

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.4776 of 2014 and
M.P.No.2 of 2014

J.Abiramiselvan

... Petitioner

-Vs-

1.The Deputy Inspector General of Police,
C.I.D Intelligence,
Chennai 600 004.

2.The Director General of Police,
Tamil Nadu,
Chennai 600 004.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his C.No.Estt.2(1)/SB/012274/2012, D.O.SB.1673/2012 dated 23.08.2012 repatriating the petitioner to his parent unit as Junior Assistant and the consequential memorandum issued by the second respondent herein in his Rc.No.160832/NGB II(2)/2012 dated 14.09.2012 and further consequential order passed by the second respondent herein in his Rc.No.160832/NGB 2(2)/2012, dated 14.08.2013, rejecting the petitioner's request to post him as Special Branch Assistant and quash the same and consequently, direct the respondents herein to post the petitioner as Special Branch Assistant with effect from 23.08.2012 with all consequential service and monetary benefits.

For Petitioner : Mr.Ravi Shanmugam
For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in his C.No.Estt.2(1)/SB/012274/2012, D.O.SB.1673/2012 dated 23.08.2012 repatriating the petitioner to his parent unit as Junior Assistant and the consequential memorandum issued by the second respondent herein in his Rc.No.160832/NGB II(2)/2012 dated 14.09.2012 and further consequential order passed by the second respondent herein in his Rc.No.160832/NGB 2(2)/2012, dated 14.08.2013, rejecting the petitioner's request to post him as Special Branch Assistant and quash the same and consequently, direct the respondents herein to post the petitioner as Special Branch Assistant with effect from 23.08.2012 with all consequential service and monetary benefits."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Junior Assistant on compassionate ground in Police Department on 20.01.2000. His service particulars were forwarded by the Superintendent of Police to the Additional Director General of Police, Intelligence, SBCID, Chennai on 09.04.2009, for appointment as Special Branch Assistant. Thereafter, the petitioner was called to attend the written test and viva voce test on 05.09.2009, for consideration for appointment of Special Branch Assistant.

4. Thereafter, by proceedings dated 05.10.2009, the petitioner was selected to the post of Special Branch Assistant by transfer in the pay band of Rs.9,300-34,800/- with Grade Pay of Rs.4,400/- with usual allowances. The petitioner joined as Special Branch Assistant on 07.12.2009 and worked there continuously till 08.07.2012, for a period of two years and seven months. It appears that the Government had issued instructions to all appointing authorities to issue formal orders of declaration of probation on 19.11.2010.

5. However, in the meanwhile, the petitioner had taken medical leave for 55 days, between 09.07.2012 and 02.09.2012. The authority had issued direction to the petitioner to appear before the Medical Board in order to ascertain the medical condition of the petitioner on 21.08.2012. In the meanwhile, it appears that the Deputy Inspector General of Police, the first respondent herein, had passed an order on 23.08.2012, repatriating the petitioner from the post of Special Branch Assistant to that of Junior Assistant on administrative grounds. A further order was passed by the second respondent on 14.09.2012, repatriating the petitioner to the parent unit as

Junior Assistant on adverse grounds.

6. At this, the petitioner represented to the first respondent by representation dated 05.10.2012. A further representation was also submitted to the second respondent on 29.12.2012. In the representations, the petitioner sought for continuing him as Special Branch Assistant, since he was not given any opportunity to explain the circumstances under which he was absent and therefore, such adverse orders cannot be passed without hearing the petitioner. However, the representation was rejected by the second respondent for consideration of the request for continuing the petitioner as Special Branch Assistant by proceedings dated 14.08.2013. The orders dated 23.08.2012 and 14.09.2012, repatriating to the parent unit as well as the rejection order dated 14.08.2013 are put to challenge in the present writ petition.

7. The learned counsel for the petitioner would submit that the petitioner was not put on any notice before repatriating him to his parent unit which infact amounted to reversion, since on being repatriated to his parent unit, the petitioner was re-fixed in the pay band of Rs.5,200 - 20,200/- with Grade Pay of Rs.2,400/-, as against his original pay band of Rs.9,300-34,800/- with Grade Pay of Rs.4,400/-. Therefore, the repatriation of the petitioner amounted to reversion, in which event, the petitioner was entitled to be given notice. The petitioner ought to have been given an opportunity to explain the circumstances under which he remained absent. This is more so, when the second respondent has passed the order of repatriating the petitioner to his parent unit by his proceedings dated 14.09.2012, on adverse grounds.

8. The learned counsel for the petitioner would draw the attention of this Court to the order passed by the learned Single Judge of this Court in W.P.Nos.13767 and 13768 of 2009, dated 11.02.2011. In the said writ petition, the learned Judge while considering the similar circumstances, has observed in paragraph No.6 as follows:

"6. Learned counsel for the petitioners is right in contending, that it is not a simple order of transfer in exigency of service or public interest, but something else weighed in the mind of competent authority, while ordering transfer. This is not permissible in law. It is now settled that before passing any adverse order against an employee, he is required to be heard by pointing out the lapse, if any. In a civilised society, a person is supposed to know, if there is anything adverse against him, furthermore, he is also entitled to explain his position."

9. The learned counsel for the petitioner would also rely on the order passed by this Court by yet another Judge reported in 2009 (5) MLJ 167. In such decision, the learned Judge has said that if a person has been reverted, he must be given an opportunity of show cause as to why the proposed action should not be taken. The learned Judge had held that the principals of natural justice and fair play required to be given an opportunity to the petitioner and in the said circumstances, the impugned order passed in that case was set aside. The learned counsel would therefore submit that the petitioner may be given an opportunity of explaining the circumstances under which he remained absent which gave raise to passing of the impugned orders of repatriating the petitioner from the post of Special Branch Assistant to the post of Junior Assistant to the parent unit.

10. Upon notice, learned Special Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. The counter affidavit reiterated the contents of the impugned orders passed by the first and second respondents.

11. The learned Special Government Pleader appearing for the respondents would submit that it is not by way of punishment the petitioner is reverted, but, he was only repatriated to parent unit. Therefore, the petitioner cannot have any cause of action to agitate the same before this Court. Therefore, the petitioner is not entitled to grant of any relief in the present writ petition.

12. This Court has considered the rival submissions of the learned counsels and perused the materials and pleadings placed on record. Whatever be the circumstances, it is not open to the authorities to pass any adverse orders affecting the right of the employee without giving him an opportunity to explain his case. As rightly contended by the learned counsel for the petitioner that the two orders passed by the learned Judges of this Court as referred above, squarely covered case of the petitioner herein. Even though it is only an order of repatriation, yet the fact remained that the petitioner had worked as Special Branch Assistant for more than two years and without calling for any kind of explanation from him, he was repatriated and placed in the lower pay scale. Therefore, the impugned orders certainly amounted to order of reversion. Therefore, the petitioner is entitled to be given an opportunity to explain his position as to why he remained absent on medical grounds.

13. It appears that the authorities have taken action only on the basis of the fact that the petitioner had entered into medical leave during his period of service as Special Branch

Assistant. While so, it is for all the above said reasons, the petitioner has to be given an opportunity to explain the circumstances under which he remained absent. Without providing an opportunity to the petitioner, the orders passed by the first and second respondents cannot be sustained in law.

14. In view of the above circumstances, the impugned orders in C.No.Estt.2(1)/SB/012274/2012, D.O.SB.1673/2012 dated 23.08.2012, Rc.No.160832/NGB II(2)/2012 dated 14.09.2012 and Rc.No.160832/NGB 2(2)/2012, dated 14.08.2013, are set aside. The respondents are directed to give show cause notice to the petitioner and call for his explanation and thereafter, shall take any further action as it deems fit to the facts and circumstances of the case.

15. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

gsk

To

1.The Deputy Inspector General of Police,
C.I.D Intelligence,
Chennai 600 004.

2.The Director General of Police,
Tamil Nadu,
Chennai 600 004.

+1 CC to Mr.Ravi Shanmugam, Advocate sr 30988.

+1 CC to Govt. Pleader sr 31322.

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W.P.No.4776 of 2014

SP(08/05/2018)