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W.A.No.2635 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2635 of 2022
and
C.M.P.No.21127 of 2022

1.The Director General of Coast Guard,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi- 110001.

2.The Commander,
Coast Guard Region (East),
Near Nappier Bridge, Chennai - 600 009.

3.J.S. Sabharwal,
Deputy Inspector General,
The Commander, (Former Commanding
Officer ICGS Samar),
Coast Guard Region (West),
Worli Sea Face, Worli, Mumbai - 400 030.

4.R.G. Gokhale,
Assistant Commandant,
Regulating Officer for Commanding Officer,
No. 2, Coast Guard District (MH),
Worli Sea Face PO, Worli, Mumbai - 400 030.



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5.A.K. Harbola
Deputy Inspector General,
Commanding Officer, (Former Commander No.2,
Coast Guard District (MH) Mumbai),
“ICGS Sangram”, C/o. Fleet Mail Office,
Mumbai - 400 001.

6.Shreekant,
Pradhan Adhikari, Assistant Regulating Officer
for Commanding Officer,
No.2, Coast Guard District (MH),
Worli Sea Face PO, Worli, Mumbai - 400 030.

7.K.R. Arun
Commandant, (Former Executive Officer,
ICGS Samar, Cochin), Coast Guard Air Enclave,
Nani Daman, Daman.

.. Appellants

Vs.

R. Thulukkanam,
S/o. Raman,
8, Muthu Mariamman Koil Street,
Palayanur Village, Kancheepuram District.

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 11.08.2022 passed in W.P.No.3145 of 2014 on the file of this
Court.

For Appellants : Mr.N.Ramesh

For Respondent : Mr.K.Sathish
for Mr.Kaavya Silambanan



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JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

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This writ appeal has been filed by the appellants herein, challenging the order passed by the learned Judge in W.P.No.3145 of 2014 on 11.08.2022.

2.The respondent herein is the petitioner in W.P.No.3145 of 2014. The facts involved in this case are that the respondent herein had enrolled in the Indian Coast Guard Service on 27.01.2000 as P/Navik (RO). On 12.05.2012, he obtained permission to go on leave on the ground of family problem and after the expiry of the sanctioned leave, he did not report to his Ship from 22.05.2012. Finally, he surrendered on ICGS, Mumbai on 29.10.2012. Because of his unauthorized absence from 22.05.2012 to 29.10.2012, charges were framed against him by the appellants under Section 26 of the Coast Guard Act, 1978' ("Act", in short) and he was declared to be a deserter. On the basis of the findings given in the summary trial under Section 57 of the Act, he was found guilty of the charges and



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consequently he was awarded the punishment of dismissal from service and mulcts of pay and allowance for 168 days, by way of the order impugned in the writ petition.

3.Challenging the order of punishment, the respondent herein filed the writ petition in W.P.No.3145 of 2014 stating that since the appellants had declared him as a deserter, the punishment of dismissal is not in conformity with Section 26 of the Act. The further submission made before the Writ Court was that the letter intimating his desertion was not properly served on the next of kin.

4.It was submitted on behalf of the appellants before the Writ Court that pursuant to the unauthorized absence committed by the respondent, the respondent himself had pleaded guilty and even then, the appellants, in order to afford an opportunity to him, prepared an abstract of evidence under Rule 24 of the Coast Guard (Discipline) Rules, 1983 and after consideration of all the documentary evidence, it was categorically established that the respondent had wilfully remained absent for 168 days. Thereafter, summary trial was conducted and on the basis of the same,



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punishment of dismissal was appropriately imposed.

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5.Considering the arguments advanced on either side, the learned Judge allowed the writ petition holding that when the appellants do not have authority to charge a deserter under Section 26 of the Act and when there is procedural infirmity in the intimation of desertion to the next of kin, the ultimate punishments imposed cannot be sustained. The respondent was directed to be reinstated in service with all benefits, but without pay for the period of absence.

6.Aggrieved by the aforesaid order passed in the writ petition, the present writ appeal has been filed.

7.The learned counsel appearing for the appellants has submitted that in an earlier occasion, the respondent remained absent without leave from 05.11.2011 to 26.12.2011 and subsequently, within a period of 6 months, he again committed the same offence for a longer duration from 14.05.2012 to 29.10.2012, which amounts to commission of an aggravated offence of absent without leave as per Rules 37 and 38 of Coast Guard (Discipline)



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Rules, 1983. According to paragraphs 5(b) & (c) of the Coast Guard Orders (CGO) 06/1997, if the absentee fails to return at the expiration of seven days, he shall be marked as “RUN” by considering the offender as a deserter. The intimation which the Court termed as the one made without application of mind, is only a part of the procedure as mandated under the Coast Guard Orders. The learned counsel further submitted that notwithstanding the fact that the letter addressed to the 'Late Father' of the respondent, the respondent was not prejudiced of his rights as accused, whatsoever. The procedures adopted by the authorities are in accordance with the Coast Guard (Discipline) Rules, 1983. However, the learned Judge has failed to appreciate the fact that the charge of 'Absence without leave' was framed under Section 26 of the Act in a proper manner and has allowed the writ petition by setting aside the order of punishment. With these contentions, the learned counsel prayed this Court to set aside the order impugned in this appeal.

8.Per contra, the learned counsel appearing for the respondent has submitted that taking note of the procedural lapses and also the fact of non-



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application of mind by issuing the letter of intimation to a dead person and failure to issue the same to the next of kin by the appellants, the learned Judge has passed the impugned order, which does not require any interference in the hands of this Court.

9. Heard the learned counsel on either side and also perused the materials available on record.

10. The question that arises for consideration in the present case is as to whether the appellants have the power to impose punishment of dismissal from service to a person who has been declared as a 'deserter'. Section 26 of the Act states that it would apply to any person, who is involved under the Act. It is also clearly understood from Section 26 that it does not apply to a person declared to be guilty of desertion. As rightly observed by the learned Judge, when the disciplinary proceedings and summary trial are initiated on the basis of treating the respondent herein as a deserter, the very foundation of the charges under Section 26 of the Act is precarious, since the provision excludes the persons who have been treated as deserters. Only in view of the



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same, it has been held by the learned Judge that all the consequential proceedings for the charges under Section 26, are deemed to be a futile exercise and hence, the ultimate punishment of dismissal from service, together with mulcts of pay and allowance for 168 days, cannot be sustained.

11.Secondly, it is a common knowledge for a normal prudent person that no letter has to be addressed to a dead person. In the letter of intimation to the respondent's father, who was no more at the relevant point of time, it has been asked to persuade the respondent to return to his unit, if known about his whereabouts. For this, it has been explained on the side of the appellants that it is only a part of the procedure adopted as per the Act, which explanation cannot be accepted by this Court.

12.Thus, the appellants have committed three lapses, one is, without having any authority to charge a deserter under Section 26 of the Act, they have charged the respondent; the second is, issuing the letter of intimation to a dead person; and the third is, not sending intimation letter to the next of



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kin. For these grounds, the order of punishment of dismissal from service awarded to the respondent herein, will not survive. Since the issue has been limited to the above three points, the grounds raised in this appeal, on the side of the appellants, do not deserve any consideration.

13.In the result, the writ appeal fails and accordingly, it is dismissed. Consequently, the order of the learned Judge is confirmed in all respects. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
28.07.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To
1.The Director General of Coast Guard,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi- 110001.

2.The Commander,
Coast Guard Region (East),
Near Nappier Bridge, Chennai - 600 009.

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MOHAMMED SHAFFIQ, J.

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