



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.04.2022

DELIVERED ON : 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.19704 of 2020

W.M.P (MD) .No.16427 of 2020 and 5688 of 2021

K.Govindasamy

...Petitioner

/Vs./

1. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.
2. The Additional Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.
3. The Deputy Superintendent of Police,
Armed Reserve,
Ramanathapuram,
Ramanathapuram District.
4. The Inspector of Police,
Armed Reserve,
Ramanathapuram,
Ramanathapuram District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned additional show cause memo with program schedule in P.R.No.37 of 2020 R 3(b) dated 08.12.2020 issued by the first respondent and quash the same.

For Petitioner : Mr.P.Krishnasamy

For Respondents : Mr.A.K.Manikkam

Special Government Pleader

O R D E R

The show cause notice issued in P.R.No.37 of 2020 dated 08.12.2020 by the first respondent is sought to be quashed in the present Writ Petition.



4. The departmental disciplinary proceedings were initiated against the writ petitioner for misconduct of desertion. The desertion was confirmed by the Superintendent of Police, Ramanathapuram District in proceedings dated 05.03.2020. Based on the desertion order, a charge memo has been issued under Rule 3(b) of the Tamil Nadu Police Sub-ordinate Services [Discipline and Appeal] Rules. The charge against the petitioner is that the petitioner without any information deserted the police force and remained absent for more than 21 days. Further, he has not reported to duty within a period of 60 days. Therefore, the desertion was confirmed by the Superintendent of Police in proceedings dated 05.03.2020. The charge memo dated 24.03.2020 contains the charges. Annexure-II provides the statement of misconducts and Annexure-III denotes the list of documents relied on by the Department to establish the charges. Annexure-IV contains the list of witnesses to be examined. Thus, there is no infirmity as such in respect of the charge memo issued to the writ petitioner. Thereafter, a memo dated 25.09.2020 was issued for conducting the enquiry. The enquiry proceedings were completed and thereafter, the respondents issued the additional show cause notice asking the petitioner to submit his further representation if any within a period of 15 days, failing which, further actions will be taken and final order will be passed. Instead of submitting further representation on the enquiry report, the petitioner has chosen to file the present writ petition. In fact, the Enquiry Officer submitted his final report on 30.11.2020 and the impugned additional show cause notice was issued on 08.12.2020.

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further contended that based on false set of facts, a charge memo has been issued. The petitioner raised several grounds on merits with reference to the allegations.

6. This Court is of the considered opinion that all those grounds raised with reference to the charges cannot be entertained in the present writ petition as the additional show cause memo issued against the petitioner is under challenge. Mere typographical error in mentioning the designation would not be a ground to grant exoneration from the departmental disciplinary proceedings. The counter affidavit filed by the respondent reveals that the petitioner is well aware that he is the Grade-I Police Constable, and enjoying all the pay and emoluments attached to the post of Grade-I Police Constable with effect from 01.03.2016. There is no doubt or suspicion in respect of designation as Grade-I Police Constable.

7. In the charge memo dated 24.03.2020, the designation of the petitioner has been rightly mentioned as Grade-I Police Constable, which was pasted at the door of his house at Rajapalayam in the presence of the Village Administrative Officer concerned. The petitioner has not submitted his explanation nor appeared for oral enquiry. On observing his willful reluctance, the departmental proceedings were continued and his unauthorized absence was proved by the Enquiry Officer. The minute and FR calling memo were sent for service to the petitioner. However, the petitioner refused to acknowledge the FR Calling memo. Therefore, mere typographical error in mentioning the designation cannot be a ground. For all purposes, the petitioner was treated as Grade-I Police Constable and importantly, he is receiving all the pay and emoluments attached to the post of Grade-I Police Constable with effect from 01.03.2016.

8. No writ against the show cause notice needs to be entertained in a routine manner.. A writ against show cause notice may be entertained, only if such notice is tainted with malafide or issued by incompetent Authority. However, the petitioner has raised a ground by stating that his designation is wrongly mentioned in the impugned notice. When, in the charge memo, his designation is correctly mentioned as Grade-I Police Constable, mere typographical error in mentioning the designation would not be considered as a ground for exonerating the petitioner from the allegations of unauthorized absence and desertion. The petitioner has to submit his explanation in respect of the impugned additional show cause memo. The impugned show cause memo was communicated along with the copy of the enquiry report. Contrarily, the High Court cannot adjudicate the merits raised by the petitioner with reference to the allegations in the present writ petition. All such defences are to be submitted by way of explanations/objections before the Competent Authority who is empowered to consider the same and pass final orders in the disciplinary proceedings.



9. In view of the facts and circumstances, this Court do not find any infirmity or perversity in respect of further show cause memo issued to the petitioner calling for explanations and further objections in respect of the enquiry report. Thus, the petitioner is at liberty to submit his further explanation/objection within a period of two weeks from the date of receipt of a copy of this order. On receipt of any such explanation from the petitioner, the respondents are directed to proceed with the departmental disciplinary proceedings and conclude the same and pass final orders as expeditiously as possible.

10. With these observations, this Writ Petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

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/ /2022

Sub Assistant Registrar(CS)

ssb
To

1. THE SUPERINTENDENT OF POLICE,
RAMANATHAPURAM DISTRICT, RAMANATHAPURAM.
2. THE ADDITIONAL SUPERINTENDENT OF POLICE,
RAMANATHAPURAM DISTRICT, RAMANATHAPURAM.
3. THE DEPUTY SUPERINTENDENT OF POLICE,
ARMED RESERVE, RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT.
4. THE INSPECTOR OF POLICE,
ARMED RESERVE, RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT.

+1 CC to M/s.SPL.Government Pleader
(SR-20441[F] dated 22/04/2022)

W.P. (MD) No.19704 of 2020
W.M.P (MD) .No.16427 of 2020
and 5688 of 2021
20.04.2022