

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.30199 of 2012

K.Kumar

.. Petitioner

Vs.

1. The Commandant,
TN Special Police Battalion
(Regimental Centre),
Avadi, Chennai - 54.

2. The Deputy Inspector General
of Police, Armed Police,
Kilpauk, Chennai - 10.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records of respondents 1 and 2 in connection with the impugned order passed in Na.Ka.No.A4/PR/03/2011 dated 18.06.2012 and RC No.C1/Appeal 09/2012 daed 11.09.2012 respectively and quash the same.

For Petitioner .. Mr.M.Muthappan

For Respondents.. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

"to issue a writ of certiorari to call for the records of respondents 1 and 2 in connection with the impugned order passed in Na.Ka.No.A4/PR/03/2011 dated 18.06.2012 and RC No.C1/Appeal 09/2012 daed 11.09.2012 respectively and quash the same."

2.The petitioner was directly recruited as Grade II Police Constable through the selection conducted by the Tamil Nadu Uniformed Services Recruitment Board in the year 2002. On being selected, he was appointed on 01.12.2003. Thereafter, he was

posted to various places of work. While working as Grade II Police Constable, a charge memo was issued on 11.08.2011 charging him of desertion having absented from duty with effect from 20.03.2011 continuously for a period of 21 days. In response to the charge memo, an explanation was offered by the petitioner stating that his grandfather had died in his native place and therefore, he had to rush to his native place. The petitioner also seems to have submitted medical certificate for the said period of absence. However, the explanation was not considered and an enquiry was held and enquiry officer held the charges proved and on the basis of which, the disciplinary authority passed an order on 18.06.2012 imposing the punishment of removal from service. According to the petitioner, the enquiry was conducted ex parte as he could not participate due to his illness and was taking treatment in his native place.

3.A detailed appeal was preferred against the order of removal from service and the same came to be rejected by the appellate authority on 11.09.2012. The orders passed by the disciplinary authority and the appellate authority are put to challenge before this Court.

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 to 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.

9.The writ petition stands disposed of on the above terms. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The Commandant,
TN Special Police Battalion
(Regimental Centre),
Avadi, Chennai - 54.

2.The Deputy Inspector General
of Police, Armed Police,
Kilpauk, Chennai - 10.

+1 Cc to Ms.M. Muthappan, Advocate sr 60853.

+1 CC to Govt. Pleader sr 61630.

GJ(CO)
sp(21/09/2017)

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