



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2017

CORAM:

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THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.A(MD) No. 1042 of 2017
and
C.M.P. (MD) .No. 7298 of 2017

S. Sivachandran .. Appellant/Petitioner

Vs.

1. The Additional Director General of Police and
Chairman of the Prison,
Prison Department,
Chennai.
2. The Deputy Inspector General of Prison,
Trichy Range,
Trichy.
3. The District Superintendent of Police and
Borstal School,
Pudukkottai,
Pudukkottai District. .. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, against the order dated 05.07.2017 made in W.P (MD).No.12433 of 2017, on the file of this Court.

Prayer in WP(MD). 12433/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned orders passed by the third respondent in his proceedings in P-1/6577/2011 dated 29.2.2012, which was confirmed by the 2nd respondent in his proceedings in No. 3526/Mu.Vu./2015 dated 21.1.2016 and the order passed by the 1st respondent in his proceedings No. 5719/E.W.2/2016 dated 20.3.2017 and quash the same and consequently direct the respondents to reinstate the petitioner with all attendant and monetary benefits.



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For Appellant : Mr.Veerakathiravan,
Senior Counsel
for M/S.Veera Associates
For respondents : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

The unsuccessful writ petitioner is on appeal, challenging the order dated 05.07.2017 made in W.P.(MD) No.12433 of 2017.

2. The writ petitioner/appellant herein was working as a Warden Grade II in Borstal School, Pudukkottai. In the year 2010, on account of his unauthorised absence, he was issued with a charge memo dated 28.03.2012. The writ petitioner was a deserter. Since the writ petitioner did not show cause or submit any explanation in response to the charge memo, he was dismissed from service by the third respondent herein. Aggrieved over the same, the writ petitioner moved the Appellate Authority, the second respondent herein. The second respondent dismissed the appeal, by order dated 21.01.2016. It is relevant to note here that the order of dismissal by the disciplinary authority was issued on 29.02.2012. But, the appeal was filed only on 12.11.2015. The appeal was dismissed on the ground of delay.

3. The writ petitioner thereupon moved the first respondent by invoking the review jurisdiction. The first respondent also confirmed the punishment of dismissal from service, by order dated 20.03.2017. These orders were challenged in W.P(MD).No.12433 of 2017. The learned Judge declined to interfere with the orders passed by the respondent authorities. Hence the writ petitioner filed this writ appeal.

4. Heard the learned Senior Counsel for the writ petitioner/appellant herein.

5. The learned Senior Counsel mainly contended that while imposing the punishment of dismissal from service, the disciplinary authority had taken note of the previous record of the writ petitioner. He would draw the attention of this Court to the decision of the Hon'ble Supreme Court in **State of Mysore v. Manche Gowda (AIR 1964 SC 506)**. In the said decision, the Constitution Bench held that it is open to the disciplinary authority to take into consideration the previous record of the Government Servant. But, what is essential is that the Government Servant should be given a reasonable opportunity to know that fact and meet the same. The learned Senior Counsel would contend that



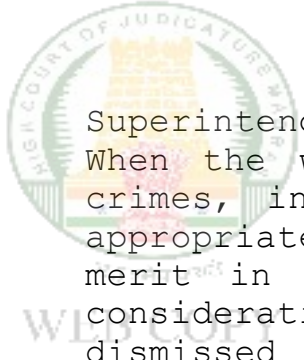
in this case the disciplinary authority did not put the appellant on notice before taking the previous record into account. Therefore, the orders impugned in the writ petition ought to be quashed and the matter remitted to the file of the disciplinary authority for fresh disposal in accordance with law.

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6. We have carefully gone through the entire material available on record. The disciplinary authority had specifically noted that though in the charge memo, the unauthorised absence of the writ petitioner from 12.11.2011 to 28.02.2012 alone was mentioned, the writ petitioner was actually absent unauthorizedly for various spells. For instance, on account of unauthorized absence for three days, i.e., between 15.05.2008 and 18.05.2008, he was given a minor punishment. Similarly, he suffered another minor punishment for unauthorised absence from 01.10.2008 to 20.10.2008. Again, he was unauthorisedly absent from 14.06.2008 to 03.07.2008. Again from 14.11.2008 to 25.11.2008, he was unauthorizedly absent, without prior permission. In the month of May 2009, he was again unauthorisely absent for six days, viz., from 11.05.2009 to 17.05.2009. He was declared as a deserter for having been unauthorisedly absent from 18.07.2009. Such spells of unauthorised absence continued in the years 2010 and 2011 also. Thus, by his conduct, he had caused serious disruption in the administration. He had been punished on several occasions by imposing minor penalties. But, the writ petitioner did not mend his ways.

7. In our view, the decision relied upon by the learned Senior Counsel would not come to the rescue of the appellant, for the reason that the appellant did not even submit his explanation in response to the charge memo.

8. At this stage, the learned Additional Government Pleader appearing for the respondents informed us that the appellant was involved in as many as four criminal cases i.e., Crime Nos.763 of 2012, for the offence under Sections 457 and 380 of the Indian Penal Code, Crime No.128 of 2012, for the offence under Section 392 of the Indian Penal Code, Crime No.688 of 2012, for the offence under Section 392 of the Indian Penal Code and Crime No.767 of 2012 for the offence under Section 392 of the Indian Penal Code. The disciplinary authority had passed the order of dismissal from service, based on the finding or guilt arrived at by the enquiry officer. He incidentally took into account the earlier service record or the delinquent employee which showed a pattern of behaviour consistent with the charges set out in the charge-memo. The Appellate Authority or the Reviewing Authority did not take note of the implication of the writ petitioner in very serious and grave crimes. But, since this Court is ~~exercising its discretionary jurisdiction~~ ^{exercising its discretionary jurisdiction}, the said information furnished by the learned Additional Government Pleader, based on the official communication dated 02.07.2012, issued by the the



Superintendent, Central Prison, Coimbatore, cannot be ignored. When the writ petitioner was arrested in connection with grave crimes, involving robbery and theft, we do not deem it fit or appropriate to show any indulgence to the appellant. We find no merit in this writ appeal. The learned Judge had taken into consideration all the relevant circumstances and only thereafter, dismissed the writ petition. We see no reason to interfere with the said order.

9. In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Additional Director General of Police and
Chairman of the Prison,
Prison Department,
Chennai.
2. The Deputy Inspector General of Prison,
Trichy Range,
Trichy.
3. The District Superintendent of Police and
Borstal School,
Pudukkottai, Pudukkottai District.

+1cc to M/S.Veera Associates, Advocate in SR.No.71229

+1cc to The Special Government Pleader in SR.No.71679

km/NB

AE/KP/SAR1/01.09.2017/4P/6C

JUDGMENT MADE IN
W.A(MD)No.1042 of 2017
and
C.M.P. (MD) .No.7298 of 2017
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