

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23/01/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

A N D

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

WRIT APPEAL NO.3897 OF 2019
AGAINST
WRIT PETITION NO.33362 OF 2015

1. The Director General of Police,
Mylapore, Chennai - 600 004.
 2. The Superintendent of Police, (Railways),
Chennai - 600 008.
- ...Appellants/Respondents

Vs

Kolumbus ... Respondent/Petitioner

Prayer :

Appeal filed under Clause 15 of the Letter Patent against the order, dated 09.07.2018, passed in W.P.No.33362 of 2015.

W.P.No.33362 of 2015:-

This Writ Petition filed under Article 226 of the constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for records relating to the 2nd respondents order made in C.No.G1/PR No.66/2006 dated 9.7.2008 as confirmed by the 1st respondent in his order in Rc.No.120497/AP IV (2)/2014 dated 20.6.2015, to quash the same and to consequently direct the respondents to forthwith reinstate the petitioner with all benefits both service and monetary and to extend other applicable benefits.

For Appellants ... Mr.R.Udhayakumar
Spl.Government Pleader

For Respondent ... Mr.L.Chandrakumar

J U D G M E N T
(Judgment of the Court was delivered by
Subramonium Prasad,J)

Instant writ appeal is directed against the order, dated 09.07.2018, passed in W.P.No.33362 of 2015.

2. The petitioner was appointed as a Grade-II Police Constable in the Police force. He was promoted as a Head Constable. He was absent from duty without information for 21 days from 20.10.2006. The petitioner was treated as a deserter and the desertion order dated 09.11.2006 was issued to the petitioner asking him to report before the Superintendent of Police. The petitioner reported before the Superintendent of Police, Railways on 29.11.2006 and was taken back for duty by Office D.O.No.663/2006 in Rc.No.G3/13235/2006. While he was working in Perambur Railway Station, a charge memo dated 07.12.2006 was served on the petitioner. The charge against the petitioner was that he had absent himself unauthorisedly from 20.10.2006 for 21 days and that he has been treated as a deserter. It is stated that the petitioner has acknowledged the charge memo, but he did not submit any explanation within a prescribed time. The Deputy Superintendent of Police, Railways, was nominated a Enquiry Officer. Oral enquiry was conducted, which was not participated by the petitioner. The charges are held to be proved.

3. The Disciplinary Authority by an order dated 09.07.2008, agreed with the findings of the Enquiry Officer and awarded the punishment of removal from service. The petitioner did not filed an appeal. The petitioner filed a mercy petition before the Director General of Police, against the order dated 09.07.2008 passed by the Superintendent of Police, Railways, imposing the punishment of removal from service. The ground given in the mercy petition was that there were adverse family circumstances and mental stress, because of which he could not attend duty.

4. The learned Single Judge has set aside the order of termination and has directed that the petitioner should be reinstated in service without any back wages. The learned Single Judge relied on the judgment of this Court that unauthorised absence from work cannot lead to a punishment of dismissal from service, as the punishment is disproportionate to the misconduct.

5. Heard the learned counsel for the appellants and respondent.

6. The learned counsel for the State would contend that the Disciplinary Authority had gone into the issue and has affirmed the findings of the Enquiry Officer. He would state that the

petitioner ought to have filed an appeal, instead, after considerable period of 6 years, the petitioner was chosen to file a mercy petition. He would state that in the absence of appeal, the order of Superintendent of Police, Railways, dated 09.07.2008, could not be interfered with. He would argue that in any event the petitioner has not brought out any ground as to why mercy should be shown to the petitioner and that too after the period of 6 years of imposition of penalty. The learned counsel would further argued that there is no discussion by the learned Single Judge as to why the punishment is shockingly disproportionate to the misconduct in this case.

7. Per Contra, the learned counsel for the writ petitioner would argue that the petitioner was not informed about the date of the enquiry. He would further argue that this was the first time that the writ petitioner absconded himself. He would argue that for the solitary instance, that too for a short period of 21 days, punishment of dismissal from service is shockingly disproportionate to the misconduct. The learned counsel for the writ petitioner/respondent has stated that the learned Single Judge had relied on precedents in which this Court has taken a view that awarding punishment of removal from service for unauthorised absence for a short period like in the present case should not entail in what he termed as "capital punishment" of removal from service.

8. We have gone through the records of the case.

9. The Enquiry Officer has given a specific finding that the charge memo was received by the writ petitioner on 20.12.2006 and the writ petitioner has neither given a reply to the charge memo nor did he participate in the oral enquiry. The affidavit of the petitioner setting out the reason for not filing the appeal is being reproduced:-

"The petitioner further submits that during 2005-06 his wife Vasanthi took certain gossips against the petitioner which came to be focused by inimically disposed neighbours resulting in the petitioner's wife suspecting character and stood character assassination against which the petitioner leveling various false and fabricated allegations, in fact stood torturing the petitioner. Despite repeated denial and also that the petitioner's wife had not given any credence as they were outcome of personal animosity which had driven them to allege certain unwarranted issues against the petitioner and his wife not proving worthy of it. Unable to bear the same as because the petitioner's wife also rushed in person to the higher officers and humiliated them with these untrue reports

and the superior officers threatening the petitioner to see to that these types unnecessary approach by the petitioner's wife in coming to the District office and making a huge hue and cry should not recur and that the petitioner's wife should deter from such activities when made known to the petitioner's wife resulted in furiousness. In once again the petitioner's wife came to the District Office, the petitioner became sick and rather was mentally sick and developed various nervous problems and the health was further deteriorated, thereby he had to board a train which took him to Andhra and was wandering as a vagabond. He was in fact not aware of what and where he was. In the meantime, it seems the respondents authorities is said to have initiated disciplinary proceedings by treating him as a deserter.

The petitioner further submits that it is given to understand that without any acknowledgement of the initiation of disciplinary proceedings as well as that of other consequential process thereto it seems an ex-parte inquiry is said to have taken place examining certain witnesses and it is on the basis of an ex-parte enquiry report having been served on the wife of the petitioner who was awaiting for an opportunity to give credence to her falsity is said to have acknowledged the enquiry report and thereby the petitioner's services stood removed.

The petitioner further submit that when it came to the knowledge of the petitioner by which time almost 5 years have got lapsed and further the wife of the petitioner Vasanthi realizing her mistake is said to have taken initiative for finding her husband, the petitioner, on coming to know that what all she had alleged was sheer falsity and gossip which made her to search for the petitioner and on finding that the petitioner is leading a miserable life and also having become sick brought him back to Chennai, and treated the petitioner for recovery of the same which took considerable time to restore to normal life. It is therefore the petitioner had made known that he has been treated as a deserter and slapped with penalty from removal from services. On coming to know of the same, he presented a memorandum to be treated as a statutory appeal, if not that of review to show mercy towards the happenings which had taken place which was not under his control and in fact was due to mental disability at that relevant point of time which stood rectified by restoration to normalcy and therefore his

claim for setting aside the ex-parte order for removal from services came to be made."

The reading of the above does not inspire any confidence in us. The petitioner has not filed any evidence to show that he was not well. The Enquiry Officer has noted that the petitioner has been served. He was given an opportunity to appear in the enquiry but he has not attend the same.

10. In S.Sreesanth Vs. Board of Cricket in India and others reported in 2019 (4) SCC 660, the Hon'ble Supreme Court observed as under:-

"The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

11. It is also well settled that once the findings of guilt cannot be interfered with, then the High Court under Article 226 of the Constitution of India, cannot go into the issue of

adequacy of punishment. As correctly pointed out by the Special Government Pleader that simply relying on few judgments, the learned Single Judge has not given any reason as to why in this case the punishment is shockingly disproportionate. As repeatedly held by the Hon'ble Supreme Court of India and this Court, the Police force is a disciplined force. An act of indiscipline cannot be tolerated. In fact, if indiscipline is condoned, it will send wrong signals to other members of the force. Policemen cannot be permitted to be absent without prior permission unless there are very cogent and compelling reasons, which should be backed by material to substantiate the reason. No doubt, every unauthorised absence cannot be treated as wilful, but the onus would lie on the delinquent employee to give reasons, supported by valid materials to demonstrate as to what was the need or occasion to not to be present on duty without any authorization. If adequate reasons are given which as stated above is substantiated with materials, then the Disciplinary Authority must take into account. If it is not taken into account, then the High Courts can exercise its jurisdiction under Article 226 of the Constitution of India, to interfere with the punishment. No such case has been made out in this case.

12. In the result, appeal succeeds and the judgment of the learned Single Judge in W.P.No.33362 of 2015 dated 09.07.2018, is set aside. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pkn

To

1. The Director General of Police, Mylapore, Chennai-600 004.

2. The Superintendent of Police, (Railways), Chennai-8.

Copy To

The Section Officer, Writ Section, High Court, Madras-104.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.4541

+1cc to Government Pleader, S.R.No.5278

W.A.No.3897 of 2019

SR(CO)

CS/11/02/2020