



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2021

CORAM

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.6054 of 2016

A.Suresh

... Petitioner

vs.

1.The Assistant Director (Pers-II),
Directorate General,
Sashastra Seema Bal,
Block-V (East), R.K.Puram,
New Delhi - 110 066.

2.The Deputy Inspector General,
SHQ, Sashastra Seema Bal,
Gorakhpur, Uttar Pradesh.

3.The Commandant,
9th Battalion,
Sashastra Seema Bal,
Balrampur, Uttar Pradesh.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for records relating to the impugned proceedings issued by the second respondent herein in No.EB-PF (Suresh, 9th Bn)SHQ/GKP/16/1292-95, dated 02.01.2016, to quash the same and to further direct the second respondent herein to pass orders on the petitioner's appeal, dated 15.12.2015, on merits after affording opportunity of hearing to the petitioner.

For Petitioner : Mr.T.S.Mohamed Mohidheen
For Respondents : Mr.S.Jeyasingh

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent, dated 02.01.2016, and consequently, to direct the second respondent to pass orders on the petitioner's appeal, dated 15.12.2015 on merits after affording opportunity of hearing to the petitioner.

2.Heard Mr.T.S.Mohamed Mohidheen, learned Counsel appearing for
<https://hcservices.ecourts.gov.in/hcservices/>



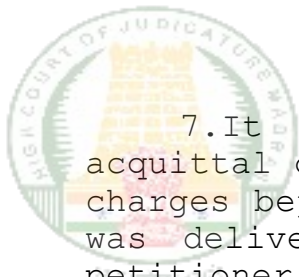
the petitioner and Mr.S.Jeyasingh, learned Counsel appearing for the respondents.

3.The petitioner was appointed as a Constable under the third respondent on 07.05.2012. It is the case of the petitioner that he applied for leave from 03.03.2014 to 01.04.2014 to see his parents at Tenkasi. It is stated that during the leave period, the petitioner came to know that he was falsely implicated in a case in Crime No.75 of 2012. On account of the situation that he had to appear before the Court till the trial was concluded in the criminal case in C.C.No.260 of 2014, it is stated that the petitioner was not able to report duty on the expiry of leave period.

4.In the meanwhile, the third respondent initiated disciplinary proceeding against the petitioner for his unauthorized absence. After following the procedure, the petitioner was dismissed from service by an order, dated 29.08.2014. The petitioner approached the third respondent to cancel the order of dismissal. In the meanwhile, the petitioner also filed an appeal before the first respondent on 15.12.2015 and the first respondent dismissed the appeal by an order, dated 21.12.2015. The petitioner preferred further appeal before the second respondent, who in turn, rejected the appeal on the ground that the petitioner has not submitted the appeal within a period of ninety days. Challenging the orders, the above Writ Petition is filed.

5.Referring to the grounds raised in the affidavit, the learned Counsel appearing for the petitioner submitted that the second respondent erred in dismissing the petitioner's appeal on the ground of delay. Since the petitioner is in service for quite sometime, it is submitted that the second respondent ought to have considered the reasons given by the petitioner for the delay. Sum and substance, the main contention of the petitioner in this case is about the irregularity in the order of second respondent, who dismissed the appeal on the ground of limitation, but not on merits.

6.This Court is unable to entertain the Writ Petition even on the admitted facts. The petitioner does not dispute that the petitioner preferred the appeal beyond the period of limitation. When an appeal is presented with a delay, the petitioner is expected to assign reasons for the delay. In the absence of any such attempt, the respondents have no other option, but to dismiss the appeal. Be that as it may, this Court, having regard to the merits of the case and the nature of misconduct alleged against the petitioner, is unable to accept the arguments of the learned Counsel for the petitioner. The petitioner was involved in a criminal case in C.C.No.260 of 2014. The petitioner was shown as the sixth accused in the case, which was registered for the offences punishable under Sections 147, 341, 294B, 323 and 506(2) IPC.

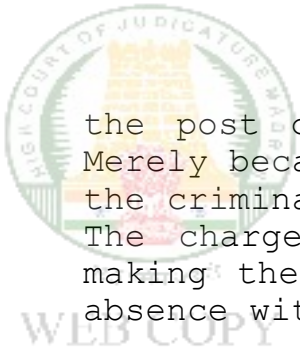


7.It is also admitted that the criminal case was ended in acquittal on the ground that the prosecution has failed to prove the charges beyond reasonable doubt. The judgment in the criminal case was delivered on 31.08.2015. However, the charges against the petitioner are specific that he failed to resume duty after expiry of the sanctioned leave and continued to be absent on his own without intimation or permission from the Competent Authority. After due enquiry, the charges against the petitioner was held proved by the Enquiry Officer and based on the enquiry report, the Disciplinary Authority passed an order of punishment by dismissing the petitioner from service with immediate effect. The petitioner has not produced before this Court even the relevant documents, which are within his reach.

8.A detailed counter affidavit has been filed by the respondents. From the statements found in the counter affidavit, it is seen that the petitioner did not report duty after availing leave for a long term. The petitioner did not respond to several notices issued to him to remind him that he was supposed to report duty. The continued absence made the respondents to initiate disciplinary proceedings and the petitioner did not come forward to deny the charges. Ultimately, the petitioner was removed from service and his removal is also in public interest.

9.This Court is unable to find any violation of principles of natural justice or want of jurisdiction. Though judicial review is permissible, in case, there are legal infirmities in the conclusion reached by the respondents, the jurisdiction of this Court and the scope of judicial review cannot be enlarged to act as Court of appeal when, fairness in disciplinary proceedings is established. The disciplinary proceeding against the petitioner was initiated as per the provisions of SSB Act, 2007, and Rules, 2009. The second respondent rejected the petitioner's appeal stating that no grounds are made out. The petitioner over stayed wilfully from 02.04.2014 without any intimation or permission from the Competent Authority. The conduct of the petitioner cannot be condoned merely on sympathetic view. The petitioner, being member of Armed Forces, is expected to perform his duties in compliance of the Service Rules. The petitioner by his misconduct exposed himself that he is not fit to be in service, as he has no regret for committing such a serious misconduct affecting the efficiency of the department.

10.In the factual background, this Court is unable to find any merits in this case in favour of the petitioner to interfere with the order of punishment. In the appeal memorandum, except stating that a false criminal case was lodged involving the petitioner, which resulted in his overstay, absolutely there is no factual basis to defend the charges. While concluding the disciplinary proceeding awarding punishment, the nature of irregularity or misconduct committed by the delinquent should be considered with reference to



the post or responsibility he took as a member of Armed Forces. Merely because, the criminal Court has acquitted the petitioner from the criminal case, it does not mean that the charges are not proved. The charges are not relating to the criminal case, but one for making the petitioner accountable/responsible for his unauthorized absence without an explanation.

11. In the circumstances pointed out and the factual background explained in this order, this Court finds no merit in the Writ Petition. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar (CS)

tmg/cmr

TO

1. The Assistant Director (Pers-II),
Directorate General,
Sashastra Seema Bal,
Block-V (East), R.K.Puram,
New Delhi - 110 066.

2. The Deputy Inspector General,
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3. The Commandant,
9th Battalion,
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Balrampur, Uttar Pradesh.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-31578[F] dated 07/10/2021)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-31414[F] dated 06/10/2021)

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NSN (CO)
KB(28.10.2021) 4P 6C