

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.1240 OF 2016 &
CMP No.3341 of 2016

1. The Officer-in-charge/Commandant (IG)
Bureau of Naviks, Mankhurd
Mumbai 400 088.
2. The Deputy Inspector General/
Commanding Officer
ICGS Sankalp, Naval Dockyard
Mumbai 400 001. ... Appellants/Respondents 3 & 4

-vs-

1. S.Rajesh ...Respondent/writ petitioner
2. The Deputy Inspector General of Police
Salem Range,
Salem.
3. The Additional Director General of Police
Tamil Nadu Police Academy
Oonamachery Village
Vandalur, Chennai 48.

... Respondents/Respondents 1 & 2

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 19.07.2016 rendered in W.P.No.6107 of 2016. Writ Petition praying to Writ of Mandamus calling for the records of impugned order in No.231/2dated 06/04/2015 passed by the 3rd respondent herein and quash the same and consequently direct the 3rd & 4th respondents to believe the petitioner from the service of the post of Navik (U.A) 12457 - 00 with all attendant benefits from the date of appointment.

For Appellants : Mr.Su.Srinivasan
Addl. Solicitor General of India

For Respondents : Mr.T.Sundaravadanam - R1

Mr.P.S.Shiva Shanmuga Sundaram -
Spl.Govt. Pleader - R2 & R3

This Writ Appeal, under Clause 15 of the Letters Patent, has been preferred by the Officer-in-charge/Commandant of the Bureau of Naviks of the Indian Coast Guard, aggrieved by the decision rendered on 19th July 2016, by the learned single Judge, who allowed the Writ Petition instituted by the first respondent herein and also directed re-consideration of the case of the writ petitioner for accepting his resignation from the post of Constable in the Coast Guard, as the writ petitioner has succeeded in the selection process, leading to his appointment as Sub-Inspector of Police in the Tamil Nadu State Government Service.

2.Heard Mr.Su.Srinivasan, learned Additional Solicitor General of India for the appellants, Mr.T.Sundaravadanam, learned counsel for the first respondent/writ petitioner and Mr.P.S.Shiva Shanmuga Sundaram, learned Special Government Pleader appearing for the respondents 2 & 3.

3.The writ petitioner, a Graduate Engineer, has been recruited as a Sailor/ Navik of the Indian Coast Guard on 12th August 2013. When the State of Tamil Nadu has undertaken the process of recruitment, he applied for the post of Sub-Inspector of Police, without obtaining prior approval of the Competent Authority of the Force, appeared for a written examination on 28.11.2015, cleared the entire selection process and got selected. He came to be appointed as Sub-Inspector of Police on 09.02.2016, with a direction to report before the Training Academy on 26.02.2016. In those circumstances, the writ petitioner has resigned from the service of the Coast Guard on 15.02.2016. On 06.04.2015, the impugned order was passed by the first Appellant, not approving the proposal for resignation, as there was acute shortage of manpower in the Force. Hence, the Writ Petition was instituted.

4.The learned Single Judge, after noticing that there is no right in the hands of the writ petitioner to resign from the post held by him in the Indian Coast Guard, however, arrived at a conclusion that in view of the subsequent selection of the writ petitioner as Sub Inspector of Police, some leniency should

have been shown by the Appellants before us, in the matter of accepting the resignation offered by him. Consequently, the learned single Judge has set aside the impugned order of rejection and directed the appellants to re-consider the offer of resignation from service, made by the writ petitioner.

5. Before we proceed any further in the matter, we consider it wholly appropriate to notice the provisions contained in the Coast Guard Act, 1978 (Act 30 of 1978) [henceforth referred to as the 'Act']. The Parliament enacted the Act for the purpose of constituting and regulating an Armed Force of the Union for ensuring the security of the maritime zones of India and also for protecting the national interests in such zones. Under section 4 of the Act, an Armed Force of the Union called the 'Coast Guard' for ensuring the security of the maritime zones of India, is constituted. As per section 5 of the Act, the general superintendence, direction and control of the Coast Guard shall vest in, and be exercised by the Central Government. Section 3 of the Act, made it clear as to the persons who shall be subject to the provisions of the said Act and the Officers and Subordinate Officers and other persons enrolled under the Act are subjected to the said Act. There is, fortunately, no dispute on this count that the writ petitioner is subjected to the said Act. Section 9 of the Act, made it abundantly clear that no member of the Coast Guard shall be at liberty (a) to resign his appointment during the tenure of his engagement, or (b) to withdraw himself from all or any of the duties of his appointment except with the previous permission in writing of the prescribed authority. Restrictions with regard to right to form association, freedom of speech etc., of the members enrolled to the Coast Guard have been imposed under section 13 of the Act. The duties and functions of the Coast Guard have been delineated under section 14 of the Act. As per section 16 of the Act, if any person who is subjected to this Act (a) deserts his post or (b) sleeps upon his watch or (c) fails to perform, or negligently performs, the duty imposed on him; or (d) wilfully conceals any words, practice or design tending to cause hindrance of the Coast Guard, is liable to suffer imprisonment for a term which may extend to two years. Under section 42 of the Act, any person who is subject to this provisions of the Act, contravenes any provision of the Act or any rule or any order issued by any lawful authority under the Act, shall, if no other punishment is provided in this Act for such neglect or contravention, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to two years. Under section 44 of the Act, any person subject to this Act, who is guilty of any act or omission or

disorder or neglect, which though not specified in this Act, is prejudicial to good order and discipline of the Coast Guard shall, on conviction by a Coast Guard Court, be liable to suffer imprisonment for a term which may extend to three years.

6. Thus, the Coast Guard is not only constituted as an Armed Force of the Union of India, but, certain restrictions on the fundamental rights contained in Part III of our Constitution have also been imposed by the Act, upon members enrolled to the said Force. Article 33 of the Constitution of India empowers such reasonable restrictions to be laid against the members of the Armed Forces of the Union.

7. Viewed in this backdrop, the act of indiscipline indulged in by the petitioner cannot be taken lightly or leniently. It is obvious that the writ petitioner was in search of a good and decent job under the Governmental fold and that was the reason why when he got recruited to the Indian Coast Guard, he joined the said service. It is also plainly understandable that rigorous nature of work schedule of service, the strict regimentation followed and adopted by the Armed Forces and the associated discipline of life, has made the writ petitioner indulge in second thoughts. It is also clear to us that the writ petitioner has not fully imbibed the true spirit behind the service associated with the Armed Forces, which calls for acute readiness for sacrifice of the highest order, for which the members of the Armed Forces are ever ready and do not even bat an eyelid so much. In the face of section 9 of the Act, which has kept a clear embargo upon the right of voluntary act of termination of employment by the members of the Indian Coast Guard, the writ petitioner can no way seek enforcement of consideration of his resignation. Section 9 of the Act, in so many terms put it beyond any pale of doubt for the members of the Indian Coast Guard, that they have no right to resign the appointment during the tenure of their engagement.

8. It is noteworthy that the parliament has imposed such a restriction, in view of the provision contained under Article 33 of our Constitution. In our opinion, the direction issued by the learned single Judge for re-consideration of the offer of resignation from service made by the writ petitioner is clearly unsustainable, in view of the provisions contained under section 9 of the Act. The dynamic interplay of the provision contained in Article 33 vis-a-vis the fundamental rights guaranteed in Part III of our Constitution and the provisions contained under the Act made by the Parliament, we are afraid,

have not been properly analysed or applied by the learned single Judge and therefore, we opine that the direction issued by the learned single Judge is unsustainable. A conjoint reading of the provisions of Sections 16, 42 & 44 of the Act also lend support to our above view.

9. However, the matter does not rest there. Very fortunately for the writ petitioner, his resignation has been accepted by the competent authority of the Indian Coast Guard on 15.11.2016. Therefore, by the time, we have taken up this Writ Appeal for consideration, the engagement of services of the writ petitioner as a member of the Indian Coast Guard, an Armed Force, has been successfully terminated. May be due to the impetus which has flown from the directions issued by the learned single Judge, in this case. In view of the subsequent development that took place on 15.11.2016, we are not upsetting the order of the learned single Judge.

10. Serving the Armed Force, calls for greater discipline and far greater dedication of body, mind and soul of the person concerned. Not all members of the Armed Forces, it appears, are able to perceive the great spirit of association with one or the other of the Armed Forces in a proper perspective. Once in a while, we come across some minor discordant notes like in the instant case. The people who have not fully realised the amount of pride that is associated in serving the Nation by being a part of one armed force or the other of the Union, are likely to degenerate themselves over a period of time into a liability to the very organisation. It is therefore, only hoped that the Human Resources Managers of the Armed Forces will evolve appropriate procedures for defusing the stress factors felt in the services and for improving qualitatively the conditions of service, by making them far more attractive, so as to retain the right kind of personnel in the services. Non availability of adequate manpower, undoubtedly is a serious factor, which has to be addressed by the Managers of the Armed Forces. 'Catch them young' appears to be a more appropriate adage, which has got to be pursued vigorously. It is the retention of right kind of people, which in our humble opinion, would sub-serve more effectively the interests of the Institutions, such as the Armed Forces, than the casual hangers on with a dis-satisfied spirit. Persons who are less interested in making sacrifices for the sake of this Nation perhaps may not deserve the pride of place to be part of the Armed Forces of this country. Perhaps, wisdom lies in getting rid of such flock rather than make an endeavour/attempt to retain them. After all, it is the evil that spreads much faster than the good that men do.

11.In view of the subsequent development that has taken place on 15.11.2016, we dismiss this Writ Appeal and only on that ground, no costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Deputy Inspector General of Police
Salem Range,
Salem.
2. The Additional Director General of Police
Tamil Nadu Police Academy
Oonamachery Village
Vandalur, Chennai 48.

+1cc to Mr.Srinivasan, Advocate, S.R.No.285
+1cc to Mr.Sundara Vadanam, Advocate, S.R.No.522
+1cc to the Government Pleader, S.R.No.746

MG(CO)
RS(27/01/2017)

W.A.No. 1240 OF 2016

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