

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.6873 of 2013

Thangadurai

...Petitioner

vs.

1.The Superintendent of Police(Armed),
Thiruvannamalai District.

2.The Director General of Police,
Tamil Nadu, Chennai-4.

3.The Secretary to Government,
Home(Police IV) Department,
Fort St. George, Chennai-9.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Certiorari, to call for the records of the respondents in connection with the impugned orders passed by them in PR.No.23 of 2007 dated 19.07.2007, RC No.158685/APII(2)/2007 dated 23.10.2007 and G.O.(2D).No.177, Home (Police VII) Department dated 09.07.2012 and quash the same and grant such other further relief.

For Petitioner : M/s.M.Muthappan

For Respondents: Mr.A.Zakkir Hussain, AGP

O R D E R

The petitioner has approached this Court seeking for the following relief:

'To issue a Certiorari, to call for the records of the respondents in connection with the impugned orders passed by them in PR.No.23 of 2007 dated 19.07.2007, RC No.158685/APII(2)/2007 dated 23.10.2007 and G.O.(2D).No.177, Home(Police VII) Department dated 09.07.2012 and quash the same and grant such other further relief'.

2. The case of the petitioner is as follows:

The petitioner entered service in the Police Department as Grade-II Police Constable on 01.03.2002. He was a selected candidate of the Tamilnadu Uniformed Services Recruitment Board, after completion of training, he was posted in the Tamilnadu

Regimental Centre. In the year 2007, he was transferred to District Armed Reserve, Tiruvannamalai District. The petitioner claims to have received 5 rewards for his meritorious services and had not come to any adverse notice till he was charge sheeted, which is the subject matter of challenge before this Court. While working as Grade-II, Police Constable, the petitioner under compelling circumstances was absent from 25.10.2006, due to serious stomach pain. He took treatment for the ailment from 25.10.2006 to 27.12.2006. According to him, he was suffering from acute ulser for which he had undergone continuous treatment for the said period. In view of the absence of the petitioner, he was declared as 'deserter' by proceedings of the first respondent dated 15.11.2006. Although, the said order was not served on the petitioner, subsequently, the order confirming the order of desertion dated 26.12.2006 was served on the petitioner. Thereafter, the petitioner was issued a charge memo under Rule 3(b) of the Tamilnadu Police Subordinate Service (D & A) Rules on 22.03.2007. An enquiry was conducted into the charges. In the enquiry, the petitioner had explained the circumstances, under which, he remained absent for the days in question. However, notwithstanding the legitimate explanation, the enquiry officer, by his report dated 10.06.2007, had held charges proved. The disciplinary authority accepted the findings of the enquiry officer and by order dated 19.07.2007, imposed a punishment of removal from service. Thereafter, a mercy petition was filed but the same was also rejected, confirming the order of penalty of removal from service vide proceedings dated 23.10.2007 as against the order passed in mercy petition, a memorandum was submitted to the third respondent herein and finally the same was rejected on 09.07.2012. The same is put to challenge in the present writ petition.

3. Mr.Muthappan, learned counsel for the petitioner would submit that there were several infirmities in the conduct of the enquiry and the orders passed by the disciplinary authority and also the other higher authorities. Without appreciating these factors mechanically an order of removal from service has been passed against him. While passing orders, the authorities concerned had not taken into consideration the mitigating circumstances, though, the petitioner had raised the issue of proportionality in imposing severe penalty of removal from service, as he had not come to any adverse notice earlier and for the absence, he had submitted his explanation, stating that he was ailing for some time, with acute ulser accompanied with severe stomach pain. Nevertheless, according to the learned counsel, the authorities without proper application of mind, had imposed a harsh penalty of removal from service on the petitioner.

4.The learned counsel would further submit that at the time when the punishment was imposed, the petitioner was only 32 years of age and his further employment in the Government has been

snuffed out for a solitary act of misconduct. The learned counsel on the issue of proportionality of punishment would draw the attention of this Court to an order passed by a learned single Judge in WP.No.16415 of 2009 dated 15.06.2011, in which, the learned Judge after adverting to various judgments passed by this Court and the Hon'ble Supreme Court of India, has concluded that removal from service for desertion, was highly disproportionate. The operative portion of the order dated 15.06.2011 passed by the learned Judge in paragraph No.10 is extracted below:

"10.Considering the facts and circumstances of this case and the order passed by the Division Bench holding that the order of dismissal from service for desertion is highly disproportionate and a lesser punishment should be imposed and the said order having been implemented by imposing a lesser punishment of postponement of one increment for two years in the case of one R.Ramesh, who was the appellant in W.A.No.58 of 2011 dated 27.01.2011, I am of the view that the interest of justice would be met by setting aside the order of the respondents and remitting the matter to the second respondent to consider the said issue of proportionality of the punishment alone in the light of the additional affidavit filed by R3, dated 10.06.2011 and pass fresh orders, within a period of eight weeks from the date of receipt of a copy of this order."

The learned counsel would therefore plead before this Court that punishment imposed on the petitioner may be interfered with on the ground that the punishment being excessive, disproportionate to the gravity of the acts of misconduct alleged against the petitioner.

5. Upon notice, Mr.A.Zakkir Hussain, learned Additional Government Pleader entered appearance for the respondents and filed a detailed counter affidavit. In the counter affidavit, it is stated that the petitioner having found guilty of misconduct, has been dealt with rightly by the respondents and there was no scope for interference by this Court even in respect of the quantum of penalty imposed on the petitioner, since the absence of duty without proper permission is a serious misconduct defined in the Uniformed Services and therefore, no relief can be granted in the present writ petition.

6. This Court, after considering the rival submissions of the learned counsel for the parties and upon perusing the relevant materials and pleadings placed on record, is of the considered view that as rightly held by the learned single Judge of this Court, as he then was, in the aforesaid writ petition, a punishment imposed on the petitioner, namely, the removal from service, is grossly disproportionate to the gravity of misconduct

(Desertion) alleged against the petitioner. There cannot be two opinions that for solitary act of misconduct, punishment of removal from service is too excessive, particularly, considering the age of the petitioner, who was only 32 years at that point of time. Having concluded so, this Court has to see as to what punishment should be imposed on the petitioner instead of removal from service. Considering the evidence in the enquiry proceedings and the order passed by the disciplinary authority, this Court is of the view in the fitness of things, that the petitioner having been removed from service as early as in 2007 and has been out of employment for over 10 years, the punishment of removal from service imposed on the petitioner is modified to the extent that the petitioner is directed to be reinstated in service without any backwages for the period from the date of his removal from service till the date of his reinstatement. Denial of backwages for a long period of 10 years is a sufficient punishment to be imposed on the petitioner in the facts and circumstances of the case.

7. In the light of the above, the respondents are directed to pass orders of reinstatement of the petitioner in service without backwages within a period of two months from the date of receipt of a copy of this order. On being reinstated, the petitioner is entitled to all other attendant benefits.

8. The writ petition is disposed of, with the above direction. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

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To:

1.The Superintendent of Police(Armed),
Thiruvannamalai District.

2.The Director General of Police,
Tamil Nadu, Chennai-4.

3.The Secretary to Government,
Home(Police IV) Department,
Fort St. George, Chennai-9.

1 cc to Mr.Muthappan, Advocate, Sr. 68632

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