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W.P.No.6366 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6366 of 2014

M.Aravindhraj

... Petitioner

Vs

The Commandant,
Office of the Commandant,
T.S.P.11th Battalion,
Rajapalayam.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, calling for the records relating to the proceedings in Na.Ka.No.A2/983/2013 dated 18.02.2013 on the file of the respondent herein and to quash the same and to direct the respondent to reinstate the petitioner as Constable Grade-II, by sending him to training with all the monetary benefits within a time frame as may be fixed by this Court.

For Petitioner : Mr.M.T.Arunan

For Respondent : Dr.T.Seenivasan,
Special Government Pleader



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ORDER

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This Writ Petition has been filed challenging the order passed by respondent dated 18.02.2013, thereby dismissing the petitioner from service.

2. The petitioner was selected to the post of Constable Grade-II by the Proceedings in Na.Ka.No.A2/983/2013 dated 26.01.2013. Accordingly, he was directed to undergo for Police Training from 17.02.2013. In the meanwhile, the petitioner was arrested and remanded to judicial custody, pursuant to the registration of FIR in Crime No.131 of 2013 registered for the offence under Section 435 of IPC on the file of the Inspector of Police, G3, Kilpauk Police Station, Chennai. Subsequently, the petitioner was released on bail and he appeared for police training on 17.02.2013. By order dated 18.02.2013, he was dismissed from service on the ground that he suppressed the fact that he was involved in the criminal case at the time of reporting for police training.

3. The learned counsel for the petitioner submitted that even



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before the selection, he was not involved in any criminal case, but after he was selected to the post of Constable Grade-II, a false case has been foisted against the petitioner. Since the petitioner's mother is working as a Sub-Inspector of Police and they are staying in the police quarters, in the Police quarters, due to jealous, with regard to appointment of selection for the post of Constable Grade-II, he has been falsely implicated in the criminal case. In fact, there was no occurrence and as such, the prosecution completed and failed to prove its case and the trial Court acquitted the petitioner from the charge by judgement dated 04.05.2023. That apart, the petitioner was not served with any show cause notice and he was not given any reasonable opportunity before passing the impugned order.

4. On a perusal of the records, it reveals that the petitioner was arrested and remanded to judicial custody on 13.02.2013 pursuant to the registration of FIR in Crime No.131 of 2013 for the offence under Section 435 of IPC, alleging that the Police Jeep was set on fire by three accused in which the petitioner has been arrayed as third accused. The driver of the Jeep had lodged a complaint on 12.02.2013 and it was enquired by the



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Inspector of Police, G3 Police Station, Kilpauk, Chennai, implicating the petitioner as an accused on the reason that he is the friend of A1. There was previous enmity between the first accused and the de-facto complainant, the driver of the Jeep. Therefore, the petitioner was implicated as an accused. After filing the charge sheet, the trial Court had taken cognizance on the final report in C.C.No.4143 of 2013 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai for the offence punishable under Section 435 IPC. After full fledged trial, the trial Court acquitted all the accused persons on the ground the prosecution failed to prove its case beyond any reasonable doubt. That apart, the accused persons had absolutely not involved in the crime and no one supported the case of the prosecution.

5. Now, the points for consideration is that, (i) whether the suppression of the involvement in the criminal case would amount to misconduct, and (ii) whether the petitioner is entitled for show cause notice and opportunity, while he was in probation period. Though the petitioner was arrested and remanded to judicial custody on 13.02.2013, on the same day, he was released on bail. That apart, there was no declaration by the



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petitioner while joining the Police training that he never involved in any criminal case.

6. Insofar as the show cause notice is concerned, the Special Rules for Tamil Nadu Police Subordinate Service reads as follows:-

Rule17. Probation-Suspension, termination or extension at any time before the expiry of the prescribed period of probation, the appointing authority may

(a) suspend the probation of a probationer and discharge him for want of vacancy and

(b) at its discretion by order, either extend the period of probation of the probationer in case the probation has not been extended under rule 20 or terminate his probation and discharge him from service after giving him a reasonable opportunity showing cause against the proposed termination of probation.

Provided that where a probationer has been given



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a reasonable opportunity of showing cause against the imposition on him of any of the penalties specified in clause (d) (h) and (j) of sub rule (1) of rule 2 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955, and at the conclusion is arrived at to terminate his probation, a further opportunity of showing cause specifically against termination of his probation need not be given to him.”

7. Thus, it is clear that before passing the impugned order, the petitioner must have been given an opportunity to show cause notice about the dismissal of his service. Admittedly, the petitioner was not served with any show cause notice and he was not given any opportunity to put-forth his defence before dismissal of service. Therefore, it is clear violation of principles of natural justice. On this sole ground alone, the impugned order cannot be sustained and it is liable to be set aside.



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8. Accordingly, the Proceedings in Na.Ka.No.A2/983/2013 dated 18.02.2013 is quashed. The respondent is directed to reinstate the petitioner as Constable grade-II and impose training on the petitioner in accordance with law, within a period of two weeks from the date of receipt of a copy of this order. It is also made clear that his service has to be calculated only from the date of his reinstatement, for all the benefits.

9. In the result, this Writ Petition is allowed. No costs.

29.09.2023

Index:Yes/No
Neutral Citation/Yes/No
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To

The Commandant,
Office of the Commandant,
T.S.P.11th Battalion,
Rajapalayam.



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G.K.ILANTHIRAIYAN, J.

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