

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2018

Coram

The Hon'ble Mr.Justice R. SURESH KUMAR

Writ Petition No. 37558 of 2004

G.Kumar

...Petitioner

Vs.

1. The Additional Director General of Police
and Commissioner of Police,
Chennai - 8.

2. The Deputy Commissioner of Police,
Traffic (North) of Chennai - 7.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent herein in Rc.No.78/PR(N)/Tr/99 dated 27.05.2000 confirming the order of the second respondent herein in F.R.No. 78/PR(N)/Tr/99 dated 09.03.2000 and quash the same and consequently direct the respondents herein to forthwith reinstate the petitioner as Constable with full back wages and all attendant benefits.

For Petitioner : Mr. A.L.Ganthimathi

For Respondent : Mr.Ravikumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records of the first respondent herein in Rc.No.78/PR(N)/Tr/99 dated 27.05.2000 confirming the order of the second respondent herein in F.R.No. 78/PR(N)/Tr/99 dated 09.03.2000 and quash the same and consequently direct the respondents herein to forthwith reinstate the petitioner as Constable with full back wages and all attendant benefits.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

(i) The petitioner was working as Grade II Police Constable (Traffic) in B.3 Fort Police Station from 25.12.1997. While so, on 01.05.1999, he suffered with acute peptic ulcer and on the advice of the Medical Officer, he ordered to take rest for 17 days, hence he was preparing to apply leave for 17 days medical leave. However, shockingly he had received a news from his family that his father-in-law, who was at Bangalore died suddenly on that date and therefore, he had to suddenly rush to the place to attend funeral.

(ii) Since, he had been away from Chennai and went to Bangalore for attending funeral and aftermath ceremony of his father-in-law, his peptic ulcer complaint got further aggravated and therefore, he could not immediately return back to Chennai. Therefore he returned back to Chennai and reported duty on 21.05.1999. His explanation had been prima facie accepted by his higher official and he has been taken back to duty, accordingly, he reported duty and had been performing duty.

(iii) However because of his absence between 01.05.1999 and 20.05.1999, a charge-memo had been issued and disciplinary proceedings under Rule 3(B) of the Tamil Nadu Police Subordinate Service (Discipline and Appeals) Rules, 1955 had been initiated.

(iv) Though an explanation had been given by the petitioner, not satisfied with the same, a domestic enquiry was conducted by appointing the Enquiry Officer, before whom the petitioner appeared and the enquiry was concluded.

(v) Ultimately, the Enquiry Officer gave a report stating that the charge framed against the petitioner had been proved, vide his report dated 05.12.1999. Following the same, on 09.03.2000, the second respondent passed an order of punishment inflicting the punishment of compulsory retirement on the petitioner.

(vi) Even though the said punishment passed by the second respondent was appealed to the first respondent, by the petitioner's appeal, dated 24.04.2000, the appellate authority also i.e., the first respondent without having considered the defense of the petitioner in proper perspective, has passed order on 27.05.2000, thereby confirming the order of punishment inflicted against the petitioner. Aggrieved over the said orders passed by the second respondent, disciplinary authority and the first respondent, appellate authority, the present petition has been filed.

3. Heard the learned counsel appearing for the petitioner, who would submit that, admittedly the petitioner had been absent for duty from 01.05.1999 to 21.05.1999. The reason for absence

of duty as has been explained by the petitioner is that, he has been suffered with peptic ulcer complaint from 01.05.1999, therefore, on the advice of the Doctor, he has to take bed rest for two weeks and when he was preparing to send application for medical leave for two weeks, suddenly, he received the death news of his father-in-law at Bangalore and with that health condition, he had to go over to Bangalore. Since he has been involving in last rites of his father-in-law and other after math ceremony, his health condition was got further deteriorated, with the result, he has been able to return to Chennai and reported duty only on 21.05.1999.

4. The learned counsel would further submits that, the said explanation though prima facie accepted and he has been taken back to duty, subsequently, disciplinary proceeding was initiated against the petitioner and ultimately punishment was awarded. The petitioner has been rendering unblemished service till the impugned order of punishment has been inflicted and still the petitioner is having 7 years of service and he is the only breadwinner of the family. All these years, the petitioner has suffered a lot and therefore, he can be taken back to duty without conferring any benefits of back wages and in that case, at least for the remaining years of service, the petitioner would be in a position to serve.

5. Per contra, Mr. Ravikumar, the learned Additional Government Pleader appearing for the respondents, by producing extract of the service register of the petitioner has submitted that it is not the first time, the petitioner had been unauthorisedly absent and in previous occasion also without proper medical certificate, he has been absent for sometime and on earlier occasion also, though he had been inflicted with the punishment of removal of service, subsequently on his appeal, by taking a lenient and sympathetic view, the appellate authority had modified the said punishment in to reduction in time scale of pay.

6. Therefore, the learned Additional Government Pleader would submit that, since the petitioner was considered to be a chronic absentee unauthorizedly intermittently, his attitude towards his duty, that too in a disciplinary force, cannot be tolerated any more. Therefore for the proven charges of the unauthorized absence of the petitioner for 20 days, the punishment awarded is certainly incommensurate with the said delinquency and therefore it cannot be considered as a disproportionate punishment.

7. I have considered the said submissions made by both sides and also perused the materials placed before this Court.

8. The absence on the part of the petitioner for twenty days from 01.05.1999 to 20.05.1999 is not in dispute. It is the definite case of the petitioner that, on 01.05.1999 he had suffered with peptic ulcer and as per the Doctor's advice, he has to take bed rest for two weeks and however, before making application for medical leave, he had to rush to Bangalore to attend the funeral of his father-in-law.

9. In so far as this defence taken by the petitioner is not in dispute as the said issue has not been further probed by the respondents, especially the Enquiry Officer, whether the said defence taken by the petitioner was genuine or not.

10. In the absence of any contra findings on the side of the respondents, especially the Enquiry Officer's finding, the said defence taken by the petitioner can be believed to be true. Therefore this Court has no other option except to accept the said defence taken by the petitioner that he had to be in Bangalore to attend the funeral of his father-in-law.

11. When a person is fitted in a situation like the one projected by the petitioner, where his absence becomes inevitable, as he had to attend the funeral of his father-in-law, no blame can be put against petitioner for the absence of those days.

12. However, whatever be the reasons for absence of duty either on medical ground or otherwise, being the member of the disciplined force, he ought to have given application for sanction of leave. In absence of such request on the side of the petitioner, certainly the said action on the part of the petitioner cannot be accepted as a routine affair and therefore for such delinquency, which is the admitted one, the petitioner should be punished.

13. Here in the case on hand, on 21.05.1999, the petitioner reported for duty and he had not been refused to take back duty by his higher officials by citing reason of initiation of disciplinary proceedings. In fact the petitioner had been taken back and he had been permitted to rejoin the duty on 21.05.1999 and the same had been reported to the station, where he had been attached, where he had been permitted to continue duty till the punishment has been inflicted on him.

14. Therefore, the only issue to be looked into in this case is whether the punishment of compulsory retirement inflicted on the petitioner for the absence of 20 days between 01.05.1999 and 20.05.1999, of course on health ground or any other emergency reason is justifiable or not.

15. The non-giving of the application for medical leave or other leave for the period of 20 days on the side of the petitioner, certainly is a delinquency, which attracts some punishment, at the same time, since the petitioner had given his defense for his absence and there is no contra evidence on the side of the department to disprove such claim, this Court is of the view that the said defence can be accepted therefore, the maximum punishment of compulsory retirement inflicted on petitioner could have been avoided.

16. In the result, by taking into account the factual matrix of the case, this Court is inclined to pass the following order:

(1) That the impugned orders passed by the second respondent as confirmed by the first respondent are hereby set aside.

(2) The respondents are directed to reinstate the petitioner.

(3) However, it is made clear that the petitioner, by applying the theory of "No work No Pay", shall not be entitled to claim any backwages, nor he shall not claim any other service benefits such as promotion etc., as admittedly he has been out of service for all these years.

(4) This denial of backwages and other benefits shall be the punishment for the proven delinquency on the part of the petitioner in not giving proper leave application to sanction leave for 20 days, as the same could be only considered as unauthorized absence.

(5) In so far as other benefits, i.e., continuity of service, only for the retiral and pensionary benefits are concerned, the entire service period can be taken into account.

(6) The aforesaid exercise shall be undertaken by the respondents within a period of two weeks from the date of receipt of a copy of this order.

With these directions, this writ petition is allowed as indicated above. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

mrm / tsvn

To

1. The Additional Director General of Police
and Commissioner of Police,
Chennai - 8.

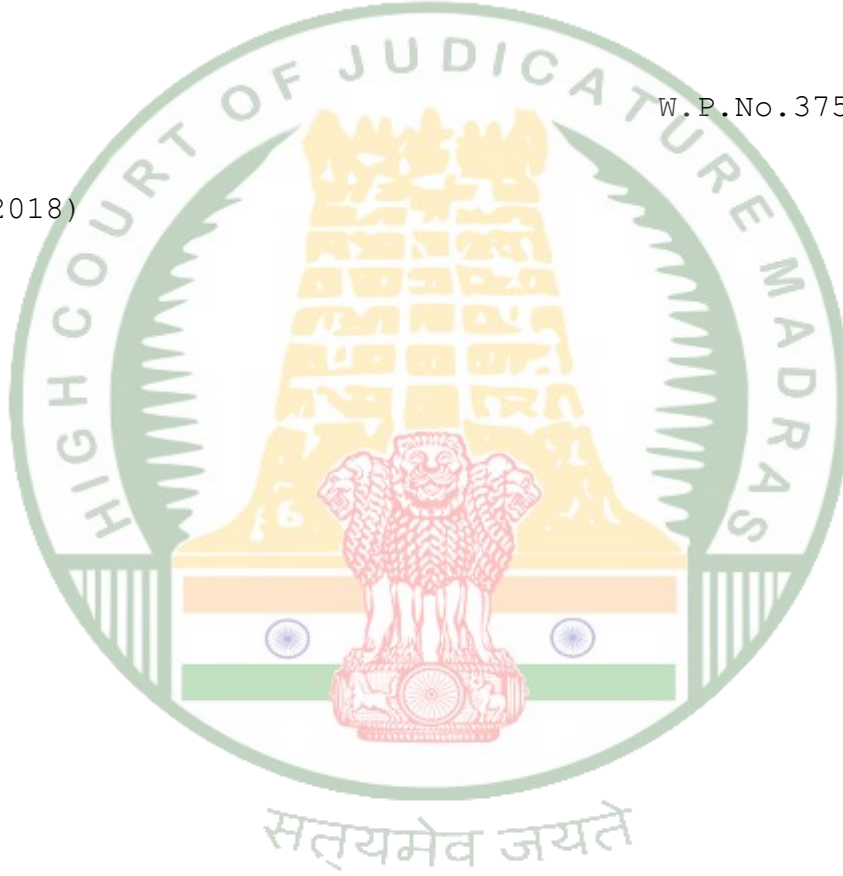
2. The Deputy Commissioner of Police,
Traffic (North) of Chennai - 7.

+1 CC to Govt. Pleader sr 68723.

+1 CC to Mrs.A.L. Gandhimathi, advocate sr 68062.

W.P.No.37558 of 2004

SP(17/12/2018)



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