



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD) No.1034 and 1035 of 2015

S.Natchathiram

... Appellant in both appeals

-vs-

1.The Commissioner of Police
Madurai City, Madurai

2.The Deputy Commissioner of Police
(Law and Order)
Madurai City, Madurai

3.The Additional Deputy Commissioner of Police
Prohibition Enforcement Wing
Madurai City, Madurai

4.The Inspector of Police
Teppakulam (L&O) Police Station
Madurai-625 009

5.M.Ramani
Inspector of Police
Teppakulam (L&O) Police Station
Madurai-625 009

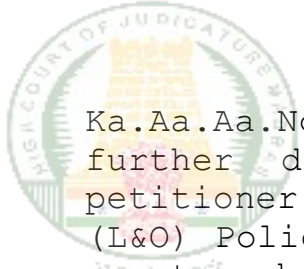
6.Ramar

... Respondents in both appeals

PRAYER (in W.A.(MD) No.1034 of 2015) Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order, dated 13.11.2014, in W.P.(MD).No.7748 of 2012, on the file of this Court.

Prayer in WP(MD). 7748/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and a Writ of Mandamus, by calling for the records from the 2nd Respondent passed in his proceedings Na.Ka.No.L1/M.V/545/2012



Ka.Aa.No.852/2012 dated 29.05.2012 and quash the same and further direct the 1st and 2nd Respondents to permit the petitioner to joint duty as Head Constable in the B-3 Teppakulam (L&O) Police Station, Madurai with continuity of service and other monetary benefits .

PRAYER (in W.A.(MD) No.1035 of 2015) Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order, dated 13.11.2014, in W.P.(MD).No.10874 of 2012, on the file of this Court.

Prayer in WP(MD). 10874/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, by calling for the records from the 2nd respondent passed in his proceedings Na.Ka.no.L.1/Ma.Vi/545/2012 Ka.Aa.No.1067/2012 dated 03.07.2012 and quash the same and further direct the 1st and 2nd Respondents to permit the petitioner to join duty as Head Constable in the B-3 Teppakulam (L & O) Police Station, Madurai and continuity of service and other monetary benefits.

For Appellant : Mr.T.Sakthi Kumaran
(in both appeals) for M/S.Victory Associates

For Respondents : Mr.V.Muruganantham,
(in both appeals) Additional Government Pleader for R1 to R4
Mr.R.Gandhi for R5 and R6

C O M M O N J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.T.Sakthi Kumaran, learned counsel appearing for the appellant, Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.R.Gandhi, learned counsel appearing for the respondents 5 and 6 and carefully perused the materials placed on record.

2. The appellant is the writ petitioner in W.P.(MD) Nos.7748 and 10874 of 2012 and he is aggrieved by only a portion of the common order, dated 13.11.2014, whereby the learned single Judge, while setting aside the order of desertion, dated 29.05.2012 and the consequential order, dated 03.07.2012, passed by the second respondent, and directing the respondents to treat the period of absence of the appellant as on duty with all service benefits, restricted the backwages to 50%. The order passed in the writ



petitions had attained finality and the official respondents have not challenged the said order.

3. We have perused the common order passed in the writ petitions and found that the learned single Judge recorded the factual finding that the absence of the appellant from duty is neither wilful nor wanton and the same would not amount to misconduct. In fact, the learned Judge, after examining the facts, found that another officer was not allowing the appellant to join duty and not allotting duty to him. Having held that the entire period of absence of the appellant was directed to be treated as duty with all service benefits, we are of the opinion that the appellant would be entitled to full backwages and the same should not have been restricted to 50%.

4. It may be true that the Court is empowered to restrict the payment of backwages and it is not an universal rule that on reinstatement, every employee / workman is entitled to full backwages. However, the Court while restricting backwages has to record reasons for doing so. We find in the impugned order no such reason has been recorded. On the contrary, the Court found that the absence of the appellant was a forcible one and therefore, held that his absence has to be treated as duty for all other practical purposes. Thus, the appellant is entitled to full backwages.

5. In the result, both the writ appeals are allowed and the order passed by the learned Single Judge so far as it restricts backwages to 50% is set aside and the respondents are directed to pay full backwages to the appellant for the period of his absence. No costs.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Commissioner of Police, Madurai City, Madurai.
 - 2.The Deputy Commissioner of Police (Law and Order),
Madurai City, Madurai.
 - 3.The Additional Deputy Commissioner of Police,
Prohibition Enforcement Wing, Madurai City, Madurai.
 - 4.The Inspector of Police,
Teppakulam (L&O) Police Station, Madurai-625 009.
- +One cc to Mr.A.Thirumurthy, Advocate, SR.No.53039
+One cc to Mr.R.Gandhi, Advocate, SR.No.53255
+One cc to The Special Government Pleader, SR.No.53430

skm/krk

RL/8C/3P/RR/4.5.2017

W.A.(MD) No.1034 & 1035 of 2015

20.04.2017