

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.24940 of 2011 and
M.P.No.1 of 2011

V.Sekar

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep by Secretary to Government,
Home(Police.VI) Department,
Secretariat, Chennai 600 009.

2.The Direct General of Police,
Chennai 600 004.

3.The Commissioner of Police,
Salem City, Salem.

4.The Deputy Commissioner of Police, Law and Order,
Salem City Police, Salem.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the orders (1) G.O.(2D) No.358, Home (Pol.VI) Department, dated 19.06.2008 of the first respondent (2) Pro.Rc.No.952/232411/AP.2 (2)/2005 dated 23.12.2005 of the second respondent (3) Pro.C.No.H1/Appeal No.35/2005 dated 19.09.2005 of the third respondent and (4) F.Order in PR.36/H1/2005 dated 07.09.2005 of the fourth respondent, to quash the same and issue consequential directions to the respondent to reinstate the petitioner in service as Head Constable with all benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.S.Gunasekaran

Additional Government Pleader

O R D E R

Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader

appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the orders (1) G.O. (2D) No.358, Home (Pol.VI) Department, dated 19.06.2008 of the first respondent (2) Pro.Rc.No.952/232411/AP.2 (2)/2005 dated 23.12.2005 of the second respondent (3) Pro.C.No.H1/Appeal No.35/2005 dated 19.09.2005 of the third respondent and (4) F.Order in PR.36/H1/2005 dated 07.09.2005 of the fourth respondent, to quash the same and issue consequential directions to the respondent to reinstate the petitioner in service as Head Constable with all benefits."

3. The case of the petitioner is as follows:

According to the petitioner, while he was working as Police Constable, Grade I, in Shevvapet Police Station, Salem City Police, Salem, from 26.09.2003, he was deputed on 12.02.2005, to Alcoholic Analysis Training from 07.03.2005. According to him, at that time, he had suffered from Chronic Ulcer and Piles and therefore, he could not attend the training. Therefore, he had to undergo medical treatment till 19.05.2005, for about 74 days. After recovery from the illness, the petitioner reported for duty with medical fitness certificate on 20.05.2005. However, he was not allowed to join the duty.

4. While matter stood thus, the fourth respondent had declared the petitioner as deserter vide proceedings dated 25.05.2005 and a disciplinary proceedings was initiated against him under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules, dated 21.07.2005. An enquiry was conducted and in the enquiry, the petitioner submitted his defense stating that he was constrained to proceed on medical leave during the relevant period due to his illness.

5. However, an enquiry report was submitted holding the charges proved. On the basis of the enquiry report, the third respondent viz., the disciplinary authority imposed a penalty of compulsory retirement on the petitioner vide proceedings dated 07.09.2005. An appeal was preferred against the order and the same was rejected by proceedings dated 19.09.2005. The petitioner further preferred a review petition before the second respondent and the same was also rejected by an order dated 23.12.2005. Thereafter, the petitioner preferred a petition to the Government-first respondent herein. However, the first respondent vide G.O.(2D) No.358, Home (Pol.VI) Department, dated 19.06.2008, rejected the petition. All these orders are put to challenge in the present writ petition.

6. The learned counsel for the petitioner, at the outset, would submit that when the petitioner was willing to rejoin on 20.05.2005, there was no justification on the part of the authorities concerned to issue charge sheet for unauthorized absence or desertion on the petitioner. The petitioner had valid explanation for his absence during the relevant period which was not properly considered by the authorities. Moreover, he would submit that the authorities who passed the order of imposing a penalty and confirming the same, have not appreciated the defense put forth by the petitioner, in proper perspective, particularly, the disciplinary authority had passed a non-speaking order which is contrary to the scheme of the disciplinary rules applicable to the petitioner.

7. The learned counsel would further contend that in any event, the penalty imposed on the petitioner viz., compulsory retirement is extremely harsh and the same does not commensurate to the gravity of the misconduct alleged against the petitioner. The learned counsel would also rely on the order passed by this Court in W.P.No.23999 of 2012, dated 05.09.2017, wherein this Court in similar circumstances, has modified the penalty of removal from service in that case and substituted the punishment of compulsory retirement. The relevant portion of the order passed by this Court in Paragraph No.7 is extracted below:-

"7. This Court after considering the rival submissions of the learned counsel and after perusing the materials and pleadings placed on record is of the view that although the petitioner was imposed with minor punishment earlier for minor lapses, the same cannot be taken into consideration for the purpose of imposition of harsh penalty of removal from service. This is more so, considering long years of service put in by the petitioner since 1976. A penalty of removal from service will not only cause harm to him but also to his family members and therefore it has to be seen whether such harsh penalty of removal from service would be the only option to be imposed on the petitioner in the circumstances of the case. The order of compulsory retirement is also one of the major penalties enumerated in the Rules and therefore, in the fitness of things, it would be appropriate that the penalty of removal from service is to be substituted by penalty of compulsory retirement, since the retention of the petitioner in Police force is not in public interest."

8. However, the learned counsel would submit that in this case the order of compulsory retirement was tantamount to

dismissal from service, since the petitioner was only 30 years old at the time of imposition of the penalty. The learned counsel would also rely on yet another decision passed by this Court in W.P.No.30199 of 2012 dated 23.08.2017, this Court in the said decision had relied on the order passed by the Hon'ble Division Bench of this Court holding that the removal from service for desertion is a disproportionate penalty. This Court after appreciating the orders passed by the Hon'ble Division Bench and modified the penalty of removal from service by setting aside the same and directed the authorities to impose the lesser penalty. The operative portion of the order which passed the above decision is extracted below:-

"4. Learned counsel appearing for the petitioner would at the outset submit that as regards the proportionality of punishment meted out to the petitioner, the same is covered directly by the order passed by the Division Bench of this Court in W.A.No.58 of 2011 dated 27.01.2011. The operative portion of the order is extracted below:

"After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge leveled against him and it is in fact, shocking the conscience of this court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority viz., the second respondent herein, to reconsider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event, the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed."

5. Learned counsel for the petitioner would also refer to the other Division Bench decision of this Court dated 26.02.2013 in W.A.No.1608 of 2011 in regard to the proportionality of punishment in respect of desertion of service by the uniformed personnel. Following the Division Bench decision, according the

learned counsel, series of decisions have been passed by the learned single Judges of this Court. Two such orders have been referred to, one was passed in W.P.No.16415 of 2009 dated 19.06.2011 and other on 07.10.2016 in respect of W.P.No.34535 of 2016. Learned single Judges of this Court have followed the order passed by the Division Bench in W.A.No.58 of 2011 dated 27.01.2011. Learned counsel would submit that in view of series of decisions passed by this Court, the same order may be passed in the present case also.

6. Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents and also resisted the claim of the petitioner. However, he has not disputed the decisions passed by this Court as stated supra.

7. In the said circumstances, this Court is of the view that the order passed by the Division Bench in W.A.No.58 of 2011 dated 27.01.2011 squarely applies to the facts and circumstances of the case.

8. In the said circumstances, the impugned orders of removal from service by the disciplinary authority and the confirmation by the appellate authority dated 18.06.2012 and 11.09.2012 respectively are set aside and the matter is remanded back to the respondents to reconsider the issue of imposing lesser penalty by reinstating the petitioner forthwith. It is also made clear that the petitioner is not entitled to backwages for the period in question on the ground of No work No pay. The respondents are directed to pass orders on the above stated lines within a period of two months from the date of receipt of a copy of this order."

The learned counsel for the petitioner would therefore contend that the similar view may be taken in the present matter also.

9. Upon notice, the learned Additional Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is stated that the petitioner suffered from Chronic Alcoholic Syndrome and therefore he was not a fit person to be retained in the police service. When the petitioner was sent for training for rehabilitation, he had abandoned the training and claimed that he had taken treatment for certain illness. Therefore, an enquiry was held and on the basis of the finding of the enquiry, the petitioner was justly punished. The punishment imposed on the petitioner was justified in the circumstances of the case. Therefore, the same does not call for interference.

10. This Court has considered the rival submissions of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. No doubt that the petitioner had committed an act of misconduct by abandoning the training for more than 70 days. However, it has to be seen that the petitioner was willing to report for duty on 20.05.2005 along with the medical certificate. In such circumstances, the authority ought to have taken a lenient view in the matter in not removing the petitioner from service by imposing a penalty of compulsory retirement.

11. As rightly contended by the learned counsel for the petitioner, in the case of the petitioner, the punishment of compulsory retirement amounted removing him from service, as no service benefits would be made available to him on compulsory retirement. This Court is in agreement with the contention raised by the learned counsel appearing for the petitioner that the order of compulsory retirement is nothing but removal from service and such punishment is found to be too harsh for misconduct of desertion by this Court earlier by Single Judge also by the Division Bench. Moreover, in this case, the petitioner himself was willing to report for duty immediately on 20.05.2005 and such readiness on the part of the petitioner was not taken into consideration by the authorities while imposing the penalty on the petitioner.

12. In the above circumstances, this Court is of the view that it is a fit case that the imposition of penalty of compulsory retirement is liable to be interfered with. While holding so, this Court is of the view that the denial of backwages to the petitioner from the date of his compulsory retirement till the date of reinstatement is a sufficient penalty for proved misconduct against the petitioner. It is to be noted that the petitioner has already lost more than 11 years of service and the punishment which is proposed to be imposed on the petitioner by this Court is more than sufficient in the circumstances of the case.

13. In the above circumstances, all the impugned orders i.e., G.O.(2D) No.358, Home (Pol.VI) Department, dated 19.06.2008, Pro.Rc.No.952/232411/AP.2(2)/2005 dated 23.12.2005, Pro.C.No.H1/Appeal No.35/2005 dated 19.09.2005, F.Order in PR.36/H1/2005 dated 07.09.2005 are set aside and the petitioner shall be reinstated in service without backwages and however he shall be entitled to all other benefits like continuity of service etc. The direction shall be complied with by the respondents by passing suitable orders on the above terms, within a period of three months from the date of receipt of a copy of this order.

14. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home(Police.VI) Department,
Secretariat, Chennai 600 009.
- 2.The Direct General of Police,
Chennai 600 004.
- 3.The Commissioner of Police,
Salem City, Salem.
- 4.The Deputy Commissioner of Police, Law and Order,
Salem City Police, Salem.

+1cc to Mr.M.Ravi, Advocate, S.R.No.78810

+1cc to the Government Pleader, S.R.No.78577

सत्यमेव जयते

W.P.No.24940 of 2011

(CO)

RRK(06/12/2017)

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