

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.18275 of 2007
(O.A.No.1102 of 2004)

K.RajMohan

..Petitioner

Vs

The Commandant
T.S.P.IV Battalian

Kovaipudur, Coimbatore -4

..Respondents

Prayer : Originally this petition has been filed as Original Application No.1102 of 2004 before the TamilNadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.18275 of 2007 .

Writ Petition praying to issue a writ of Certiorari to call for the records in B.O.221/2002 R.C.No.E3/PR-38/2001 dated 04.04.2002 on the file of the respondent and quash the same.

For Petitioner : No representation

For Respondent : Mr.P.Chinnadurai, Addl.Govt.Pleader

ORDER

The Petitioner was working as Constable in 4th Battalion, Coimbatore. The charges against the petitioner is that he never attended the office and he was declared as a deserter. Action was taken against him and it was proved and proceedings was issued under Section 3(B) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, and later he joined duty. The second allegation is that the petitioner married a lady constable 2630 Jayanthi on 27.08.2000 and later on 15.09.2000 he married one Vijayalakshmi while the first marriage was subsisting and thus he contravened the Rule 23(1) (6) 1964. After the enquiry, he was dismissed from service by order dated 04.04.2002.

2. This Writ Petition was originally filed as Original Application No.1102 of 2004 before the Tamil Nadu Administrative Tribunal. After abolition of the TNAT, the application has been transferred to the file of this court and numbered as W.P.No.18275 of 2007.

3. The learned counsel for the petitioner would submit that though the petitioner filed a proper medical certificate issued by the Medical Officer,

that he was in regular treatment, the same was not considered by the disciplinary authority. Further he would submit that as regards the charge of second marriage is concerned, the 2nd wife was divorced vide H.M.O.P.No.92 of 2003 on the file of the Principal Subordinate Judge Court, Mayiladuthurai, the petitioner was not aware of the Rules, as he put only two years of service and that too in training period, before the enquiry and the punishment awarded to the petitioner is a major punishment of dismissal which is improper and disproportionate to the charges levelled against him.

4. The learned Additional Government Pleader would submit that while he was on duty, working in 4th Battalion, Coimbatore, from 04.10.2000 to 25.10.2000, the petitioner never attended office and not reported any leave or permission, therefore, for the absence of the petitioner for more than 21 days, he was declared as deserter. Therefore, charge memo was issued against him under Rule 3(B) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. It is observed that he did not attend duty for more than 21 days and the medical certificate given by the petitioner is only an after thought. Secondly, while he was in service, he married a lady constable 2630 Jayanthi on 27.08.2000 and later within one month on

15.09.2000, he married one Vijayalakshmi while the first marriage was in subsistence and thus he contravened Rule 23(1)(6) of Tamil Nadu Police Subordinate Service (D&A) Rules. The petitioner himself admitted that he absented from duty and he belatedly produced medical certificate which is not genuine but only in order to escape from the disciplinary proceedings and as such it as an after thought, he produced the medical certificate. Further, the second marriage of the petitioner is concerned, the petitioner himself admitted that he married one Vijayalakshmi when the first marriage was in subsistence and that he submitted that he was not aware of the Service Rules and procedures, but subsequently, he divorced Vijayalakshmi on 16.05.2003 and it shows that he married for a second time when the first marriage was in subsistence. Based on the enquiry report, the disciplinary authority awarded the punishment of removal from service and therefore, there is no merits in the writ petition and is liable to be dismissed.

5. Heard and perused the records.

6. Admittedly, the petitioner was working as 4th Battalion, Kovaipudur, Coimbatore. Admittedly, he was not attending office from 04.10.2000 to 25.10.2000 which is more than 21 days, for which, action was taken and he

was declared as deserter. The petitioner filed a medical certificate only to escape from the action to be taken against him. Though the petitioner has stated before the Enquiry Officer that due to family circumstances, he could not attend duty from 04.10.2000 to 25.10.2000, it would infer that if at all there is any circumstances really affecting him from attending his duty, he would have informed his superior officer before leaving the Head Quarters and without informing the superior officers, he left the Head Quarters. Though the petitioner was searched, he was not found in his residence address during his duty. Therefore, the petitioner himself admitted his unauthorised absence but he has given medical certificate i.e, only to avoid action taken against him.

7. Secondly, the petitioner himself admitted that he married one Vijayalakshmi even when the first marriage was in subsistence. However, after issuing charge memo, he has given explanation that since he was new to the service and only two years, he put in training period after joining the service, he was not aware of procedures and due to ignorance of law, he committed the misconduct and therefore, he cannot be awarded any major punishment since he was not aware of the Rules and Regulations of the Subordinate Service Rules.

8. Admittedly, the petitioner married one lady constable 2630 Jayanthi on 27.08.2000 and later, on 15.09.2000 he married one Vijayalakshmi even when the first marriage was in subsistence. However, the petitioner divorced Vijayalakshmi whom he got married secondly and that itself shows that he married two ladies and too when first marriage was in subsistence, he married for the second time. The charge against the petitioner was that since the petitioner was working in Uniformed Service and committed misconduct, the disciplinary authority has taken the view that this petitioner should be dismissed from service. Accordingly, the petitioner was awarded punishment of dismissal from service, after conducting disciplinary enquiry.

9. A perusal of the entire records available before this court, would go to show that the punishment awarded by the disciplinary authority needs no interference and the punishment awarded is not disproportionate to the charges levelled against the petitioner. Further scope of judicial review on the question of proportionality of punishment is very limited and restricted to exceptional cases and in the case on hand, the petitioner who is required to maintain honesty and being in uniformed service, committed misconduct and pleading ignorance of law cannot be viewed leniently but to dealt with iron

hands. Hence, finding no merits in the writ petition, the Writ petition fails and the same is dismissed. No costs.

23.11.2020

nvsri

To

- 1.The Director of Agriculture
Chennai-5
- 2.The Regional Asst.Director of Agriculture,
Tiruvarur, Nagai District

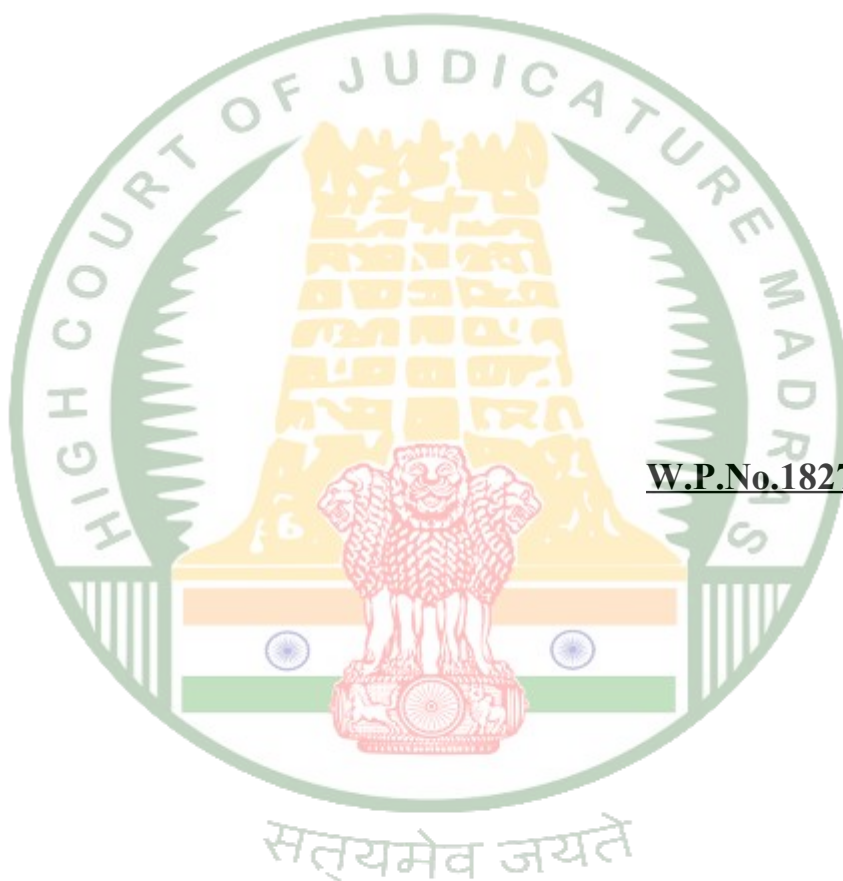


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P.VELMURUGAN, J.

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