

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R. SURESH KUMAR
W.P. No.20326 of 2004

T.Mari

... Petitioner

Vs

1.The Deputy Commissioner of Police,
Washermenpet Division,
Chennai-600 021

2.The Superintendent of Police,
Ramanathapuram,
Ramanad District.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling upon the production of the records relating to the order dated 25.03.2004 made in Tha.Pa.No.4/Ramanad/2002 passed by the first respondent herein and quash the same and direct the respondents to reinstate him in service with backwages and with all attendant benefits.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.K. Ravikumar,
Addl. Government Pleader

O R D E R

The prayer sought for in this writ petitioner is for a Writ of Certiorarified Mandamus calling upon the production of the records relating to the order dated 25.03.2004 made in Tha.Pa.No.4/ Ramanad/2002 passed by the first respondent herein and quash the same and direct the respondents to reinstate him in service with backwages and with all attendant benefits.

2. The short facts which are required to be noticed for disposal of this writ petition are as follows:

The petitioner joined the service on 26.12.1985 as Police Constable Grade II. Thereafter, he was promoted to Police Constable Grade I in the year 1997. While he was working in Ramanathapuram Town Police Station, a charge memo dated 06.02.2002 was issued by the second respondent. Mainly two charges were framed against him. The first charge is that on 13.11.2001, he abused the Sub-Inspector one Jaya Princess and

the second charge was that between 14.09.2000 and 20.10.2001, while he was working in Ramanathapuram Town Police Station, out of 402 days, he was on leave for 232 days including medical leave, for 22 times.

3. As against the said charge memo, though an inquiry was directed to be conducted, and an inquiry officer was appointed, it is the claim of the petitioner that it was not informed him and the said notice was pasted on the door of his residence at Ramanathapuram, whereas in the meanwhile he was transferred to Tondiyarpettai, Chennai. The petitioner had chosen to appear for enquiry at one time and he has cross examined the government witnesses. Subsequently, chance was given to the petitioner to cross examine some witnesses. Thereafter one more witness was produced and the inquiry date was fixed. However, the petitioner did not turn up. Nevertheless the inquiry officer concluded the inquiry by stating that both the charges, against the petitioner, were proved.

4. Thereafter according to the respondents, the Enquiry Officer's report was served on the petitioner with the second show cause notice to give reply to the same. However, the petitioner has not given any reply. Even though it was mentioned by the learned counsel appearing for the petitioner that, the petitioner has chosen to give reply to the second show cause notice, no material has been produced to that effect before this court. Subsequently, on the basis of the Enquiry Officer's report, the second respondent, being the disciplinary authority has passed the impugned order dated 25.03.2004, whereby for the said proven charges, the petitioner has been removed from service, as against which, the present writ petition has been filed.

5. During the hearing the learned Additional Government Pleader appearing for the respondents on instructions would submit that the petitioner in fact had preferred a mercy petition dated 02.11.2007, before the Director General of Police, Tamil Nadu, Chennai, against the impugned order and the said mercy petition is still pending with the said authority without taking any decision because of the pendency of this writ petition.

6. Some of the grounds were urged by the learned counsel appearing for the petitioner stating that, though reply has been given to the second show cause notice by the petitioner, the same has not been considered and also the other point that the enquiry was not properly conducted because there had been no proper communication to the petitioner, as the notice had been pasted in the residence of the petitioner at Ramanathapuram, as he had already been shifted to the Chennai because of the transfer.

7. Though all these grounds were urged by the learned counsel for the petitioner, in view of the mercy petition having been filed by the petitioner, during the pendency of the writ petition, in the year 2007, and the same has also been pending for consideration before the Director General of Police, Tamil Nadu, as per instructions of the learned Additional Government Pleader, this Court is not inclined to go into the merits of the case. Hence, this Court is of the view that, instead of going into the merits of the impugned order, a direction can be given to the respondents including the Director General of Police, TamilNadu, Chennai to decide the mercy petition dated 02.11.2007, filed by the petitioner, on merits.

8. In view of the aforesaid, this Court is inclined to pass the following order:

(i) the appeal/mercy petition filed by the writ petitioner dated 02.11.2007 to the Director General of Police, Chennai, Tamil Nadu, shall be decided by the said authority on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this Order.

(ii) While making consideration of the said appeal/mercy petition if any additional particular is required either from the petitioner or from the respondents, the same may be called for and after obtaining the additional particulars, the said authority viz., the Director General of Police, Tamil Nadu, Chennai shall decide the said appeal/mercy petition, within the time frame as stipulated above and communicate the order there on to the petitioner.

9. With these directions, the writ petition is disposed of without expressing any opinion about the merits of the case of the petitioner as well as the counter case of the respondents. No costs.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

rts/jrs

To

1.The Director General of Police,
Tamil Nadu, Chennai.

2. The Deputy Commissioner of Police,
Washermenpet Division,
Chennai-600 021

3. The Superintendent of Police,
Ramanathapuram,
Ramanad District.

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No.72065
+1cc to the Government Pleader, S.R.No.72427

W.P. No.20326 of 2004

PPA(CO)

rrs 28/11/2018



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