

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.15210 of 2008
and
M.P.No.2 of 2008

V.Kandasamy

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Home Department, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Police,
Mylapore, Chennai - 600 004.
- 3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur District.
- 4.The Superintendent of Police,
Nagapattinam District.
- 5.The Deputy Superintendent of Police,
Armed Reserve Force,
Nagapattinam District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to call for the records of the First Respondent dated 30.11.2007 made in G.O.(2D)No.798 affirming the order of the third respondent dated 14.03.1997 made in C.No.A4/17566/96 and further affirming the order of the fourth respondent dated 29.10.1996 and quash the order of the respondents as illegal and without jurisdiction by issuing writ of certiorarified mandamus directing the respondents to reinstate the petitioner into service as "Secondary Grade Armed Reserve Police' constable with all monetary benefits from the date of removal of service till

that appointment.

For Petitioner : Mr.K.Venkataramani
Senior Counsel for M.Muthappan

For Respondents: Mr.P.Chinnadurai
Additional Government Pleader

O R D E R

The petitioner was appointed as Grade II Constable in Armed Reserve, Nagapattinam and posted in V Battalion and on 22.07.1995 he was assigned with a duty of emergency services by the Sup-Inspector of Police. But on the said date, he did not report to duty by 08.00 am as directed. On the same day, at about 01.00 pm, an F.I.R came to be registered against him, having created nuisance in a drunken mood. The police have registered a case in Cr.No.737 of 1995 under Section 4 (1) (J) of the Tamil Nadu City Police Act and 75 Madras City Police Act. A departmental enquiry was also initiated for:

- a) his absence from duty.
- b) bringing dis-reputation to the uniformed services.

2. An Enquiry Officer was appointed, nine witnesses were examined and 14 documents were marked. The Enquiry Officer held that the charges were proved and based on the evidence of the witnesses, the 4th respondent has imposed the punishment. The said order was confirmed in the appeal and revision in G.O(2D). No.798 Home Department dated 30.11.2007. Against which, the petitioner is before this Court.

3. Heard the submission on both sides.

4. Facts narrated are not disputed. The petitioner was charged on two counts:

- (i) He absented himself to duty
- (ii) He brought dis-reputation to uniformed service force by creating nuisance in a public place in drunken mood. An Enquiry Officer was appointed and in the enquiry nine witnesses were examined and 14 documents were marked. The charges were held to be proved and culminated in an order of punishment. On appeal and revision it was confirmed.

5. Insofar as the first charge is concerned the concerned police officials have let in evidence and marked documentary evidence. Based on the same, the enquiry officer has held the

charge proved. There is no contra evidence on the side of petitioner to disprove the same.

6. In respect of the second charge, the prosecution had examined all the police officials. It is stated that the petitioner caused nuisance to the public at large near Velipalayam and he was arrested. Since he was in drunken mood sent to Medical examination to Government Hospital, Nagapattinam. On examination, Doctor issued a certificate that the petitioner was in a drunken mood and hence radio manage was sent to higher official and FIR was filed against him. The petitioner had taken a stand that on medical advice he had taken "Aminovin" tonic which contains alcohol and that he had not consumed alcohol. Further he warned an old lady for creating nuisance and he was arrested from his home. Due to previous animosity, the Sub-Inspector police had foisted a false case against him.

7. In the above back drop it is to be seen as to whether the finding of the enquiry officer is based on materials and correct.

8. On perusal of the enquiry report it is seen that the prosecution witnesses are police officials. There is no independent witness was examined to prove the fact that the petitioner was causing nuisance in a public place and that he was arrested from that scene of occurrence. Hence the arrest was not proved. It only remains to analyse as to whether his drunkenness was proved. Rightly he was taken to Government hospital for medical examination and a certificate was also issued. It also discloses that blood and urine samples were sent for chemical examination, but they were not marked. Contrary to the same, the delinquent had taken a stand that he had taken "Aminovin" a medicine which contains alcohol. Therefore, it is vital to prove the drunkenness of the petitioner through competent witnesses. The Doctor's certificate reads as under:-

(CERTIFICATE OF DRUNKENNESS)

ORIGINAL

This is to certify that I, Dr.G.Kumarasamy, Asst.Surgeon, Government Hospital, Nagapattinam, have examined a person by name Thiru./Tmt.Kandasamy, S/o.Vadivel, aged 34 native of ARPC 232 residing at 12/3, A.R.Quarters, Nagapattinam who was sent with 78/Med1/95 dated 22/07/1995 from Inspector of Police, Velipalayam PC 1966 and 1463 for drunkenness. He/She was seen by me at 2.00 AM on 22.07.1995.

Identification Marks: (1) ABM Rt.Cheek.

(2) ABM Left Cheek.

Symptoms at the time of examination: Patient is cautious answers questions, over talkative, conjunctiva congested pupils normal and equally reacting to light. Pulse 78/Mt.BP 130/80. Breath smells of liquor gait is unsteady.

I am of the opinion that the above person-

(1) consumed liquor and is under its influence and is in a state of intoxicity is proved by the following:

(a) talk incoherently - Yes/

(b) unable to appreciate the objects
- Yes/

(c) unable to stand or walk steadily
- No/

(d) unable to recollect the past events
- Yes/

(2) consumed liquor but is not under its influence.

(3) has not consumed liquor

Blood sample were taken for analysis

Dr.G.KUMARASAMY

Asst. Surgeon

The above opinion of the doctor does not clearly spell out whether the delinquent was under the influence of alcohol and the test was done on him. Unfortunately, the doctor who issued the certificate was not examined as witnesses. The delinquent was not identified nor it is proved that he was under the influence of alcohol. Eventhough the question was raised, the enquiry officer had brushed aside the same as not acceptable. Further, a step ahead the first respondent after the direction of this Court, had observed that,

"3. Thiru V.Kandasamy, Ex Police Constable 232 of Nagapattinam District in his petition dated 16.08.2006 has stated among other things that in the charge memo, he was not directed to state specifically as to whether he desire an oral enquiry or to be heard in person or both. He has also stated that except this punishment he has not earned any other punishments and he has good record of service and the prosecution has miserably failed to examine the doctor who issued drunkenness certificate for the alleged consumption of Arrack. On the day in question he took Aminovin Tonic for his ailment as prescribed by the Doctor. In the absence of it, it cannot be presumed that he had drunken and was intoxication. If the doctor was examined, he had not

drunken liquor."

9. It is well settled in service jurisprudence that the prosecution shall prove the charge through material evidence. After proving the charge alone, the question of disproving the proved misconduct will arise. But in the instant case, the first respondent had proceeded on the obverse. In order to prove a documentary evidence the author of the document shall called as a witness. In the instant case, the Doctor who examined the delinquent should have been examined. The Hon'ble Supreme Court in the case of Roop Singh Negi Vs. Punjab National Bank & Other (2009 (2) SCC 570) has held the manner in which a documentary evidence shall be proved in a quasi judicial proceeding in the following lines:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

10. In the light of the ratio laid down by the Hon'ble Supreme Court, I find that the finding of the enquiry officer that second charge is held proved is perverse as it is based on no evidence or insufficient evidence. Apart from this it is seen from the enquiry report that the enquiry officer himself ventured to cross examine the prosecution witness, while delinquent also cross examined them. Such a procedure is alien to service jurisprudence and conduct of the enquiry in the present case is not above board. The disciplinary authority, without considering the above lapses simply extracted the charge memo, explanation, enquiry report and its finding passed a cryptic order without analysing the material aspects and his reasons for his conclusion. The same is the approach of the appellate authorities. In such circumstances, the impugned order does not stand the test of scrutiny of law and fails.

Hence, the impugned order passed by the First Respondent, dated 30.11.2007 made in G.O.(2D)No.798 which affirms the order of the third respondent dated 14.03.1997 made in C.No.A4/17566/96 and the order of the fourth respondent dated 29.10.1996, is set-aside. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/true copy/
Sub Asst. Registrar

bri
To

- 1.The Government of Tamil Nadu,
Represented by its Secretary,
Home Department, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Police,
Mylapore, Chennai - 600 004.
- 3.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur District.
- 4.The Superintendent of Police,
Nagapattinam District.
- 5.The Deputy Superintendent of Police,
Armed Reserve Force,
Nagapattinam District.

+1 cc to Mr.M.Muthappan Advocate sr3036
+1 cc to Government Pleader sr 3494

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