

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.17476 of 2015

K.Kavitha

...Petitioner

vs.

- 1.The State of Tamilnadu,
Rep. by its Secretary,
Home Department,
Fort St.George, Chennai - 600 009.
- 2.The Director General of Police (Law & Order)
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
- 3.The Addl.Director General of Police,
(Armed Forces), Kilpauk, Chennai - 600 010.
- 4.The Commandant,
Tamil Nadu Special Police, V Btn.,
Avadi, Chennai - 600 109.

...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, calling for the records, particularly the 4th respondent's impugned order of removal of service dated 03.11.2009 vide PR No.68/2009, Rule 3(b) and subsequent proceedings of the 2nd respondent dated 16.04.2015 vide RC No.6350/AP 3(1)/2015 and quash the same and consequentially direct the respondents to reinstate the petitioner's service with original seniority with all back wages, attendant benefits and also promotional avenues on par as per petitioner's representation dated 03.11.2014.

For Petitioner : Mr.R.Thanjan

For Respondents : Mr.V.Jayaprakash Narayanan
Spl.Govt.Pleader

O R D E R

The petitioner was selected as Grade-II Woman Police Constable during the year 2005. After training, she joined duty at V Battalioin, Avadi, Chennai, on 15.11.2005. Thereafter, she was transferred to I Battalion, Trichy in the year 2007. While so, she was deputed to outdoor duty and accordingly, she reported before the third respondent, who in turn, directed her to report before the Superintendent of Police and accordingly, she joined duty on 27.01.2008.

2. According to the petitioner, after joining outdoor duty, she happened to travel from Kotturpuram to Mayajal in East Coast Road in the Police Tata Sumo Car along with other Police Officers and Constables and the said car met with an accident on 24.05.2008. Due to the accident, the petitioner suffered grievous injuries and admitted in Malar Hospital, Adyar, as in-patient for 5 days i.e, from 24.05.2008 to 28.05.2008. In the said accident, she suffered injuries all over her body, particularly, a grievous bone injury in the lower hip, which caused lower mid occipital pain.

3. In these circumstances, she sent an application seeking medical leave for 30 days from 24.05.2008 to 24.06.2008 and subsequently extended the leave upto 14.07.2008. According to the petitioner, even after 14.07.2008, she was able to walk only with the support of walker. Hence, she again made a request to the Superintendent of Police, to grant further medical leave to enable her to join duty after being fully fit.

4. While so, a disciplinary proceeding was initiated against the petitioner for unauthorised absence by issuing charge memo, dated 23.07.2009, by the 4th respondent under Rule 3(b) of Tamil Nadu Police Sub-ordinate Service Rules. The allegation in the charge memo is that she was unauthorisedly absent for 21 days. Hence, she was treated as a deserter. Based on the aforesaid charge sheet, the petitioner was removed from service by an order dated 03.11.2009 by the 4th respondent. Thereafter, she made repeated representations to higher authorities. Those representations are enclosed at the typed set of papers. While so, the second respondent passed the impugned order dated 16.04.2015 rejecting the mercy petition filed by the petitioner.

5. The petitioner has now come up with this writ petition to quash the order dated 03.11.2009 of the 4th respondent and the order dated 16.04.2015 of the second respondent.

6. The petitioner has enclosed the Medical Report and also the news item appeared in Tamil Daily on 26.05.2008 about the accident. I have perused the medical report. As per the medical report given by Malar Hospitals Ltd., she was admitted on

24.05.2008 and discharged on 28.05.2008. It is relevant to extract the following:-

"Course in the hospital:

Patient admitted with right hip pain and history of LOC. CT hip shows undisplaced fracture in right acetabulum. Patient mobilized with walker support. "

7. The learned counsel for the petitioner would contend that the absence of petitioner is neither wilful nor wanton and it was only due to an accident while on duty. Hence, removal from service is too harsh and not warranted. The learned counsel has relied on the judgment dated 12.10.2011 made in W.P.No.7570 of 2007 [M.Abdul Razak v. The Commandant, Tamil Nadu Special Police, Madurai]. Paragraphs 11 and 12 may be usefully extracted hereunder:-

11.The respondents have not disputed the fact that the petitioner met with the accident and sustained grievous injuries. The impugned proceedings in GO RT No.998/Home Police IX Department, dated 19.5.2000 passed by the fifth respondent reveals that the petitioner produced the medical certificate after 12 and ½ months. The impugned G.O also records the version of the petitioner that the petitioner met with accident on 5.7.1997 and his left hand was damaged. The following passage from the impugned G.O is extracted hereunder:

"He has not reported for duty. But he has reported that due to an accident on 05.07.1997 his left hand was damaged and he would report on 27.1.1997. But he did not join on that date also. Again he submitted a petition to the Commandant, for reinstatement into service on 13.07.1978. On this petition the Commandant has sought orders of the Director General of Police for his reinstatement into service endorsing the medical certificate produced by the individual, after 12 and ½ months. The Director General of Police did not accept his petition and requested the Commandant, Tamil Nadu Special Police VI Battalion, Madurai to take action accordingly. Now the individual has given a petition to Government for reinstatement into service. In his petition he has not adduced any fresh grounds."

12.The aforesaid passage makes it clear that the petitioner did not join duty only due to the accident. Later, he produced the medical

certificate. In such circumstances, particularly when the fourth respondent modified the punishment imposed on the petitioner by his order dated 3.6.1997, the petitioner should have been reinstated into service, when he reported to duty after recovery from illness. In such circumstances, I am of the view that the impugned proceedings in GO RT No.998/Home Police IX Department, dated 19.5.2000 passed by the fifth respondent is not a legal one. Accordingly, the impugned proceedings in GO RT No.998/Home Police IX Department dated 19.5.2000 is quashed. Except the order dated 3.6.1997 passed by the fourth respondent modifying the punishment, all other orders that are impugned in this writ petition are quashed. Accordingly, the respondents are directed to re-instate the petitioner with continuity of service without back wages. The petitioner shall under go the modified punishment ordered by the fourth respondent in RC No.API(1) 296/61935/96, dated 3.6.1997. The respondents are directed to reinstate the petitioner in service with continuity of service without back wages, and also with notional pay fixation within a period of four weeks from the date of receipt of a copy of this order. "

8. In the aforesaid facts and circumstances of the case, I am of the view that the removal of the petitioner from service is too harsh, as contended by the learned counsel for the petitioner.

9. The learned counsel for the petitioner has submitted that the petitioner would be satisfied if re-instatement is ordered with continuity of service for fixation of notional pay and backwages may be deprived, in lieu of removal from service.

10. In view of the said submission made by the learned counsel for the petitioner and in view of the fact that the petitioner involved in an accident and she was not able to attend duties, the impugned orders are liable to be set aside.

11. Accordingly, the impugned orders are set aside and the matter is remitted back to the second respondent. The second respondent is directed to pass an appropriate order, within a period of eight weeks from the date of receipt of a copy of this order. While doing so, the second respondent is at liberty to deprive backwages and shall also impose any other punishment in lieu of removal from service, besides depriving backwages.

The writ petition stands allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Tamilnadu,
Home Department,
Fort St.George, Chennai - 600 009.
- 2.The Director General of Police (Law & Order)
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
- 3.The Addl.Director General of Police,
(Armed Forces), Kilpauk, Chennai - 600 010.
- 4.The Commandant,
Tamil Nadu Special Police, V Btn.,
Vaishnavi Nagar,
Avadi, Chennai - 600 109.

1 CC to Mr.R.Thanjan, Advocate SR.No. 32025

1 CC to the Government Pleader, SR.No. 32087

W.P.No.17476 of 2015

CTK (CO)
PSI (06.07.2015)

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