted to make representation or mercy petition to the Government. It is always open to the petitioner to make such an application, if he is so advised and the liberty is given.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Police
Armed Reserve Coimbatore City

2 ccs to Mr.S.Selva Thirumurugan, Advocate, sr.31280, 31002.
1 cc to Government Pleader, sr.30915

gj co
kra 21.06.2016

WP No.11779 of 2007