

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24738 of 2001

ORDER:

This Writ Petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in removing the petitioner from service by proceedings, dated 15.09.2000, as illegal and arbitrary. A consequential direction to reinstate the petitioner into service is also sought.

2. Heard Sri S.Srinivas Bhatt, learned counsel for the petitioner, and Sri S.S.Varma, learned Standing Counsel for respondents 2 and 3.

3. It has been contended by the petitioner that initially he was appointed as Jawan in the Border Security Force. While he was working as Constable, the 3rd respondent charge sheeted him on 05.09.2000 alleging that he was found in a state of intoxication and disobeyed the General Order, dated 03.09.2000. The 3rd respondent referred the matter to the Summary Security Force Court and the trial took place on 07.09.2000. The Summary Security Force Court vide its judgment, dated 15.09.2000, dismissed the petitioner from service w.e.f 15.09.2000. Challenging the order of dismissal, this writ petition is filed.

4. Learned counsel appearing for the petitioner relied on Rule 60 of the Border Security Force Rules, 1969 (for short, 'the Rules'), which reads as follows:

"Disqualification of officers for serving on [General and Petty] Security Force Courts:

- (i) is an officer who convened the Court; or
- (ii) is the prosecutor or a witness for the prosecution; or

- (iii) has taken any part in the investigation of the case, which would have necessitated applying his mind to any part of the evidence, or to the facts of the case; or
- (iv) is the Commandant to the accused; or
- (v) has a personal interest in the case.”

Relying on the above said Rules, the counsel contends that the Commanding Officer charge sheeted the petitioner and referred the case to Summary Security Force Court and contrary to Rule 60 of the Rules, he himself presided over the Summary Security Force Court and passed the impugned order.

5. Learned Standing Counsel appearing for the respondents 2 and 3 contended that no cause of action has arisen in the State of Andhra Pradesh. While the petitioner was working as Constable in the Border Security Force at Tripura, the alleged misconduct has been committed by him at Tripura and the Summary Security Force Court conducted proceedings at Tripura and impugned order, dated 15.09.2000, was passed at Tripura and hence, this Court lacks territorial jurisdiction to entertain the writ petition.

6. On the other hand, learned counsel appearing for the petitioner has contended that the petitioner is a permanent resident of Chittoor District and the impugned order copy of dismissal from service was serviced at his native place at Chittoor and a part of cause of action arose at Chittoor and hence, the Writ Petition is maintainable.

7. Yet another objection taken by learned Standing Counsel appearing for the respondents is that without exhausting the alternative remedy of preferring an appeal, the petitioner has

straightaway approached this Court and since it is a case of dismissal, unless the petitioner avails the statutory remedy of appeal, the writ petition is not maintainable.

8. Having considered the submissions made by the petitioner, this Court, without going into the merits of the case, is of the considered view that ends of justice would be met, if a direction is given to the petitioner to prefer an appeal to the appellate authority within a period of four (4) weeks from the date of receipt of a copy of this order, and on receiving the appeal preferred by the petitioner, the appellate authority shall consider the same and pass appropriate orders, within a period of eight (8) weeks thereafter. It is made clear that the appellate authority will examine the case of the petitioner in terms of Rule 60 of the Rules and also decide the appeal on merits, without raising the issue of limitation, as the petitioner was pursuing his remedies in a wrong Forum. The period of such pendency of the writ petition before this Court may not be put against the petitioner.

9. With these observations, the Writ Petition is disposed of. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

ABHINAND KUMAR SHAVILI, J

JULY 25, 2018

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Date:25.07.2018

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