

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.6706/2013

S.Ravichandran

.. Petitioner

Versus

1.The Director General of Police
Mylapore, Chennai 600 004.

2.The Commissioner of Police
Egmore, Chennai 600 008.

3.The Deputy Commissioner of Police
Central Crime Branch, Chennai.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus calling for the records connected with proceedings issued in Rc.No.54467/AP.3[2]/2011 dated 24.09.2012 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.P.T.Perumal

For Respondents : Mr.K.Dhananjayan, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

2.The petitioner made a challenge to the order of dismissal from service passed by the 3rd respondent by way of an appeal before the 2nd respondent, who has dismissed the same and the petitioner filed a revision before the 1st respondent and the order of dismissal from service was modified to one of compulsory retirement and challenging the legality of the order, has filed the present writ petition.

3.The petitioner, in the affidavit filed in support of this writ petition would aver among other things that he joined the

Tamil Nadu Police Service as a Police Constable on 01.08.1984 and got his promotion as Head Constable and due to his ill-health, he was forced to apply for medical leave from 07.12.2007 for a period of thirty days and he has produced necessary medical certificate to that effect.

4.The petitioner, on expiry of the leave period, had appeared before the Inspector of Police, Sastri Nagar Police Station and the Writer attached to the said Police Station, had informed the petitioner that he should appear before the Medical Board and as soon as the Assessment Report is received from the Medical Board with regard to the fitness, he will be allowed to join.

5.The petitioner would further aver that in the General Diary of the said Station, the said fact has been recorded and however, all of a sudden, without any notice, he was issued with a Desertion Order dated 31.05.2008 by the 3rd respondent. The petitioner was also issued a charge memo by the 3rd respondent under section 3[b] of the Tamil Nadu Police Services [Discipline and Appeal] Rules, alleging that he has unauthorisedly absented himself from 05.01.2008. The petitioner submitted his explanation and not satisfied with the same, domestic enquiry was conducted and the Enquiry Officer has found that the charge framed against the petitioner, has been proved and it was accepted by the 3rd respondent / Disciplinary Authority who has passed the order of dismissal from service and the appeal filed by the petitioner before the 2nd respondent, has also ended in dismissal and in the review petition filed before the 1st respondent, the punishment was modified to one of compulsory retirement.

6.Mr.P.T.Perumal, learned counsel appearing for the petitioner has drawn the attention of this Court to the additional typed set of documents and would submit that as per the entry made in the Attendance Register dated 05.01.2007 maintained by the said Police Station, the petitioner was on medical leave and the 3rd respondent, vide proceedings dated 30.11.2007 addressed to the Dean of Royapettah Government Hospital, Chennai-600014, about the appearance of the concerned police personnel for medical examination with regard to the Medical Fitness Certificate and the name of the petitioner has been included in Serial No.1. It is the further submission of the learned counsel for the petitioner that Dr.M.Chandra, Medical Officer attached to the Government Estate Dispensary attached to the Government General Hospital, had also issued the Medical Certificate stating that the period of absence from duty, viz., from 07.12.2007 to 05.01.2008, is absolutely necessary for the restoration of the health of the petitioner and accordingly, the petitioner availed medical leave. Insofar as the non-appearance before the Medical Board is concerned, it

is an admitted position that unless the petitioner receives any notice or necessary communication from the Medical Board to physically appear before them on a particular date, he is not expected to appear before them and admittedly, no such communication has been sent to him. It is also the further submission of the learned counsel appearing for the petitioner that the petitioner was suffering due to illness "colon" and therefore, he was forced to be on rest on account of the medical advise and before declaring him as a deserter, the mandate cast upon the 3rd respondent under Police Standing Order 95, has not been complied with and in any event, the order of dismissal from service passed by the 3rd respondent as confirmed by the 2nd respondent and modified by the 1st respondent to one of compulsory retirement, is highly disproportionate to the act of delinquency on the part of the petitioner and therefore, prays for appropriate orders.

7 The learned counsel for the petitioner, in support of his submissions, has placed reliance upon the common order passed by this Court dated 02.07.2012 made in WP.Nos,93/2008, 27942/2004, 21740/2008 and 2471/2007 as well as the decision of a Division Bench of this Court reported in 2013 [3] MLJ 228 [S.Shanmugarajan Vs. State of Tamil Nadu, rep.by the Director General of Police, Mylapore, Chennai and others].

8.Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents, has invited the attention of this Court to the counter affidavit and would submit that though the petitioner went on thirty days medical leave, it expired on 05.01.2008 and the petitioner failed to report for duty and unauthorisedly, remained absent for over sixty days and the said act of desertion was also informed vide proceedings dated 31.05.2008 and the petitioner has failed to offer plausible or acceptable explanation as to his long period of absence despite the fact that he is a member of disciplinary force, viz., The Tamil Nadu Police. It is the further submission of the learned Special Government Pleader that the petitioner in his service career, so far availed 246 days and it is also an accepted fact that he is not interested in performing his duty or task assigned to him and taking into consideration of the relevant facts and circumstances, the 3rd respondent / Disciplinary Authority has reached the conclusion of passing an order of dismissal from service and the Appellate Authority / 2nd respondent has confirmed the same. However, the Revisional Authority, viz., the 1st respondent herein, based on sympathetic consideration, has modified the punishment to one of compulsory retirement so that the petitioner cannot suffer a stigma. In sum and substance, it is the submission of the learned Special Government Pleader that the conclusion reached by the

Disciplinary Authority may not warrant interference by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India unless the findings are perverse or based upon 'no evidence' and in the case on hand, the petitioner was given reasonable opportunity to participate in the domestic enquiry and was afforded with full opportunity to defend himself against the charge framed against him and after affording all fair and reasonable opportunity only, he has been imposed with the said punishment and hence, prays for the dismissal of this writ petition.

9.This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10.The facts of the case would disclose that the petitioner was issued with a Medical Certificate by Dr.M.Chandra, for the period between 07.12.2007 and 04.01.2008 and from 05.01.2008 onwards, the petitioner did not report for duty. The 3rd respondent, vide proceedings dated 31.05.2008 has declared the petitioner as deserter. The primordial submission made by the learned counsel appearing for the petitioner is that the 3rd respondent, while declaring the writ petitioner as a deserter, has failed to follow 95 of the Police Standing Order and also the Circular Memorandum in RC.No.243881/AP.I[1]/90 dated 30.10.1990, issued by the Office of the Director General of Police, Chennai-4, signed by the Inspector General of Police [Law and Order] and alternately, it is the submission of the learned counsel for the petitioner that in any event, the order of dismissal from service modified by the 1st respondent with one of compulsory retirement from service, is highly disproportionate to the delinquency on the part of the petitioner.

11.It is relevant to extract 95 of the Police Standing Order as well as the Circular Memorandum dated 30.10.1990:-

"95.Desertion:-[1] Absence without leave for 21 days complete as the offences of desertion, after which the officers name shall be invariably struck off from the date of absence.
[G.O.186, Judicial, 21st January 1984]

[2] An application for reinstatement from an officer who has been struck off as deserter shall not be entertained unless it reaches the Superintendent of an officer of equal rank under who the subordinate officer was serving within two months from the date of the commencement of the absence without leave. The Superintendent or the corresponding officer of equal rank, as the case may be, shall no reinstate a deserter [a] until the deserter has attends in person which he should do not later than the date prescribed by the officer dealing with the case, and has given his explanation for his absence without leave and [b]

unless the Superintendent or an officer of equal rank, as the case may be, is satisfied after such enquiry as may be necessary that the case deserves consideration. At the end of the two months, if no application for reinstatement is received and if the whereabouts of the deserter are not known, the officer dealing with the case will record in writing the reason for his being satisfied that it is not reasonably practicable to give the deserter an opportunity of showing cause against his dismissal and then confirm the dismissal. In other cases, a charge should be framed and the procedure prescribed in Order No.80 complied with, before confirming the dismissal or reinstating the deserter with or without punishment."

Circular Memorandum dated 30.10.1990:-

Rc.No.243881/AP.I[1]/90 Office of the
Director General of
Police, PB No.60,
Madras-4.
Dated 30.10.90

Circular Memorandum

Sub: P.Rs. In Desertion cases after taking delinquents for duty - Certain instructions - Issued.

While disposing of appeals/reviews from Head Constables to Police Constables, I noticed that the Superintendents of Police are awarding the maximum penalty of dismissal or removal from service in desertion cases, after taking them for duty. This is unfair and cannot be justified.

2 When a Head Constable / Police Constable is struck off as a deserter, notice is issued directing the delinquent to appear before the Superintendent of Police within two months. When he appears, Superintendent of Police should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. If Superintendent of Police is not satisfied, the delinquent should not be taken for duty. If on the other hand, Superintendent of Police is satisfied, he can be taken for duty. In such cases, while disposing of P.Rs., punishment of removal/dismissal from service or compulsory retirement should not be given. Any other punishment is acceptable. This guideline may be kept in view, while dealing with the desertion cases.

3 Please acknowledge in the proforma enclosed.

Sd/-

Inspector General of Police
{Law and Order}"

12.A perusal of the materials placed before this Court, especially the counter affidavit filed on behalf of the respondents, would clearly disclose that the mandatory duty cast upon the 3rd respondent in terms of the Police Standing Order 95 as well as the Circular Memorandum dated 30.10.1990 issued by the 1st respondent, have not been followed. The 3rd respondent, before declaring the petitioner as a deserter, ought to have issued a notice and after he appeared and convinced about his absence from duty, it was opened to the 3rd respondent to take appropriate decision, either to treat him as a deserter or to condone his absence on account of furnishing of proper and sufficient medical certificate. Admittedly, the 3rd respondent has failed to follow the said procedure. It is also not in serious dispute that the petitioner has also undergone a surgery regarding stomach ailment and was hospitalised.

13. Therefore, this Court is of the considered view that the order of modification of the punishment of dismissal from service to one of compulsory retirement by the 1st respondent requires modification. It is the alternate submission of the learned counsel appearing for the petitioner that even for the sake of argument, the petitioner is guilty of charge framed against him, the order of punishment, is highly disproportionate to the act of delinquency and placed reliance upon the judgment rendered by the Division Bench of this Court reported in 2013 [3] MLJ 228 [cited supra] . The Division Bench, has placed reliance upon the judgment rendered by the Hon'ble Supreme Court of India reported in 2012 [3] SCC 198 [Krushnakant B. Parmar V. Union of India], wherein, it has been held that "for punishing a person for unauthorised absence, wilful absence must be proved and if the person has absented due to compelling circumstances, his absence cannot be held to be wilful. The dismissal order confirmed by the Central Administrative Tribunal as well as the High Court was set aside with 50% backwages."

14. The petitioner has explained his absence on account of his illness and on an earlier occasion, the Medical Certificate was also

issued by the concerned Medical Officer, advising him to take rest between 07.12.2007 to 04.01.2008 for restoration of his health and therefore, it cannot be doubted that the petitioner was not suffering from illness. As already pointed out, the 3rd respondent, before declaring the petitioner as a deserter, has failed to follow the mandate cast upon him under Police Standing Order 95 as well as the Circular Memorandum issued by the 1st respondent dated 30.10.1990. It is also pertinent to point out at this juncture, that the charge memo came to be issued on the pretext that he was a deserter.

15.In the light of the above facts and circumstances coupled with the above decisions, this Court is of the view tht the modified order of punishment of compulsory retirement passed by the 1st respondent, requires interference. This Court, on the facts and circumstances projected before it, is also of the considered view tht the impugned order is highly disproportionate to the act of delinquency on the part of the petitioner and therefore, he shall be imposed with any one of the minor penalties.

16.In the result, the writ petition is partly allowed and the impugned order dated 24.09.2012 passed by the 1st respondent is set aside and the matter is once again remanded to the 3rd respondent who shall take into consideration the findings/observations made by this Court in this writ petition and pass appropriate orders of imposing minor punishment against the petitioner within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Director General of Police
Mylapore, Chennai 600 004.

2.The Commissioner of Police
Egmore, Chennai 600 008.

3.The Deputy Commissioner of Police
Central Crime Branch, Chennai.

+1cc to Mr.P.T.Perumal, Advocate SR.No.45336

+1cc to Government Pleader, SR.No.45736

+3cc to Mr.P.T.Perumal, Advocate SR.No.45336(24/07/2017)

GN(14/07/2017)

WP.No.6706/2013