

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.26243 & 26477 OF 2013

AND

M.P. NOS. 1 OF 2014

S.Venkatesh ... Petitioner in WP 26243/2013

P.Englas ... Petitioner in WP 26477/2013

- Vs -

1. The Director General
Indo Tibetan Border Police Force
Block II, GGO Complex
Lodhi Road, New Delhi 110 003.
2. The Soldier - The Commandant 3rd Battalion
III Army, Indo Tibetan Border Police Force
Office of Forces III Vahini
Indo Tibetan Border Police Force
Bukhara Camp, District Bareilly (UP).

...Respondents in both petitions

W.P.No.26243 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records of the 2nd respondent's order dated 05.12.2012 and quash the same and thereby direct the respondents herein to reinstate the petitioner into service as Constable in Indo Tibet Border Police Force.

W.P.No.26477 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records of the 2nd respondent's order dated 18.06.2012 and quash the same and thereby direct the respondents herein to reinstate the petitioner into service as Constable in Indo Tibet Border Police Force.

For Petitioners : Mr. K.A.Ravindran

For Respondents : Mr. C.V.Ramachandramoorthy

ORDER

It is the case of the petitioners that they joined the Indo-Tibetan Police Force as Constable on 9.7.07 and after rendering five long years of service, applied for a month's leave on personal grounds. On completion of leave granted to them, they had not reported for duty. Since the petitioners did not report for duty on the completion of the period of leave, the respondents treated the petitioners as deserters and issued paper publication for their appearance and joining duty. Even thereafter the petitioners did not report for duty and, therefore, enquiry was initiated against the petitioners by issuance of show cause notice. Since the petitioners did not participate in the enquiry process inspite of issuance of notice, the petitioners were treated ex-parte and enquiry was concluded culminating in the order of removing the petitioners from service. Challenging the said order of removal, the petitioners are before this Court by filing the present petitions.

2. Learned counsel appearing for the petitioners submit that the petitioners suffered Viral Hepatitis and Jaundice respectively, which necessitated medical attention and in view of their medical condition, they were prevented from returning to duty. It is the further submission of the learned counsel for the petitioners that all the communications issued to the petitioners were in Hindi. Though the petitioners were conversant in speaking Hindi in view of their posting in the North-Eastern Region, however, they are not conversant in reading and writing Hindi. However, all the communications given to the petitioners were in Hindi, which precluded them from understanding the said communications and making an effective representation of their plight, which necessitated their overstay after expiry of their period of leave. However, without considering the various aspects, the respondents have set the petitioners exparte and conducted the enquiry and based on the enquiry, ordered the removal of the petitioners from service, which is per se impermissible and unsustainable, as there is total violation of principles of natural justice and no opportunity has been granted to them to put forth their case. It is fairly conceded by the learned counsel for the petitioners that in the event of this Court issuing a direction to consider the case of the petitioners, the petitioners will not claim any backwages or salary from the date of their absence till their reinstatement in the post. Accordingly, prayer is made for allowing the writ petitions.

3. Learned Central Government Standing Counsel appearing for the respondents, while highlighting the various procedures followed by the respondents before initiating action against the

petitioners and removing them from service, further reiterated that the procedures contemplating paper publication, issuance of notice before enquiry and setting the petitioner ex-parte, were complied with in letter and spirit. It is the further submission of the learned standing counsel for the respondents that inspite of notice and personal contact with the petitioners/family of the petitioners asking them to rejoin duty forthwith, the petitioners did not turn out for the enquiry by joining duty to face the enquiry. It is the further submission of the learned standing counsel for the respondents that the petitioners, being members of a disciplined force, high standards of discipline and devotion to duty is required and expected of them and, more especially, the petitioners, being posted in sensitive posts in guarding the borders of the country, cannot at their will, desert the post and overstay the leave, as such an act would put the defence of the country in peril. In such circumstances, the impugned orders, which were passed, after following all the procedures contemplated, is wholly sustainable and no interference is warranted with the same.

4. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the entire materials available on record.

5. The facts in issue are not in dispute. The petitioners failed to report for duty on expiry of their period of leave, which necessitated the respondents to resort to the various procedures before ordering enquiry. However, it is not in dispute that the show cause notice, which has been issued to the petitioners is in Hindi. True that paper publication has been issued in the local language. But paper publication is only to the limited extent of satisfying the mandatory condition of publishing the fact in the locality, but that cannot be taken as if the petitioners were aware of the directions issued by the respondents for the joining of the petitioners. The show cause notice is the basic material, which is given to the petitioners to face the enquiry. However, a perusal of the above show cause notice clearly reveals that the same has been issued in Hindi. Further, the order of removal of the petitioners from service has also been issued in Hindi. It is nowhere the case of the respondents that the petitioners are well versed in Hindi and that they are competent to write and read the Hindi language. That being the case, issuing a show cause notice and the order in a language, which is not known to the petitioners would not be sufficient to satisfy the concept of audi alteram partem, which is a basic ingredient in service jurisprudence. No person should be condemned without a hearing. In the case on hand, issuing show cause notice and order to the petitioners, in a language, which is alien to them, would defeat the very

purpose of issuance of show cause notice and also issuance of order and in such view of the matter, this Court is of the considered view that the petitioners ought to have been heard before any order was passed. The petitioners having not been heard before passing the order of removal from service, definitely the impugned orders issued to the petitioners suffers with infirmity and deserves to be set aside.

6. For the reasons aforesaid, the writ petitions are disposed of and the impugned orders passed by the 2nd respondent are set aside and the matter is remanded back to the respondents for fresh consideration and passing of orders after affording reasonable opportunity to the petitioner to put forth their case. The petitioners shall be put on notice and all the materials given to the petitioners in a language in which they are conversant and, thereafter, the respondents shall proceed with the enquiry and complete the same in accordance with law, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director General
Indo Tibetan Border Police Force
Block II, GGO Complex
Lodhi Road, New Delhi 110 003.
2. The Soldier - The Commandant 3rd Battalion
III Army, Indo Tibetan Border Police Force
Office of Forces III Vahini
Indo Tibetan Border Police Force
Bukhara Camp, District Bareilly (UP).

+1cc to Mr.C.T.Ramachandramurthy, Advocate, Sr.No.32301

W.P. NOS. 26243 & 26477 OF 2013

pvs (co)
rr ii (21/10/2020)