

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH,

and

The Honourable Dr.Justice S.VIMALA

W.A.NO.805 OF 2016 &

C.M.P.No.2442 of 2016

K.Kavitha

Appellant

versus

1. The State of Tamil Nadu,
rep. by its Secretary,
Home Department,
Fort St.George, Chennai-600 009.

2. The Director General of Police (Law & Order),
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3. The Addl.Director General of Police,
(Armed Forces), Kilpauk,
Chennai-600 010.

4. The Commandant,
Tamil Nadu Special Police,
V Battalion, Vaishnavi Nagar, Avadi,
Chennai-600 109.

Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order of the learned single Judge dated 29.06.2015 in W.P.No.17476 of 2015.Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified Mandamus, Calling for the records of the respondents particularly the 4th respondents impugned order of removal of service dated 03.11.2009 vide PR No.68/2009 Rule 3 (b) and subsequent proceedings of the 2nd respondent dated 16.04.2015 vide RC No.6350/AP 3(1)/2015 and quash the same and consequentially direct the respondents to reinstate the

petitioners service with original seniority with all back wages attendant benefits and also promotional avenues on par as per petitioners representation dated 03.11.2014.

For Appellant : Mr.L.K.Sudhirgha Babu
for Mr. R. Thanjan
For Respondent : Mr.P.S.Sivashanmughasundaram,
Spl.G.P.

JUDGMENT

(Judgment of the Court was made by
HULUVADI G. RAMESH, J.)

This Writ Appeal has been directed against the order of the learned single Judge dated 29.06.2015 in W.P.No.17476 of 2015, in and by which, while setting aside the order of removal from service inflicted against the appellant, the learned Judge remitted the matter to the respondents to impose any other punishment in lieu of removal from service, besides depriving back wages.

2. The petitioner was initiated with disciplinary proceedings for unauthorized absence from duty for a period of 21 days, by issuing a charge memo dated 23.7.2009 by the 4th respondent. Thereafter, the Assistant Commandant-II who conducted the oral enquiry, held that the charge was proved and thereafter, vide proceedings dated 3.11.2009, the Disciplinary Authority imposed the major punishment of removal from service. Aggrieved by the same, the appellant has filed the writ petition.

3. By order, dated 29.06.2015, the learned Judge, while setting aside the order of removal from service inflicted against the appellant, remitted the matter to the respondents to impose any other punishment in lieu of removal from service, besides depriving back wages. Pursuant to the orders of this Court, the second respondent vide proceedings dated 31.09.2015, modified the punishment of removal from service, by imposing punishment of stoppage of three increments for a period of three years with cumulative effect without back wages.

4. We have gone through the entire records placed before us. The appellant, on 24.5.2008 while on official duty, travelling in a police car along with other police officials, met with an accident, wherein, she sustained grievous injuries and was admitted in the hospital. Thereafter, she applied for medical leave, which was also considered. However, according to the respondents, even after expiry of medical leave, the appellant had not reported for duty and remained unauthorizedly absent,

which was viewed as a serious misconduct and imposed major penalty, which came to be set aside by the learned Judge and pursuant to the directions of this Court, now the second respondent imposed stoppage of three increments with cumulative effect without back wages. It is pertinent to note that till the subject misconduct, there was no blemish of record of the appellant. In fact, the alleged unauthorized absence was only due to her involvement in an unfortunate vehicular accident which had taken place during her official duty, in which, she sustained grievous injury and which made her unable to report for duty and it was not deliberate. In such circumstances, we are of the view that even the modified punishment now imposed by the second respondent vide proceedings dated 16.4.2015, i.e. stoppage of three increments with cumulative effect, is also disproportionate to the misconduct committed by the appellant. In such view of the matter, instead of remitting the matter again to the authority which would consume considerable time, we feel it appropriate to modify the punishment of stoppage of three increments into 'stoppage of one increment without cumulative effect' with 50% of backwages. Accordingly, it is modified.

With the above modification, this Writ Appeal is disposed of. The respondents are directed to pass orders on the above terms within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Govt.,
Home Department,
Fort St.George, Chennai-600 009.

2. The Director General of Police (Law & Order),
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

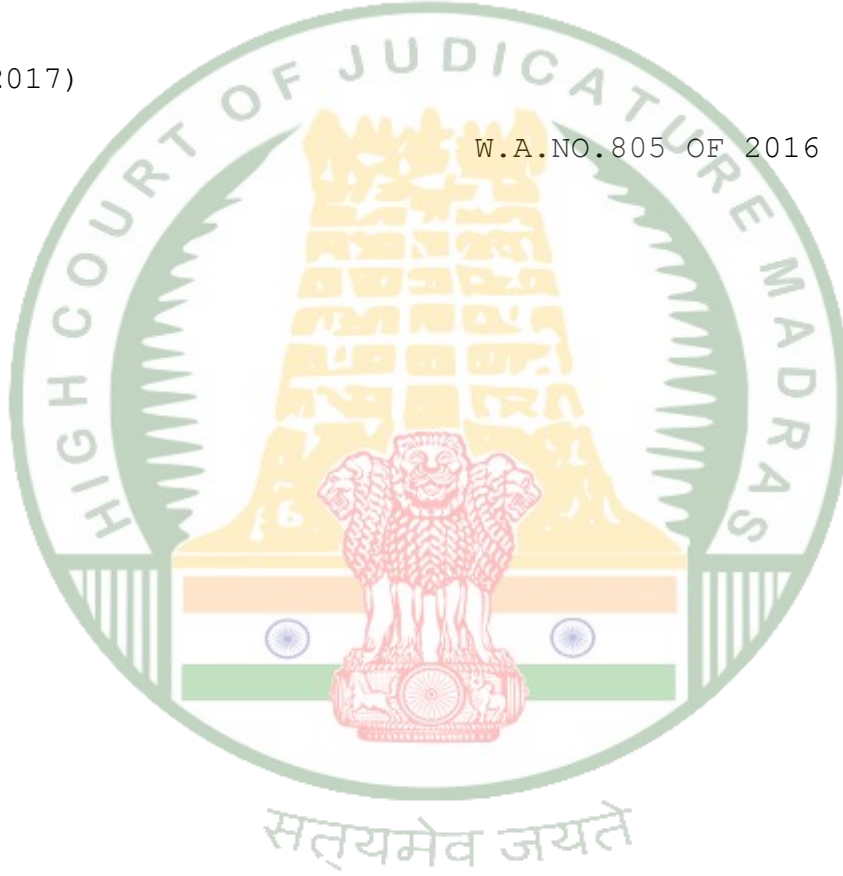
3. The Addl. Director General of Police,
(Armed Forces), Kilpauk,
Chennai-600 010.

4. The Commandant,
Tamil Nadu Special Police,
V Battalion, Vaishnavi Nagar, Avadi,
Chennai-600 109.

+lcc to Mr.R. Thanjan, Advocate, S.R.No.21763
+lcc to the Government Pleader, S.R.No.21710

rr(CO)
md(26/04/2017)

W.A.NO.805 OF 2016



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