

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.22009 of 2015
and M.P.No.1 and 2 of 2015

N.Suresh

.. Petitioner

vs.

1. The Deputy Commissioner of Police,
Armed Reserve Police,
Pudupet, Chennai-600 002
2. The Inspector of Police,
Armed Reserve-I,
'A' Company, VR Platoon,
Pudupet, Chennai-600 002
3. Head Constable (Writer),
H.C.15670
'A' Company, VR Platoon,
Armed Reserve,
Pudupet, Chennai-600 002

... Respondents

* * *

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing the respondent to dispose of the petitioner's representation dated 01.07.2015.

* * *

For Petitioner : Mr.S.Mahendran

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader

O R D E R

The petitioner is a Grade II Police Constable. in Armed Reserve Police.

2. He was suffering from low back pain. The pain was not tolerable. He availed leave from 26.03.2015 to 29.03.2015. The illness continued and he suffered pain. He was under treatment in the Government Hospital, Thiruvallur, as Out-Patient. Hence, he obtained Sick Leave for a period of 30 days from 30.03.2015 to 28.04.2015.

3. He sought to extend the Sick Leave from 29.04.2015 to 25.05.2015 for another 27 days enclosing O.P.Chit and the Memo of the Inspector of Police, Thiruvallur Town Police Station. It is certified by the Government Doctor at the Tiruvallur Government Hospital. The same is evident from the Police Passport issued by the Inspector of Police, B1 Thiruvallur Town Police Station, Thiruvallur District, and the same is also enclosed at page No.22 of the typed set of papers.

4. Thereafter, he requested to extend the leave from 26.05.2015 to 09.06.2015 for 15 days based on the medical certificate issued by the Assistant Surgeon, Government Headquarters Hospital, Thiruvallur. He sent his request along with the said certificate through Registered Post with Acknowledgment Due on 04.06.2015 to the Inspector of Police, Armed Reserve I, the second respondent herein. But the second respondent refused to receive the same as per the detailed track events furnished by the postal department, which is enclosed at page No.31 of the typed set of papers.

5. While so, the first respondent issued the proceedings in Na.Ka.No.Vidupu 3(2)/2099/62519/2015, Pe.Na.Ka.Order No.1757/2015, dated 23.06.2015 declaring that the petitioner is a "Deserter", as he unauthorisedly absent from 26.05.2015 for 21 days. It is stated in the said proceedings that further disciplinary action would be taken against him.

6. In those circumstances, the petitioner made a representation dated 01.07.2015 to the first respondent explaining the above said facts and requesting to cancel the order dated 23.06.2015 declaring him as a Deserter.

7. Now he has filed this writ petition seeking a direction to the respondents to dispose of his representation dated 01.07.2015.

8. Heard the learned counsel for the petitioner. The learned counsel for the petitioner submitted that the leave application for 15 days from 26.5.2015 to 9.6.2015 enclosing the medical certificate sent on 4.6.2015 through registered post with acknowledgment due was refused to be received by the second respondent. This led to the issuance of the order dated 23.06.2015 by the first respondent declaring the petitioner as a "Deserter".

9. The learned counsel for the petitioner further submitted that a Government servant cannot refuse to receive a letter sent through post by any person including his subordinates. Had the letter been received and acted upon, the first respondent would not have issued the order dated 23.06.2015.

10. I find some force in the submission made by the learned counsel for the petitioner. In my view, action of the second respondent in refusing to receive the letter that was sent through registered post is deplorable.

11. If the second respondent received the letter that was sent by registered post and he refused to grant leave to the petitioner, then it is a different matter. But he cannot simply refuse to receive the letter sent through registered post with acknowledgment due.

12. The petitioner along with the letter enclosed the certificate issued by the Assistant Surgeon, Government Headquarters Hospital, Thiruvallur, recommending for 15 days leave from 26.05.2015 to 09.06.2015. When the petitioner was granted leave upto 25.05.2015, it is not fair to simply refuse to receive even the letter seeking leave.

13. If the second respondent entertained any doubt as to the genuineness of the illness of the petitioner, he could have requested for referring the petitioner to the competent Medical Board to find out the correctness of the illness.

14. Under these circumstances only, as rightly contended by the learned counsel for the petitioner, the first respondent issued the proceedings dated 23.06.2015 declaring the petitioner as Deserter. However, the learned counsel for the petitioner has now sought a narrow prayer permitting the petitioner to make a fresh representation enclosing all the materials to the first respondent seeking to cancel the order dated 23.06.2015 declaring the petitioner as Deserter and the first respondent may be directed to dispose of the said representation within a stipulated period.

15. In view of the narrow prayer made by the learned counsel for the petitioner and also taking into account the aforesaid facts, the petitioner is permitted to make a fresh representation, enclosing all necessary papers for the perusal of the first respondent, to the first respondent, requesting him to cancel the order dated 23.06.2015 declaring him as a Deserter, within a period of one week from the date of receipt of a copy of this order and the first respondent, on receipt of the said representation, is directed to dispose of the same within a period of four weeks from the date of receipt of the representation in the light of the facts, as stated above, and on merits and in accordance with law.

16. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

msk/gg

(Sd)
Assistant Registrar (CS-II)

True copy

Sub Assistant Registrar.

To

1. The Deputy Commissioner of Police,
Armed Reserve Police,
Pudupet,
Chennai-600 002.

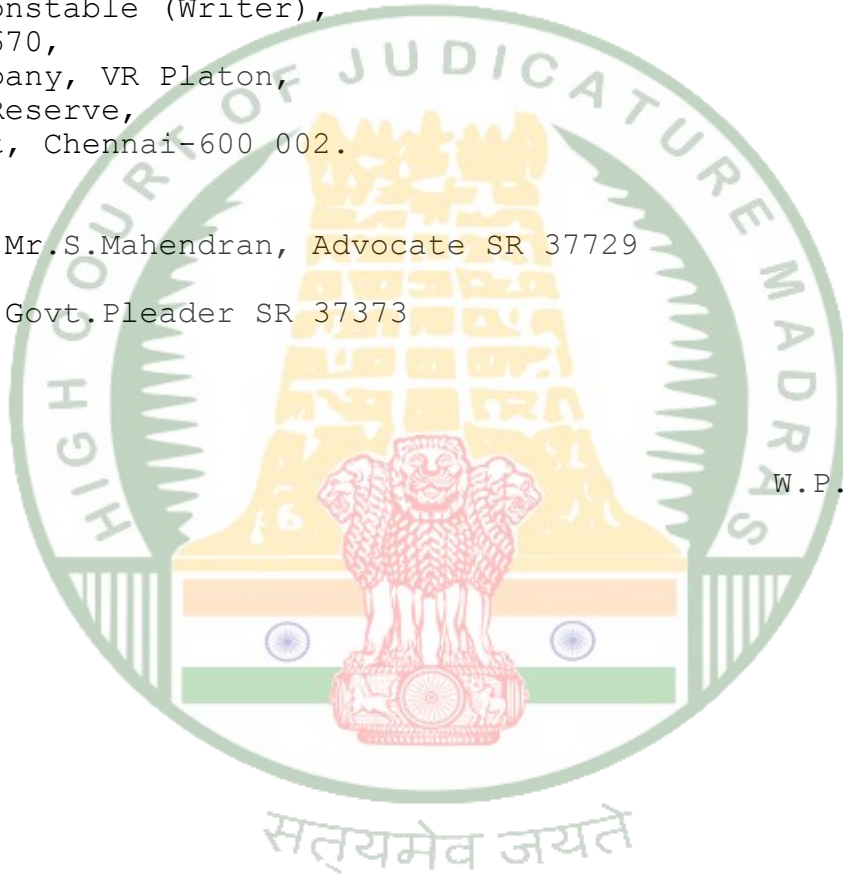
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'A' Company, VR Platoon,
Armed Reserve,
Pudupet, Chennai-600 002.

+ 1 cc to Mr.S.Mahendran, Advocate SR 37729

+ 1 cc to Govt.Pleader SR 37373

scd(co)
prk24/7



W.P.No.22009 of 2015

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