

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.24356 of 2015

Tmt.M.Hemalatha

.. Petitioner

Vs

1.The Director General of Police,
Mylapore, Chennai - 4.

2.The Additional Director General of Police,
Armed Police, Chennai - 10.
(i/c) Deputy Inspector General of Police,
Armed Police, Chennai - 10.

3.The Commandant,
Tamil Nadu Special Police XVth Battalion,
Vellore @ Avadi,
Chennai - 54.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the proceedings of the first respondent herein namely the Director General of Police, Mylapore, Chennai - 4, bearing Na.Ka.No.006351/Ma.Mu.4(1)/2013, dated 16.12.2013, proceedings bearing PR No.06/12, dated 17.08.2012, of the Commandant, 15th Battalion, Tamil Nadu Special Police, Avadi @ Vellore, Chennai-54, the proceedings of the second respondent herein namely the Additional Director General of Police, Armed Police, Chennai -10, (i/c) Deputy Inspector General of Police, Armed Police, Chennai - 10, bearing Rc.No.C1/Appeal 14/12, dated 02.11.2012, quash all the three proceedings and consequently direct the respondents 1 to 3 herein to reinstate the petitioner into service as Grade II Police Constable in the Tamil Nadu Special Police, Vellore @ Avadi, Chennai -54, with effect from 10.07.2011, and to treat the period of service from 10.07.2011 to date of rejoining duty as one of duty for all purposes with attendant, service and monetary benefits and continuity of service for the above said period together with back wages for the period from 10.07.2011 to date of joining duty.

For petitioner : Mr.S.Arivazhagan

For Respondents : Mr.R.A.S.Senthilvel, AGP

O R D E R

Having suffered an order of removal from service, the petitioner has filed this writ petition.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Grade-II Women Police Constable in the Tamil Nadu Special Police XVth Battalion, Vellore @ Avadi, Chennai, on 21.01.2011 and she was allotted with PC No.228. Subsequent to her appointment, she was transferred and posed under the control of the Principal, Temporary Police Training School, Villupuram. While she was working in the said place, since her mother fell sick, she left from her work place on 06.05.2011 and gone to Chennai to take care of her mother, without informing the superior authorities and she was absent for about 21 days. Subsequently, the Principal, Temporary Police Training School, Villupuram, issued a desertion order dated 15.06.2011 informing her that if she intends to return for work within a period of 60 days from 06.05.2011, she will have to appear in person and explain the circumstances which made her to leave the work place through representation. Thereafter, it is stated, she appeared in person on 28.06.2011 and submitted her representation. Subsequent to this, she was taken back to duty, however, the Principal, Temporary Police Training School, directed the authorities concerned to initiate disciplinary action against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, 1955, for the charge of deserting the work place.

3. In view of the above, the Deputy Commandant-2, 15th Battalion, Vellore, was appointed as the Enquiry Officer, who, on examining the oral and documentary evidence, submitted his report dated 30.06.2012 holding that the charge levelled against the petitioner as proved. Therefore, the third respondent, vide his proceedings dated 17.08.2012, imposed the punishment of removal from service on the petitioner. Subsequent to the order of removal, though she had preferred appeal petition, the same dismissed by the appellate authority on 02.11.2012. Aggrieved against this, when mercy petition was filed, the same was also dismissed by the second respondent on 16.12.2013.

4. Therefore, it is contended by the learned counsel for the petitioner that the action of the respondents 1 to 3 in imposing the punishment of removal from service is highly arbitrary, illegal, unjust and against the principles of natural justice. It is further contended that the Enquiry Officer

failed to take note of the extenuating circumstances which made the petitioner to absent herself from duty and therefore, the finding of the enquiry officer is a perverse one and hence, the same is liable to be set aside.

5. Taking support from the judgment of the Hon'ble Apex Court in the case of Chairman-cum-Managing Director, Coal India Limited V. Mukul Kumar Choudhuri and others [(2009) 8 MLJ 460 (SC)], learned counsel for the petitioner submitted that the Apex Court, while considering the similar issue held that removal from service of employee for misconduct of absenting without leave will be a harsh one and denial of back wages would be sufficient punishment. Therefore, in the present case, he pleaded that the punishment of removal from service for absenting from duty against the petitioner is highly exorbitant one and disproportionate to the charge levelled against her.

6. By relying upon one another judgment passed by this Court in W.P.No.30199 of 2012 (K.Kumar v. the Commandant and another), it is stated that in a similar circumstances, for the charge of absenting from duty, this Court, while modifying the punishment of removal from service, remanded the matter back to the respondents therein to reconsider the issue by imposing lesser penalty by reinstating the petitioner therein forthwith. Therefore, on the basis of the above said judgments, he sought for quashing the impugned proceedings passed by the respondents.

7. Per contra, learned Additional Government Pleader, by filing a detailed counter affidavit, submitted that while the petitioner was undergoing training programme at Police Recruitment School, Villupuram, from 31.01.2011, she was absented herself without obtaining leave or prior permission from her superiors continuously for more than 21 days from 06.05.2011. Therefore, she was treated as deserter by the Principal, Temporary Police Recruitment School, Villupuram, vide his proceedings dated 15.06.2011. After receiving her explanation, when she was taken back for duty, again, she absented herself from duty and left the training campus without obtaining leave or prior permission from her superiors continuously for more than 21 days from 10.07.2011. Therefore, she was treated as deserter vide proceedings dated 29.11.2011 and a copy of the same was served on her on 14.12.2011. Again, she was given an opportunity to appear before the Principal, Police Recruitment School, Coimbatore, within a period of 60 days, but, she did not appear, hence, the above said desertion order was confirmed by the third respondent.

8. In his further submissions, by referring to the appointment order, it is submitted that the petitioner was clearly instructed in the appointment order that she will be placed on probation for a period of one year with a continuous

period of two years from the date of her joining for the training, and if any dissatisfaction of her duty in the probation period, she will be removed from service. It is also further stated that if she fails to report for training, the same would amount to removal from service. Therefore, in view of the terms mentioned in the appointment order, since the petitioner absented herself from duty for about 160 days continuously from 10.07.2011, she was rightly removed from her services, therefore, the writ petition filed by the petitioner questioning such an impugned order passed by the respondents is liable to be dismissed.

9. I fully agree with the above said submissions. Initially, the petitioner was appointed on 21.01.2011, as Grade-II Women Police Constable, and as could be seen from appointment order, she will be placed on probation for a period of one year from the date of her joining for the training. If any dissatisfaction for duty in probation period, she will be removed from service and it is further stated that if she fails to report for training, action will be taken to remove her from the services. While such being categorical condition, the petitioner was absented herself without obtaining prior permission from her superiors continuously for more than 21 days from 06.05.2011 and therefore, she was issued with a desertion order on 15.06.2011 by the Principal, Temporary Police Recruitment School, Villupuram. She was also given an opportunity to appear before the said authority within 60 days from the date of her absence. Thereafter, she appeared before the said authority on 28.06.2011 and subsequently, she was also taken back for duty on the same day itself.

10. While she was undergoing police training in the Police Recruitment School, Coimbatore, as back squad, again, she absented herself and left the training campus without obtaining leave or prior permission from her superiors continuously for more than 21 days from 10.07.2011 and therefore, she was again issued with a desertion order on 29.11.2011. A copy of the same was also served on her on 14.12.2011. The petitioner was again given an opportunity to appear before the Principal, Police Recruitment School, Coimbatore, within 60 days from the date of her absence, but, this time, she did not appear before the said authority and she continued to remain absent for more than 160 days from 10.07.2011, that too when she was under the probation period.

11. Thereafter, she was departmentally proceeded by appointing the Enquiry Officer, who, on examining the oral and documentary evidence, held that the charge of absence from duty without obtaining prior permission from the superiors, stands proved. Thereafter, she was removed from service and as stated

above, when she preferred an appeal petition and again mercy petition, the same were also dismissed by the second respondent. Therefore, the judgments cited by the learned counsel for the petitioner stated supra cannot be made applicable to the facts of the present case, as the petitioner in the present case, who was undergoing training, did not even complete her probationary period.

12. Thus, for the reasons stated above, the writ petition fails and the same is dismissed as devoid of any merit. No Costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General of Police,
Mylapore, Chennai - 4.
2. The Additional Director General of Police,
Armed Police, Chennai - 10.
(i/c) Deputy Inspector General of Police,
Armed Police, Chennai - 10.
3. The Commandant,
Tamil Nadu Special Police XVth Battalion,
Vellore @ Avadi,
Chennai - 54.

+1 cc to Mr. Arivazhagan Advocate sr 72484
+1 cc to the Govt Pleader High Court Madras sr 72606,

W.P.No.24356 of 2015

aa30/10/2017