

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.23999 of 2012

and

W.M.P.Nos.28070 of 2016 & 4688 of 2017

G.Sasitharan

.. Petitioner

Vs.

1. The Additional Director General of Police,
(Law and Order), Chennai-4.

2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore-18.

3. The Superintendent of Police,
District Police Office,
Coimbatore District,
Coimbatore-18.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the order of the third respondent herein passed in his Rc.No.J1/PR.44/2009 dated 10.10.2009 removing the petitioner from service and the consequential order passed by the second respondent herein passed in his Rc.No.D2/AP/27/2009 dated 16.01.2010 rejecting the petitioner's appeal petition and quash the same and consequently direct the respondent herein to modify the punishment of removal from service as compulsory retirement from service with all consequential retirement benefits within a stipulated time.

For Petitioner .. Mr.Ravi Shanmugam

For Respondents .. Mr.T.M.Pappiah,
Special Government Pleader

ORDER

Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records pertaining to the order of the third respondent herein passed in his Rc.No.J1/PR.44/2009 dated 10.10.2009 removing the petitioner

from service and the consequential order passed by the second respondent herein passed in his Rc.No.D2/AP/27/2009 dated 16.01.2010 rejecting the petitioner's appeal petition and quash the same and consequently direct the respondent herein to modify the punishment of removal from service as compulsory retirement from service with all consequential retirement benefits within a stipulated time.

2.The case of the petitioner is that he was appointed as Grade II Police Constable on 15.09.1976 and he was promoted as Grade I, Police Constable on 22.08.1994. During the year 2008, the petitioner was absent for some time and therefore he was declared as deserter vide proceedings of the third respondent dated 11.09.2008. In response to the action proposed to be taken by the third respondent, the petitioner reported for duty on 23.09.2008 and produced medical certificates for his absence between the period from 01.08.2008 and 21.09.2008. However, not satisfied with the petitioner's explanation, a charge memo was issued on 12.06.2009 under Rule 3(b) of the Tamilnadu Police Subordinate Service (Disciplinary and Appeal) Rules charging the petitioner for his absence without permission. Thereafter, an enquiry was conducted for the charges and the enquiry report was submitted on 31.08.2009 holding the charges as proved. The disciplinary authority namely, the third respondent herein, after assessing the enquiry report, issued an order on 10.10.2009, removing the petitioner from service. Against the said order, the petitioner preferred a statutory appeal before the second respondent, viz., the Appellate Authority on 13.11.2009, and the same came to be rejected on 16.01.2010. The petitioner has also preferred a review petition before the first respondent on 01.03.2010. However, no order has been passed on the review petition. In the meanwhile, the petitioner had attained the age of superannuation on 31.10.2012. The impugned order passed by the third and second respondents removing the petitioner from service are under challenge in the present writ petition.

3.The prayer in the present writ petition itself is one not for quashing of the impugned orders in its entirety but only for modification of the orders into one of compulsory retirement.

4.Mr.Ravi Shanmugam, the learned counsel for the petitioner would submit that the petitioner had rendered service from the year 1976 and although he was issued with a minor penalty earlier for minor lapses, the present punishment was issued without considering his past years of service. The learned counsel would straight away brought to the notice of this Court the order passed in W.P.No.5503 of 2008 dated 25.09.2008, wherein, this Court in similar circumstances, has modified the penalty of dismissal from service into one of compulsory

retirement. The learned counsel also brought to the notice of this Court the judgment passed by the Division Bench of this Court in W.A.No.58 of 2011 on 27.01.2011, wherein, the Division Bench found that the punishment of dismissal from service was inappropriate to the charges of desertion and directed the authorities to pass orders by remanding the case by following the order passed by the Division Bench of this Court. In similar circumstances, this Court has also passed orders in W.P.No.12734 of 2005 dated 18.10.2011.

5. In the said circumstances, the learned counsel for the petitioner would submit that the punishment of removal from service notwithstanding the earlier penalties imposed on the petitioner is disproportionate, considering the long years of service put in by the petitioner in Police Department. According to the learned counsel the earlier punishment was imposed for very minor lapses and therefore, such punishment ought not to have been considered as an issue on the part of the disciplinary authority for imposing a major penalty of removal from service. According to the learned counsel, though there were no charges of corruption against the petitioner, the order of removal from service is extremely harsh and excessive.

6. Upon notice, Mr. T.M. Pappiah, learned Special Government Pleader entered appearance for the respondents and filed counter affidavit. The learned Special Government Pleader would point out that the petitioner had come under the cloud on earlier occasions and therefore, the authority had considered all the pros and cons and finally imposed a penalty of removal from service. Since the petitioner himself absented on several occasions without proper permission of the authorities concerned, he is not a fit person to be retained in the police force, therefore, the punishment of removal from service was rightly imposed on the petitioner and the same does not require any interference from this Court.

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. In the above circumstances, the writ petition is allowed. The impugned orders dated 10.10.2009 & 16.01.2010 are set aside and the penalty of compulsory retirement is imposed on the petitioner with effect from the date on which he was removed from service on 10.10.2009. The competent authorities are directed to pass consequential orders within a period of two months from the date of receipt of a copy of this order. It is needless to mention that the petitioner is entitled to all consequential monetary benefits, to which, he is entitled to. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dn

To

1. The Additional Director General of Police,
(Law and Order), Chennai-4.
2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore-18.
3. The Superintendent of Police,
District Police Office,
Coimbatore District,
Coimbatore-18

+1 cc to M/s.Ravi Shanmugam Advocate sr 64365
+1 cc to the Special Government Pleader sr 64969

W.P.No.23999 of 2012

mr(co)
aa06/10/2017