

Joint Secretary to the Home Department, Madras and Others

Vs

R. Ramalingam

Civil Appeal No. 11645 of 1996

(B. P. Jeevan Reddy, K. S. Paripoorna JJ)

09.09.1996

ORDER

1. Leave granted.

2. This appeal arises from an order of a learned Single Member (Administrative) in Original Application No. 2398 of 1991 quashing the order dismissing the respondent from service and directing his reinstatement. The Tribunal has, however, denied back wages observing at the same time that the period between the date of dismissal and the date of the Tribunal's order shall count for service and pensionary benefits.

3. The respondent, R. Ramalingam, a Head Constable, was posted at Thiruvaiyaru Police Station. On the night intervening 15-8-1987/16-8-1987, one Meenambal went to the police station enquiring whether her husband was in the police custody. The respondent, it is said, misbehaved and molested her on that occasion. On her shouting and screaming, a Constable (PC 1168) came to the scene to whom the said lady complained of the respondent's misbehaviour. In the meantime, the Inspector of Police, Mannergudi (Crime) arrived with his party in a jeep at the police station in search of an accused concerned in Mellatur PS Cr. No. 205 of 1989. He rescued Meenambal from the situation. The Inspector sent a report to the Superintendent of Police on 16-8-1987 about the incident who in turn referred the matter to the Deputy Superintendent of Police, Thanjavur (Rural) (DSP) for conducting a preliminary enquiry. The DSP submitted a report recommending disciplinary action. On the basis of the said report, charges were framed. The gravamen of the charges was the "highly reprehensible conduct unbecoming of a police officer in molesting one Meenambal at Thiruvaiyaru Police Station at 0200 hrs on 15-8-1987/16-8-1987 with intention to rape". The DSP, Crime Record Bureau was directed to hold a disciplinary enquiry. On the basis of the report of the DSP, the respondent was dismissed from service on 11-3-1988. The appeal and review preferred by the respondent were dismissed. A mercy petition filed before the Government was also rejected.

4. The respondent then approached the Tamil Nadu Administrative Tribunal by way of an Original Application (OA No. 2398 of 1991). The respondent contended that the charge memo was issued by the DSP and not by the appointing authority, viz., Superintendent of Police. According to him, the DSP had no jurisdiction to issue the memo of charges, since he was not his appointing authority. He further submitted that in his case the Revenue Divisional Officer should have conducted the preliminary enquiry and on the basis of his report, the Government should have decided whether a disciplinary proceeding or a criminal prosecution should be initiated against him. He also contended that a copy of the Enquiry Officer's report was not supplied to him and as such he was denied the reasonable opportunity to defend himself.

5. The original application was heard by a learned Single Member (Administrative) sitting singly, with the consent of both the parties before it. The Tribunal allowed the application holding that the DSP, being an authority subordinate to the appointing authority, was not competent to hold the disciplinary enquiry. It also held that serious prejudice has been caused to the respondent on account of non-supply of Enquiry Officer's report and that he has been denied reasonable opportunity to defend himself on that account. The Tribunal held further that since the statements of witnesses examined during the preliminary enquiry were not supplied to the respondent, the enquiry held was vitiated. The Tribunal also found fault with the orders of the disciplinary and appellate authorities as wanting in reasons and hence, bad.

6. The first two grounds given by the Tribunal are unsustainable in view of the decisions of this Court in *Inspector General of Police v. Thavasiappan* [(1996) 2 SCC 145 : 1996 SCC (L&S) 433 : (1996) 32 ATC 663] and in *Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]. (The order of punishment/dismissal in this case is prior to the decision in *Union of India v. Mohd. Ramzan Khan* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1994) 16 ATC 505].)

7. So far as other grounds given by the Tribunal were concerned, the learned counsel for the appellant offers several reasons and explanations why the said grounds are not sustainable. On the other hand, the learned counsel for the respondent seeks to support those grounds. We are, however, not inclined to go into the correctness or otherwise of the said grounds. In all the circumstances of this case, we think, this is a proper case, where the matter should go back to the Tribunal for a fresh decision according to law. The matter shall be heard by a Bench of which at least one is a Judicial Member.

8. The appeal is allowed in the above terms. The judgment of the Tribunal impugned herein is set aside and the matter remitted for a fresh consideration. No costs.