

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.1.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1524 of 2017
and
C.M.P.No.20019 of 2017

1. The Superintendent of Police,
Railway Police, Tiruchirapalli.
 2. The Inspector General of Police,
Railway Police, Egmore, Chennai 600 008.
 3. The Superintendent of Police,
Trichy.
 4. The Additional Inspector General
of Police,
DGP Office, Mylapore, Chennai 600 004.
- Appellants

Versus

V.Nagarajan

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.11.2016 passed in W.P.No.33213 of 2013 on the file of this court.

WP.No.33213/2013:Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records in the proceedings of the first respondent in C.No.F1/PR/07/2013 under Rule 3(b) of the Tamil Nadu Police Subordinate Service Discipline & Appeal Rules, 1955 dated 10.09.2013 and quash the same.

For appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader
For respondent : Mr.V.K.Sathiyamoorthy for
Mr.R.Ramanlal

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)
Heard the learned counsel appearing for the parties.

2. The writ appeal has been filed by the Department challenging the order passed by the learned Single Judge

quashing the charge memo issued against the respondent herein for his unauthorised absence.

3. It is not in dispute that on the earlier occasion, the respondent herein was relieved from Trichy Railway Police District, he has not reported at the transferred place even after completion of 14 months and after imposing a punishment, he was taken back for duty and thereafter, though he was relieved on 31.12.2012, it appears that he has reported at the transferred place only after 21 months. It further appears that he is said to have obtained medical certificate on 1.1.2013, 16.1.2013 and 17.1.2013, but, he had not submitted the same to his superiors. In such a background, it appears that the appellant-officials have ordered for oral enquiry under Rule 3 (b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 which was under challenge before the learned Single Judge.

4. After hearing both the parties, the learned Single Judge came to the conclusion that the writ petitioner is not a habitual deserter as projected by the Department and since he had submitted the medical certificates, he cannot be termed as deserter and reasoning so, has allowed the writ petition and quashed the enquiry proceedings. Challenging the correctness of the said order passed by the learned Single Judge, the State has preferred the appeal.

5. The learned Special Government Pleader appearing for the State has submitted that the writ petition was filed by the respondent seeking to quash the impugned order issued under Rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 dated 10.9.2013 and the petitioner had submitted his medical certificate to the third respondent only on 27.2.2013 alongwith passport dated 31.12.2012 issued to him by the Sub Inspector of Police, Trichy Railway Police Station instructing him to report before the third respondent for further posting. He further submitted that the petitioner also produced the medical certificates dated 1.1.2013, 16.1.2013 and 17.1.2013 obtained by him from the Medical Office only on 27.2.2013 and thereby the petitioner kept the department in darkness by not knowing his whereabouts.

6. Per contra, learned counsel appearing for the respondent herein is that the respondent had sent the leave letter alongwith the medical certificate by registered post which was served on the third appellant and as against the punishments given earlier, he had filed appeals before the statutory authorities concerned and the same are pending and therefore, the earlier orders cannot be put against him. He further submitted that the factum of his submitting the leave application alongwith the medical certificates prior to the passing of the impugned order is not denied by the appellants in their counter and hence, the writ appeal is not maintainable and it is not correct to say that he had neither sent medical certificate to the Department nor informed his whereabouts to

his next superior even after the completion of 21 days and thereby committed the offence of desertion.

7. On consideration of the submissions of the rival contentions, we are of the view that the question as to whether the respondent herein has filed any appeal as against the earlier order of imposing of punishment for desertion as claimed by him is a matter of fact to be decided by the fact finding authority. Further, whether the leave letters alleged to have been sent by the respondent herein to the higher officials have reached as claimed by the respondent herein are also matter of fact and therefore, necessarily enquiry has to be conducted to find out whether the alleged facts as projected by the respondent herein are true or not.

8. In view of the disputed facts with regard to the above two issues, we feel that we have to interfere with the order passed by the learned Single Judge and accordingly, the order passed by the learned Single Judge is hereby set aside and the respondent herein is directed to face the enquiry. However, considering the lapse of time, we direct that the enquiry shall be completed within a period of three months from the date of receipt of a copy of this judgment, after giving due opportunity to the respondent herein in accordance with law. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Superintendent of Police,
Railway Police, Tiruchirapalli.
2. The Inspector General of Police,
Railway Police, Egmore, Chennai 600 008.
3. The Superintendent of Police,
Trichy.
4. The Additional Inspector General
of Police, DGP Office, Mylapore, Chennai 600 004.

+2cc to Mr.R.Ramanlal, Advocate Sr.No.5022

+1cc to Government Pleader Sr.No.4817

BR(CO)

sm:13.3.2018

W.A.No.1524 of 2017