

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.T.RAJA

W.P.No.5768 of 2007(T)
(O.A.No.5436 of 2002)

D.Samson Anandan

... Petitioner

Vs.

The Superintendent of Police,
Cuddalore,
Cuddalore District.

... Respondent

This petition is came to be numbered by transfer O.A.No.5436 of 2002 from the file of Tamil Nadu Administrative Tribunal praying this Court to call for the records relating to the impugned order of the respondent in D.O.465 of 2002 SL/PR 195/2001 dated 15.04.2002 and to quash the same and to direct the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran

For Respondent : Mr.R.Govindasamy

Additional Government Pleader

ORDER

This writ petition has been filed by D.Samson Anandan, who was removed from service by impugned order dated 15.04.2002 passed by the Superintendent of Police, Cuddalore, filed O.A.No.5436 of 2002 before the Tamil Nadu Administrative Tribunal on the ground that not only punishment of removal from service is excessive and harsh but also disproportionate to the charge held proved against him.

2.The learned counsel for the petitioner assailing the impugned order would submit that when the petitioner was working as Grade-I Police Constable at Orathur Police Station, Sethiathope Sub Division, Cuddalore District, he was unable to attend duty from 03.06.2001 onwards as he was suffering from jaundice and taking native treatment. Since jaundice was at a advanced stage, he was bedridden. That apart, the petitioner has lost his wife in 1998 and his mother was also totally blind and also had no issues. There was no one in his family to inform his superior about his illness. Being

so, the Superintendent of Police, Cuddalore issued an order in Ma.Aa.No.759/2001 dated 29.06.2001 treating him as deserter since he was absent for more than 21 days and directed the petitioner to report to duty if so desire with proper explanation within 60 days of the date of desertion i.e., on 03.06.2001. As the petitioner was bedridden with severe liver infection on account of jaundice, he was unable to move to report for duty as per the said order. In view of that he was issued with charge memo PR 195/2001 dated 22.10.2001 under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules as he was absent for more than 21 days from 03.06.2001 without any leave or prior permission. An enquiry was conducted by the Deputy Superintendent of Police. The petitioner participated in the enquiry and submitted that he was absent on account of illness and hence, there was neither wilful absence nor deliberate intention of deserting duty. However, Enquiry Officer submitted a report stating that charges levelled against the petitioner was proved. Thereafter, copy of the enquiry report was served on the petitioner with sufficient time to give his explanations and he submitted his explanations stating that he was absent only on account of illness and there was no intention to desert the duty. However, though petitioner submitted his explanation, the respondent passed major penalty of removal from service on 15.04.2002. As the impugned order is illegal and unjust and the same is liable to be set aside.

3. The learned counsel for the petitioner would further submit that it is not the case of habitual absenteeism, hence, as petitioner due to jaundice was unable to attend duty from 03.06.2001, the respondent ought not to have taken a harsh decision to impose major penalty of removal from service. He further submitted that in a similar circumstance when one Mr.R.Ramesh who was also working in Police Department deserted the police force on three occasions and absented from duty for two occasions, interfering with the dismissal order, this Court in W.A.58 of 2011 dated 27.01.2011 [R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another] remanded the matter back to the authority i.e., the Superintendent of Police, Kancheepuram District to reinstate the matter interfering with quantum of punishment to the said R.Ramesh. The said order having been implemented, the same respondent department are bound by the same and therefore, they can't take a different discriminative treatment against the petitioner alone. More particularly, when the petitioner had not like R.Ramesh who repeatedly taken leave, some leniency should be shown as the petitioner is not having wife or children. He has also finally submitted that the Hon'ble Division Bench of this Court in W.A.58 of 2011 dated 27.01.2011 [R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another] given a direction to the respondent department not to pay backwages and prayed that in the same line, a similar direction may be given on the said quantum of punishment.

4.Mr.R.Govindasamy, learned Additional Government Pleader for the respondent heavily opposing the above prayer argued that it is not the case, where the contention of the petitioner to remand the matter back to the department can be done for more than one reason because the petitioner alleged that he was suffering from jaundice but had not produced any evidence whatsoever before the authorities and consequently, when he was issued with charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules on 22.10.2001 in PR 195/2001 calling upon him to submit his explanation, surprisingly he refused to give the same stating that he will file the written explanation only on the report of the enquiry officer that shows his reprehensible behaviour. In view of the peculiar circumstances alone, the respondent/Superintendent of Police herein taking note of the two facts that he has not reported for duty after served with order of desertion and also refused to give explanation, rightly came to the conclusion that such police man need not be allowed to serve in the police department. I fully agree with his submission.

5.Considering the submissions made on either side, this Court also taking note of the fact that the petitioner having not produced any documents as he suffered from jaundice and as a result, he was unable to move for duty and further, keeping in mind that the petitioner has not reported for duty after he was served with the order of desertion, this Court is of the considered view that the order passed by this Court in W.A.58 of 2011 dated 27.01.2011 [R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another] cannot be applied to this case. Therefore, the Writ Petition fails.

6.In the result, the Writ Petition is dismissed. No costs.

DP

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Superintendent of Police,
Cuddalore,
Cuddalore District.

+ 1 cc to Government Pleader SR 11855

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prk28/5

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