

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.539 of 2015
and
M.P.No.1 of 2015

1. The Government of Tamil Nadu,
represented by Secretary to Government,
Home (Police IX) Department,
Secretariat, Chennai-9.
2. The Director General of Police,
Tamil Nadu, Chennai-4.
3. The Deputy Inspector General of Police,
Armed Police,
Chennai-10.
4. The Commandant,
Tamil Nadu Special Police,
III Battalion, Veerapuram,
Chennai-5.

...Appellants

Vs.

सत्यमेव जयते

K.Rajkumar

...Respondent

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 28.02.2014 made in W.P.No.6164 of 2014.

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus

to call for the records against the orders passed in (1) G.O.(2D) No.295 Home (Police IX) Department dated 15.6.2010 by the First Respondent (2) Pro.Rc.No. 58877/AP3(1) / 2009 dated 20.10.2009 of the second Respondent (3) Pro.Rc.No. C2/5342/2009 dated 11.5.2009 of the third Respondent and (4) P.R.No.23/2007 dated 31.3.2008 of the Fourth Respondent, to quash the same and to issue consequential directions to the Respondents to reinstate the petitioner in service with consequential benefits.

For Appellants : Mr.N.Sakthivel, GA

For Respondent : Mr.S.Venkatesan
for Mr.M.Ravi

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The allegation in the memo of charge against the writ petitioner was that the writ petitioner without sanction and permission remained absent on medical leave from 14.11.2006 to 12.01.2007 and thereafter, continue to remain absent for about 21 days, in total for about 60 days, the petitioner remained absent. A proper enquiry was held. Finding the charges proved, the disciplinary authority, by order dated 31.3.2008 removed the writ petitioner from service. Thereagainst, the appeal preferred was dismissed by order dated 11.5.2009 and also the revision was dismissed by order dated 20.10.2009 by the Director General of Police. Being aggrieved, the writ petitioner has come up with the writ petition, questioning the legality and validity of the order of removal from service.

2. The learned Single Judge, accepting the finding on guilt, on the issue of proportionality of punishment, remitted back the matter to the disciplinary authority to reconsider the question of imposition of punishment having regard to the charges levelled against him and to pass fresh orders within a period of six weeks. It was further held that the writ petitioner shall not be entitled to claim backwages for the period he had not performed his duty. Feeling aggrieved, the State Government has come up with the instant appeal.

3. At the relevant time, the writ petitioner was serving as Havildar in the Tamil Nadu Special Police Service, III Battalion, 'D'Company, Veerapuram. On account of his illness, he proceeded on medical leave without prior approval / sanction and thereafter, he remained again absent, which was treated by the disciplinary

authority as desertion. Both charges were found proved. The learned Single Judge did not find any reason to interfere with the findings recorded by the enquiring authority, confirmed by the disciplinary authority. However, on the question of punishment of removal of service, it was felt that the same was disproportionate to the charges levelled against him.

4. The learned Government Advocate appearing for the appellants State submits that in the police force, strict discipline is required. Even if the writ petitioner was physically ill, he was under an obligation to take prior approval and sanction before proceeding on medical leave. Proceeding on medical leave without permission amounts to desertion as even after completing the medical leave, the writ petitioner had not reported back for duty for a period of 21 days. Thus, the punishment of removal from service is not disproportionate to the charges.

5. We have given our anxious consideration to the submissions advanced by the learned counsel for the parties and also perused the pleadings and documents appended thereto.

6. Indisputably, the finding of the disciplinary authority has not been disturbed. Now, the question is in view of the findings with regard to the absence on medical leave without permission and also thereafter not joining for the period of 21 days, whether it would suffice to remove the writ petitioner from service even if it is a case of uniformed service. It is not the case of the appellants State that on account of any so-called indiscipline, any loss or damage has been caused to the public at large or to the employer. In the facts of the case, we are not inclined to express our view in this respect, since the finding of the guilt has been upheld, only on the question of quantum of punishment, the matter has been remitted back to the disciplinary authority. We are of the view that the order rendered by the learned Single Judge is not irrational, unreasonable or illegal. We accordingly affirm the order and dismiss the writ appeal. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

vvk

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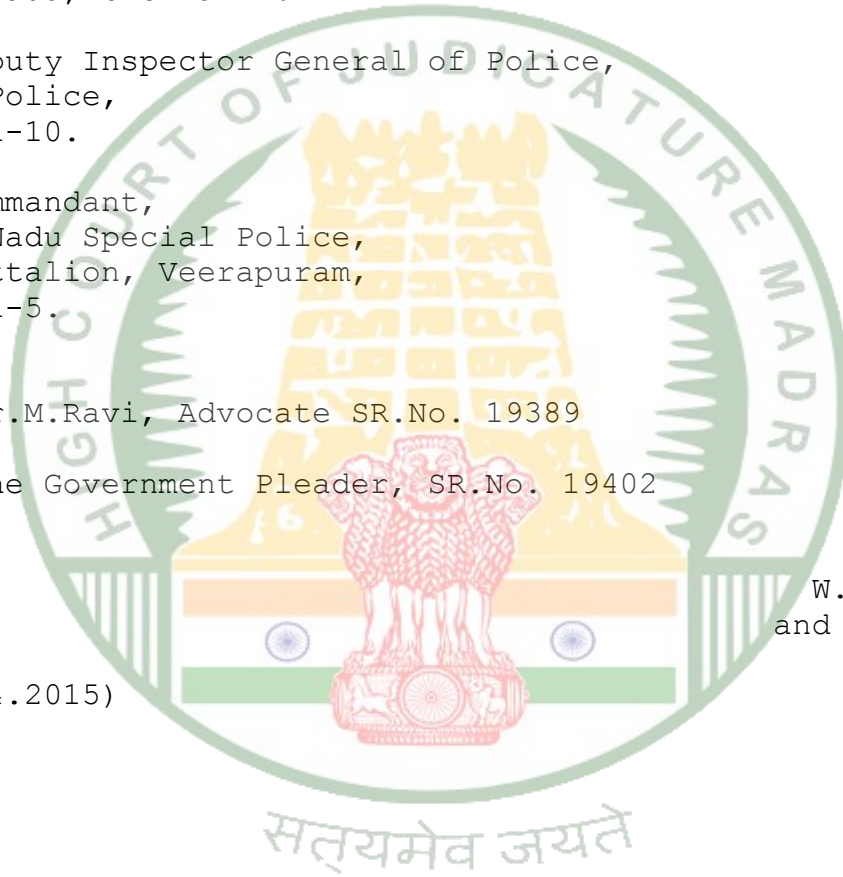
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1 CC to Mr.M.Ravi, Advocate SR.No. 19389

1 CC to the Government Pleader, SR.No. 19402

KSJ (CO)
PSI (21.04.2015)

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