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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.04.2017
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
W.P.(MD).No.7665 of 2017

and
W.M.P(MD)No.5976 of 2017

A.Vallinayagam

..Petitioner

Vs.

1. The Director General of Police,
Chennai-4.
2. The Commissioner of Police,
Madurai City.
3. The Deputy Commissioner of Police,
Headquarters, Armed reserve, Madurai City.
4. The Assistant Commissioner of Police,
Thallakulam (Law and order),
Madurai City.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of dismissal from service by the third respondent, dated 05.02.2013 in P.R.No.91/13 under Rule 3(b) and quash the same and consequently quash the impugned order passed by the second respondent herein, dated 03.04.2014 in C.No.D1(2)/PR91/13 and the first respondent, dated 10.08.2016 in Rc.No.107936/AP.II(3)/2014 confirming the impugned order passed by the third respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service, together with all consequential service and monetary benefits.

For Petitioner	: Mr.S.Ramasamy
For Respondents	: Mr.J.Gunaseelan Muthaiah, Government Advocate.

O R D E R

This Writ petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of dismissal from service by the third respondent, dated 05.02.2014 in P.R.No.91/13 under Rule 3(b) and quash the same and consequently quash the impugned order passed by the second respondent herein, dated 03.04.2014 in



C.No.D1(2)/PR91/13 and the first respondent, dated 10.08.2016 in Rc.No.107936/AP.II(3)/2014 confirming the impugned order passed by the third respondent and consequently direct the respondents to reinstate the petitioner into service, together with all consequential service and monetary benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3. Mr.J.Gunaseelan Muthaiah, learned Government Advocate, takes notice for the respondents. By consent, the Writ petition itself is taken up for final disposal.

4. The petitioner challenges the order of the first respondent, dated 10.08.2016, confirming the order of the second respondent, dated 03.04.2014, who in turn had confirmed the order of the third respondent dismissing the petitioner from service by proceedings, dated 05.02.2013.

5. The petitioner joined in Tamil Nadu Police Service as Grade-II Police Constable in the year 1994 and later, he was transferred to Armed Reserve of Madurai City. While the petitioner was serving as Grade-II Police Constable, the fourth respondent issued a charge memo against the petitioner, on 12.07.2013. The charge against the petitioner is that the petitioner who was supposed to attend the roll-call at 7 a.m., on 22.04.2013, without any cause or permission, absented himself till the afternoon on 12.05.2013. Since his period of absence was more than 21 days, an order was passed against the petitioner for desertion and notice was also issued against the petitioner to show cause and to present before the Deputy Commissioner of Police concerned. Despite the show cause notice and the direction, the petitioner who received the communication on 17.05.2013 had not reported to duty even thereafter till 21.06.2013. Hence, the order of desertion was confirmed. The petitioner even after receiving the order on 28.06.2013, did not report or submit any explanation but continuously absented himself. In view of this misconduct committed by the petitioner, the fourth respondent issued charge memo and an enquiry was conducted. The petitioner was found guilty of the charge. Even before the Enquiry Officer, the petitioner did not cross examine any of the witnesses and he had no dispute with regard to the facts stated in the charge memo. Based on the enquiry report, the third respondent, considering the fact that the petitioner had not given any explanation to the charge memo and that his explanation to the second show cause notice is neither convincing nor supported by any evidence, the third respondent held that the charge is proved. Taking into account the fact that the petitioner had earlier suffered two major punishments and eleven minor punishments, the third respondent issued an order removing the petitioner from service and the order of the third respondent was confirmed by the second respondent by an order, dated 03.04.2014. Thereafter, the



petitioner filed a petition before the first respondent and the same was also dismissed, confirming the order passed by the second respondent. Against the order of the first respondent, dated 10.08.2016, confirming the orders of the respondents 2 and 3, the present Writ petition has been filed.

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6. The learned counsel for the petitioner submitted that the explanation submitted by the petitioner with regard to his excuse on the basis of medical record was not at all considered by the respondents. He further state that the punishment is not proportionate to the delinquency complained against the petitioner. It is further submitted that the unauthorised absence or desertion cannot be treated as a serious misconduct so as to warrant the punishment of dismissal.

7. Materials on record disclose that the petitioner has not disputed the charges framed against him. Though he has given the explanation that he was under treatment there was no justification for his unauthorised absence without permission from the superiors. The Authorities have also held that the petitioner had not produced enough materials to substantiate his case regarding the treatment taken by him in various hospitals. That apart, the past record of the petitioner is a factor that was considered by the Authorities. The delinquent did not submit any medical certificate in support of his claim as found by the Authorities concerned. Since the charge against the petitioner was proved beyond any reasonable doubt through the prosecution witnesses and the facts were admitted by the petitioner, there is no scope for interfering with the findings of the respondents 2 and 3 while passing an order of dismissal as against the petitioner.

8. As a matter of fact, in the petition before the first respondent, that is, in the appeal that was preferred before the first respondent, dated 20.02.2014, the petitioner has admitted his guilt but pleaded sympathy.

9. Having regard to the conduct of the petitioner, interfering with the order on any misplaced sympathy will not be conducive in public interest. Since the impugned order does not suffer from infirmity or irregularity and the decision was purely taken in public interest, this Court is not inclined to interfere with the impugned order. Hence, the Writ petition is dismissed. No costs. Consequently, connected, Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/ True Copy /

Sub Assistant Registrar(C.S.)



To

1. The Director General of Police,
Chennai-4.

2. The Commissioner of Police,
Madurai City.

3. The Deputy Commissioner of Police,
Headquarters, Armed reserve, Madurai City.

4. The Assistant Commissioner of Police,
Thallakulam (Law and order),
Madurai City.

+1 CC TO MR.S.RAMASAMY, ADVOCATE, SR NO.53879

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.54658

pmu

MAS/KP/SAR1:12.06.2017:4P-7C

ORDER MADE IN
W.P. (MD) .No.7665 of 2017
and
W.M.P (MD) No.5976 of 2017
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