

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.7044 of 2014

and

M.P.No.1 of 2014

L.Sathiyaraj

... Petitioner

Vs.

1. The Director General of Police,
Mylapore, Chennai-600 004.
2. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.
3. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the impugned order in RC.No.191553/AP 2(1)/2013, dated 14.01.2014, confirming the order of the second respondent in C.No.C4/4109/2010, dated 11.03.2011 and order of the third respondent in PR.No.23/97, dated 08.10.1999 imposing the punishment of removal from service and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.A.Kalaiselvan

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the impugned order in RC.No.191553/AP 2(1)/2013, dated 14.01.2014, confirming the

order of the second respondent in C.No.C4/4109/2010, dated 11.03.2011 and order of the third respondent in PR.No.23/97, dated 08.10.1999 imposing the punishment of removal from service and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. It is the case of the petitioner that he was working as Police Constable in Thoothukudi District. Departmental proceedings were initiated against him under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules in P.R.No.23/97 for the following delinquency:

"Highly reprehensible conduct in having absented himself from duty without any leave or permission from 14.12.1996 and completed period of absent from duty for 21 days and thereby committed the offence of desertion as per P.S.O.88(1) Vol.1."

The desertion order dated 16.01.1997 was served on the petitioner on 31.07.1997 by the third respondent. In the said desertion order, it is stated that he availed casual leave on 20.10.1996 for 5 days and he had to join duty on 25.10.1996. However, he had not resumed duty from 25.10.1996 to 18.11.1996, during which period, he availed medical leave till 18.11.1996. Intimation was also given to the Inspector of Police by him. Since he had not recovered from illness, he extended his medical leave from 19.11.1996 to 13.12.1996 and also obtained Medical Certificate, which was sent to his officer. It is further stated that from 14.12.1996, without permission or leave, he absented for duty continuously for 21 days. Hence, on 08.01.1997, a report was sent to the Superintendent of Police by the Inspector, Control Room, Thoothukudi. Consequently, desertion order was issued to the petitioner, instructing him to appear before the Superintendent of Police within 60 days from 14.12.1996 along with sufficient explanation for his absence. Accordingly, on 08.02.1997, he appeared before the Superintendent of Police with sufficient records, but he was instructed by him to come again on 03.07.1997, on which date, he again appeared along with his Medical Certificate. The third respondent satisfied himself with his explanation and assured that he would be taken for duty and appropriate order would be passed in due course.

3. Thereafter, the third respondent instructed the petitioner to appear before the Enquiry Officer, the Deputy Superintendent of Police, Armed Reserve for oral enquiry, wherein no witness was examined in the presence of the petitioner and he was not allowed to cross-examine the prosecution witnesses. The petitioner stated before the Enquiry that no charge memo was issued to him and he was not aware of

the charge levelled against him. The petitioner's objection was not at all considered by the Enquiry Officer. However, the Enquiry Officer allowed the petitioner to produce Medical Certificate dated 02.07.1997 issued by the Siddha Medical Officer. Since the petitioner's request was not considered by the Enquiry Officer, he represented his grievance through further representation, dated 04.08.1997 to the third respondent. However, without considering the petitioner's contentions, final order was passed by the third respondent-Superintendent of Police, awarding the punishment of removal from service, vide order dated 08.10.1999.

4. As against the above punishment of removal from service, the petitioner filed O.A.No.7607 of 1999 before the Tamil Nadu Administrative Tribunal and after abolition of the Tribunal, the case was transferred to this Court and it was re-numbered as W.P.No.40575 of 2006. At the time of filing the said Original Application in O.A.No.7607 of 1999 before the Tribunal, the petitioner obtained stay and was reinstated into service on 21.01.2000. However, on 23.02.2010, this Court directed the petitioner to file an appeal to the second respondent-Deputy Inspector General of Police (appellate authority) on or before 31.03.2010 and thereby directed the second respondent to pass order on the appeal within three months with direction to continue the petitioner in service till the disposal of the appeal.

5. As per the direction of this Court, impugned order dated 11.03.2011 was passed by the second respondent, confirming the punishment of removal from service imposed by the third respondent, against which, the petitioner preferred revision petition before the first respondent. Since no order was passed on the revision petition, inspite of reminders, the petitioner filed W.P.No.29254 of 2013 before this Court, in which, on 29.10.2013, a direction was issued to the first respondent to dispose of his revision petition, dated 02.05.2011 within 12 weeks from the date of receipt of a copy of the order. Pursuant to the said direction of this Court, since no order was passed by the first respondent, the petitioner sought information under the RTI Act through his counsel, for which, the petitioner received a reply stating that the order is yet to be passed on his revision petition. Thereafter, the first respondent passed impugned order, dated 14.01.2014 rejecting the revision/review petition, against which, the present Writ Petition is filed for the relief stated supra.

6. Heard both sides and perused the materials available on record.

7. Learned counsel appearing for the petitioner submitted that the punishment imposed on the petitioner is disproportionate to the charge levelled against him. Hence, according to the learned counsel for the petitioner, by quashing the impugned orders, a direction may be given to the respondents to reinstate the petitioner into service and to grant all consequential service and monetary benefits. Reliance was placed by the learned counsel for the petitioner upon the judgment rendered by the Division Bench of this Court in W.A.No.1608 of 2011, dated 26.02.2013, wherein in an identical situation, a Division Bench of this Court, by relying upon the judgment of the Supreme Court reported in 2004 (4) SCC 560 (Shri Bhagwan Lalarya Vs. Commissioner of Police), set aside the dismissal order and remitted back the matter to the respondent therein to consider the issue regarding the proportionality of the punishment and to pass fresh orders. In this regard, learned counsel appearing for the petitioner has also invited the attention of this Court to the judgment passed by the Division Bench of this Court in W.A.No.58 of 2011, dated 27.1.2011 (R.Ramesh Vs. the Deputy Inspector General of Police and others).

8. The above cited judgments rendered by the Division Bench of this Court are squarely applicable to the facts of the present case. In the light of the above referred to judgments, I am of the opinion that the punishment imposed on the petitioner is disproportionate to the charge levelled against him. Hence, the impugned orders are liable to be quashed.

9. Accordingly, the impugned orders are quashed. The Writ Petition is allowed. The matter is remitted back to the disciplinary authority viz., the third respondent herein (Superintendent of Police) to re-consider the same with regard to the quantum of the punishment imposed on the petitioner and to pass fresh orders within a period of six weeks from the date of receipt of a copy of this order. It is also made clear that in the event the quantum of punishment is reduced, the petitioner shall not claim back-wages for the period in which he has not performed his duty. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Director General of Police,
Mylapore, Chennai-600 004.
2. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.
3. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

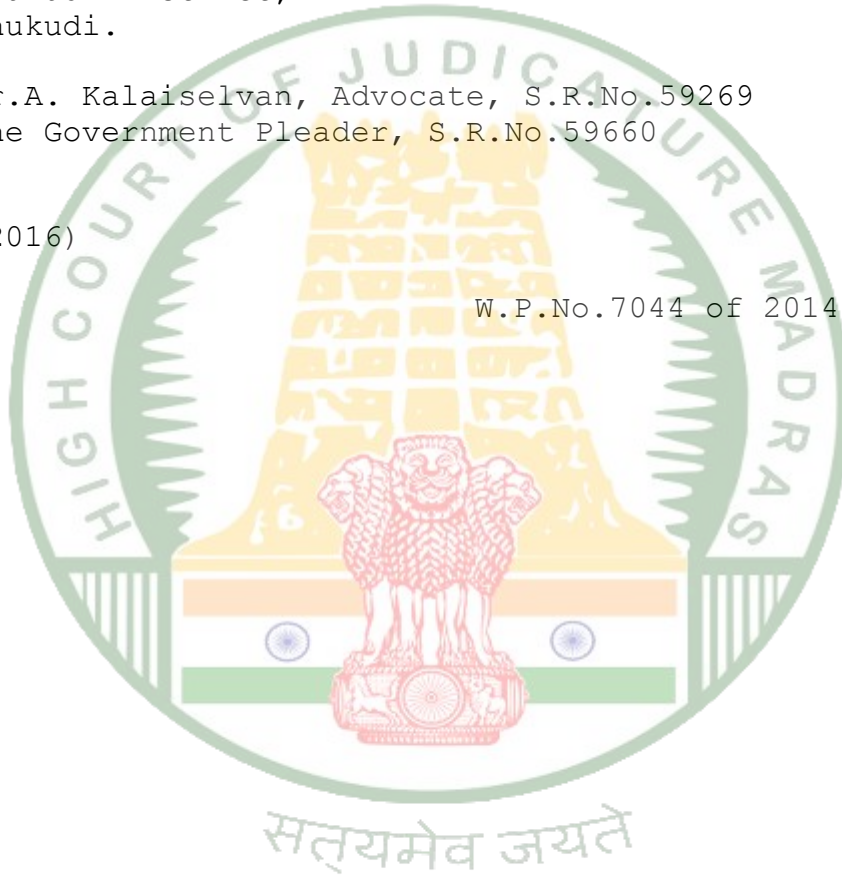
+2cc to Mr.A. Kalaiselvan, Advocate, S.R.No.59269

+1cc to the Government Pleader, S.R.No.59660

sai (CO)

md (9/11/2016)

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