

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31774 of 2004

Sivaperumal (Ex.Hav.1318)

... Petitioner

..Vs..

1. The Director General of Police,
State of Tamil Nadu,
Chennai - 600 004.
2. The Inspector General of Police,
Armed Police,
Trichy.
3. The Deputy Inspector General of Police,
Armed Police,
Chennai- 600 010.
4. The Commandant
Regimental Center,
Avadi, Chennai

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the entire records of the first respondent in his proceedings R.C.No.166845/PR.III[1]2003 dated 20.09.2003 confirming the orders of second and third respondents in their proceedings R.C.No.ESST.1[2]9677/1G/2002 dated 15.07.2003 and C.No.B2/5233/2003 dated 23.04.2003 respectively and quash the same and direct the respondents for reinstatement the petitioner with back wages from the date of removed from service.

For Petitioner : Mr.S.Gopinathan

For Respondents : Mr.M.Elumalai
Government Advocate

O R D E R

The petitioner has filed this writ petition, challenging the order of removal passed by the first respondent on 20.09.2003 and the said order was confirmed by the second and third respondents and for a consequential direction to the respondents to reinstate the petitioner.

2.The brief facts of the case is that the petitioner was enlisted as Grade II PC on 09.06.1993. After completion of basic training at Police Recruitment School, Coimbatore, he had reported at Tamil Nadu Special Police V Battalion on 09.12.1993. Thereafter he was promoted as Temporary Naik and Temporary Havildar during 1996 and 1997 respectively. While he was working in the in the V Battalion to Regimental Centre, Avadi, he was absented himself for duty without leave or permission from 01.01.2001 to 21.01.2001 and continued his absence for more than 21 days and became a deserter. The desertion order in C.No.A3/153/2001 was issued on 22.01.2001 by the 4th respondent and instructed the petitioner to return for duty within 60 days and directed him to report before the Commandant, Regimental Centre, explaining his reasons for his absence. However, the petitioner was issued charge memo under Rule 3(b) of TNPSS (D&A) Rules 1955 in PR.1/2001 for gross indisciplinary conduct.

3.The Deputy commandant, Regimental Centre, Avadi was nominated as enquiry officer in PR.1/2001. The petitioner did not appear before the enquiry officer and the charge memo and oral enquiry memo was issued to the petitioner for further representation from the above temporary Havildar with a minute copy had been served by pasting on the door of the delinquent at the last known address at 10/17, Police Quarters, S.M.Nagar, Avadi and also at his native place, Ammapatty Village, Uthamapalayam, Theni District in the presence of authorised witness, the petitioner was given sufficient opportunity but failed to utilise the opportunity of appearing before the enquiry officer for oral enquiry and given any defence or written explanation. Hence, exparte minutes was drawn based on the prosecution records, statements and prosecution witnesses. The said enquiry report was submitted before the authority with proved charges. Thereafter, the Competent authority passed an order of removal from service vide order in C.No.A4/PR 1-01-B.O.228/01 dated 13.10.2001.

4.Though, the order of punishment was given to him on 13.10.2001, the petitioner has filed an appeal before the Deputy Inspector General of Police / 3rd respondent after two and half years, requesting him to take the petitioner back to duty. On 23.04.2003, the 3rd respondent rejected his appeal petition on

the ground that the petitioner has preferred an appeal with a delay of two and half years and the reason he had given in his appeal about his marriage is also false as reported by the Commandant / 4th respondent on the above reasons, the appeal petition was dismissed.

5. Aggrieved by the order passed by the competent authority, the petitioner submitted a review petition on 23.06.2003 before the Inspector General of Police / 2nd respondent. The review petition was also dismissed on the very same grounds and the earlier orders passed by the respective authorities were confirmed.

6. Thereafter, the petitioner filed a mercy petition before the Director General of Police / 1st respondent on 30.07.2003 to cancel the punishment of removal from service imposed on him, which was also dismissed on 20.09.2003.

7. The learned counsel for the petitioner would submit that the reason for his absence from duty at the relevant period is due to his ill health and subsequent marriage. Thereafter, he had not reported duty at the relevant point of time.

8. Per contra, Mr. Elumalai, the learned Government Advocate appearing for the respondents would submit that no documents were produced regarding his ill health and the other ground urged by the petitioner about his marriage with a handicapped lady is also false and the petitioner did not report to duty as directed by the 4th respondent and he has not filed an appeal within the prescribed time and for the above said reasons, the petitioner is not fit for uniformed services.

9. In the similar situation, it is relevant to extract the decision of the Hon'ble Supreme Court in State of Uttar Pradesh and Another Vs. Man Mohan Nath Sinha and Another reported in (2009) 8 SCC 310, wherein it has been held as follows:

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate Court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit

admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See. Syed Yakoah v. K.S.Radhakrishan.

24.The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusion. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do".

10.On a perusal of judgment cited above, it is clear that this Court cannot exercise its Appellate jurisdiction and interfere with the order of the Appellate Authority, unless there is error in the findings rendered by the fact finding authority on face of record which may shock the conscience of the Court.

12.The petitioner being the employee in the disciplined force, the authority expected some standards of discipline from the employee. Though the petitioner was absented from duty, may be for the bonafide reasons, the petitioner did not join duty

within 60 days as directed by the Authority and thereafter the petitioner did not participate in the enquiry before the enquiry officer and he has not preferred appeal within the time which shows his negligence and carelessness. Accordingly, the petitioner deserves no leniency or sympathy. Hence this court is of the view that the petitioner is not entitled for any relief from this Court.

13. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

kas

To.

1. The Director General of Police, State of Tamil Nadu, Chennai - 4.
2. The Inspector General of Police, Armed Police, Trichy.
3. The Deputy Inspector General of Police, Armed Police, Chennai-10.
4. The Commandant, Regimental Center, Avadi, Chennai.

+1cc to Government Pleader in sr.no.67606

W.P.No.31774 of 2004

KJI (CO)
NR 20/11/2017

सत्यमेव जयते

WEB COPY