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+ W R I T P E T I T I O N N o . 4 1 8 1 4 o f 2 0 1 7

% Date: 11-12-2017

B E T W E E N:

1. The State of Andhra Pradesh rep. by its Principal Secretary,
Department of Home, Secretariat, Velagapudi, Guntur District.
2. The Director General of Police, State of Andhra Pradesh, O/o. Police
Head Quarters, Near 6th APSP Battalion Camp, Mangalagiri, Guntur
District.
3. The Additional Director General of Police (Admn), O/o. The Director
General of Police, A.P., Mangalagiri.
4. The Deputy Inspector General of Police, Guntur Range, Guntur.
5. The Superintendent of Police, Guntur rural.

... Petitioners

Vs.

1. Sri SK. Ghouse Mohiddin Ex PC 1832., (since died as LRs)
2. Sk. Jilani S/o. SK. Ghouse Mohiddin, New Masid Centre, D.No.23-
02-20, Atchampet Road, Sattenapalli, Guntur District.
3. Shaik Baji D/o. Sk. Ghouse Mohiddin, New Masid Centre, D.No.23-
02-20, Atchampet Road, Sattenapalli, Guntur District.
4. Sk. Hassan S/o. Sk. Ghouse Mohiddin, New Masid Centre, D.No.23-
02-20, Atchampet Road, Sattenapalli, Guntur District.
5. Sk. Gousiya Parveen D/o. SK. Ghouse Mohiddin, New Masid Centre,
D.No.23-02-20, Atchampet Road, Sattenapalli, Guntur District.

... Respondents

!Counsel for Petitioners : Government Pleader for Services (AP)

^ Counsel for Respondents :

< G I S T:

> H E A D N O T E:

? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.41814 of 2017

ORDER: (per VRS,J.)

The State of A.P. has come up with the above writ petition challenging an order of the A.P. Administrative Tribunal setting aside the penalty of dismissal from service.

2. Heard the learned Government Pleader for Services (A.P).

3. The respondents 2 to 5 herein are the legal heirs of one Mr. Ghouse Mohiddin, who was employed as police constable. He was imposed with penalty of dismissal from service by order dated 22.09.2008, on the only charge of unauthorised absence from duty for a period of 21 days leading to he being declared as a deserter. Challenging the order of penalty the deceased Government Servant filed O.A.No.214 of 2011 on the file of the A.P. Administrative Tribunal. The Tribunal found the penalty to be disproportionate, and allowed the Original Application directing reinstatement with all benefits except back wages. The order of the Tribunal was passed on 18.09.2013. Within a month, the employee died on 17.10.2013.

4. For almost four years the Government did not challenge the order of the Tribunal. But when the children of the deceased employee started making a claim, the Government has come up with the above writ petition challenging the order of the Tribunal.

5. The main contention of the learned Government Pleader for Services is that though the only charge framed against the deceased employee was unauthorised absence for 21 days, his past record of

service showed that he was a habitual absentee having suffered several penalties during his tenure. In paragraph-6 of the affidavit in support of the writ petition, the Government have given a tabulation, which reads as follows:

Sl.No	Punishment Awarded	C.No. and D.O.No.
1	RTSP by two stages for two years with effect	C.No.64 to 67/PR/89 D.No.523/93 dated 05.05.1993
2	PPI for One year w.e. on future increments and pension	C.No.352/PR/98 D.O.No.1469/01 dated 23.11.2001
3	PPI for one year without effect on future increments and pension	C.No.112/PR/A10/2002 D.O.No.1408/2002 dated 06.07.2002
4	PPI for a period of 2 years without effect on future pay and pension the period of desertion from 28.06.1997 to 14.11.1997 is treated as LWP	C.No.388/PR/1997 D.O.No.1050/2002 dated 19.05.2002
5	PPI for one year without effect the absence period is treated as LWP	C.No.71/PR/A10/2003 D.O.No.864/2003 dated 01.07.2003
6.	PPI for one year without effect on future increments and pension the absence period from 27.03.2003 to 06.04.2003 is treated LWP	C.No.139/PR/A10/2003 D.O.No.992/03 dated 29.07.2003
7	PPI for two years without effect on future increments and pension	C.No.28/PR/A10/2003 D.O.No.1009/2003 dated 30.07.2003
8	Censure the absence period from 25.02.2004 to 13.03.2004 is treated as LWP	C.No.37/PR/A10/2005 D.O.No.253/2005 dated 04.03.2005
9.	PPI for one year without effect on future increments and pension	C.No.239/PR/A10/2005 D.O.No.708/2005 dated 28.05.2005
10.	PPI for one year with effect on future increments and pension the suspension period from 10.04.2004 FN to 20.05.2004 as not on duty and the absence period from 03.02.2004 to 07.02.2004 and from 09.02.2004 to 21.02.2004 and 25.02.2004 to 13.03.2004 are treated as LWP	C.No.16/A7/2005 D.O.No.30/2006 dated 10.01.2006
11	PPI for one year without effect on future increment and pension	C.No.1426/PR/A10/2005 D.O.No.305/2006 dated 02.03.2006
12	PPI for one year without effect on future increments and pension period of absence from 29.06.2005 to 13.07.2005 is treated as LWP	C.No.15/PR/A10/2006 D.O.No.1230/2006 dated 24.08.2006
13	PPI for one year without effect on	C.No.61/PR/A10/06

	future increments and pension the absence period from 07.02.2006 to 21.02.2006 is treated as LWP	D.O.No.1231/2006 dated 24.08.2006
14	Censure period of absence from 21.01.2006 to 04.02.2006 is treated as LWP	C.No.69/PR/A10/2006 D.No.1501/06 dated 12.10.2006
15	Censure period of absence from 03.12.2005 to 10.12.2005 is treated as not on duty	C.No.83/PR/A10/06 D.O.No.1852/06 dated 14.12.2006
16	PPI for one year without effect on future increments and pension	C.No.15/PR/A10/07 D.O.No.156/2007 dated 06.02.2007
17	PPI for one year without effect on future increments and pension the absence period from 30.01.2007 to 06.02.2007 is treated as LWP	C.No.96/PR/A10/2007 D.O.No.63/2008 dated 10.01.2008
18	PPI for one year without effect on future increments and pension the period absence from 30.12.2006 to 17.01.2007 is treated as LWP	C.No.94/PR/A10/2007 D.O.No.93/2008 dated 21.09.2008
19	PPI for one year without effect on future increments and pension the desertion period from 18.04.2007 AN to 08.05.2007 AN is treated as LWP	C.No.29/OE-PR/2007 D.O.No.720/2008 dated 06.06.2008
20	Dismissed from service w.e.f. 24.09.2008 and the desertion period from 08.06.2007 FN to 18.02.2008 AN is treated as LWP	S.No.31/OE-PR/2008 D.O.No.1344/2008 dated 22.09.2008

6. Therefore it is contended by the learned Government Pleader that the question of proportionality of penalty could not have been decided by the Tribunal solely on the basis of the charge, but also on the basis of the past record of service of the employee. According to the learned Government Pleader if the past record of service of the employee is considered, the penalty imposed upon him could not be said to be disproportionate.

7. We have carefully considered the above submissions.

8. The past record of service of the employee was not put against the employee, when a show cause notice was issued before imposing the penalty. In the order of penalty dated 22.09.2008, all that was recorded

was that the charged officer accepted his guilt and did not even contest the charge in the enquiry.

9. Insofar as the past record of service of an employee, the order of penalty should disclose that the same prompted the disciplinary authority to decide the quantum of penalty. If the disciplinary authority had decided the quantum of penalty without reference to the past service record of an employee, it is not open to the Government to support the conclusion *post facto* with the past record of service. Therefore, today the Government cannot ask us to look into the past record of service to support a conclusion reached by the disciplinary authority without taking that past record of service into account. Therefore, the said contention does not impress us.

10. After all in this case, the employee was dismissed from service on 22.09.2008. He succeeded before the Tribunal by the order dated 18.09.2013. On the 30th day of his victory before the Tribunal, viz., 17.10.2013 he died without reaping the fruits of successful litigation. The Tribunal has refused to grant him back wages. Therefore, the family is not going to get any back wages for the period from the date of dismissal from 22.09.2008 at least up to 18.09.2013. Thereafter, the employee survived only for one month. Therefore, we do not think that it is a fit case for interference, especially when the only charge is that the employee was unauthorised absence.

11. Additionally there is no reason or rhyme for the Government to come up with the writ petition after four years of the order of the tribunal. The death of the employee could not have been taken advantage of by

the State to delay the challenge to the order of the Tribunal. Therefore, the writ petition is dismissed.

18. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

11th December, 2017.
Js



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.41814 of 2017

(per VRS, J.)



11th December, 2017.

Js.