

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.34354 of 2013

P.Rajasekar

... Petitioner

1.Principal Secretary to Government,
Home Department,
Fort. St.George,
Chennai - 600 009.

2. Director General of Police,
Chennai - 600 004.

3. Superintendent of Police,
District Police Office,
Trichy.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order the first respondent herein in his proceedings G.O.(2D).No.163 dated 01.04.2010 and G.O.(2D) No.676 dated 06/11/2013 and the order passed by the second respondent in his proceedings Rc.No.AP.IV(1)/65771/2009 dated 10.05.2009 and the order passed by the third respondent herein in his proceedings P.R.No.39/H1/98 u/r.3(b) dated 25.08.2008 and quash the same and direct the respondents herein to reinstate the petitioner into service, together with all consequential service and monetary benefits.

For Petitioner : M/s.D.Velmurugan
for M/s.G.Bala and Daisy

For Respondents : Mr.B.Anand
Government Advocate for R1 to R3

O R D E R

The instant writ petition has been filed to quash the orders passed by the second respondent in his proceedings Rc.No.AP.IV (1)/65771/2009 dated 10.05.2009 and the order passed by the third respondent herein in his proceedings P.R.No.39/H1/98 u/r.3

(b) dated 25.08.2008 and direct the respondents herein to reinstate the petitioner service, together with all consequential service and monetary benefits.

2. The petitioner joined the police service as Second Grade Police Constable in the year 2003. It is stated that the petitioner on 07.02.2008, while on duty, he fell ill due to severe chest pain. He was unconscious and was under treatment. The petitioner was charged for being absent from duty from 07.01.2008 to 27.01.2008 without permission. The charge memo was framed under Rule 3(b) of TNPSS Rules in PR.No.39/2008. The Deputy Superintendent of Police, Manapparai was appointed as an Enquiry Officer. The petitioner contested the proceedings and submitted his explanation. The Enquiry Officer by his report dated 31.07.2008 held that charges were proved.

3. The Superintendent of Police, Trichy by an order dated 25.08.2008 agreed with the findings of the Enquiry Officer and passed an order removing the petitioner from service. The petitioner filed mercy petition before the Director General of Police, Tamil Nadu. The Director General of Police by an order dated 10.05.2009 rejected the mercy petition. The petitioner thereafter filed another mercy petition before the Government. The petitioner also approached this Court vide W.P.No.12334 of 2013. This Court by an order dated 29.04.2013 directed the Government to consider his petition on merits and in accordance with law. The Principal Secretary of the Government, before whom the mercy petitioner was filed rejected the mercy petition by the impugned order. This order has been challenged in the instant writ petition.

4. The learned counsel for the petitioner would vehemently contended that the order removal from service has been passed in a routine manner without proper application of mind. He would submit that the petitioner was not well and he was admitted in Hospital and therefore, the period of absence from duty could not have been called as desertion.

5. On a perusal of record, it is clear that the petitioner has not filed any document to substantiate the contention that he was under going away from medical treatment on 07.01.2008. The writ petitioner in his averments has stated that he was admitted in a Hospital, but he has not filed any discharge summary of the Hospital. He has chosen not to produce any documents even at the time of enquiry proceedings or during appeal or in the mercy petition and even in this Court.

6. The counsel for the respondents would submit that the petitioner is working in Uniformed Service and that the

desertion from duty is a very serious charge. An indisciplined person cannot be allowed to remain in Uniformed Service. He would rely on the judgment of this Court in (2014) 4 LLJ 584 is reads as under:-

"Even assuming for the sake of argument to avoid the disputed question of fact, that I accept the contention of the learned counsel for the petitioner as contended by him in the affidavit that his absence is for only for a period of two months and there is medical certificate to that effect, there is no evidence or averment that he has no disinclination to report for work. As he has deserted the work, in terms of the standing order, the Corporation was right in coming to the conclusion that he has abandoned the service. An employee cannot seek sympathy from this Court on the ground that his family would be in streets. If an employee wanted to avail leave, he should have informed the Management by enclosing a medical certificate sent it by registered post. Further, the work of a driver is not a part time job and it is a full time job, but the petitioner has taken it as a part time job, which cannot be accepted by this Court. The decision taken by the Management cannot be found fault with and the order of the respondent management in coming to the conclusion that he has abandoned the service is perfectly justified. However, taking note of the length of service put in by the petitioner, it is open to the petitioner to work out his remedy for consequential benefits thereof in the light of decisions of the Hon'ble Supreme Court reported in UCO Bank and Others V. Sanwar mal etc. AIR 2004 SC 2135:(2004) 4 MLJ 48:2000-II-LLJ-490, Syndicate Bank, Bangalore V. Satya Srinath(2009) 16 SCC 422:LNIND 2007 SC 488:2007-II-LLJ-820. For the foregoing reasons, the writ petition fails and it is dismissed. No Costs."

7. In the absence of any material, this Court is not able to substitute the punishment of removal of service by a lesser punishment. No case for mercy has made out by the petitioner as to why a lesser punishment should be imposed. The writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsp/pkn

To

1.Principal Secretary to Government,
Home Department,
Fort. St.George,
Chennai - 600 009.

2. Director General of Police,
Chennai - 600 004.

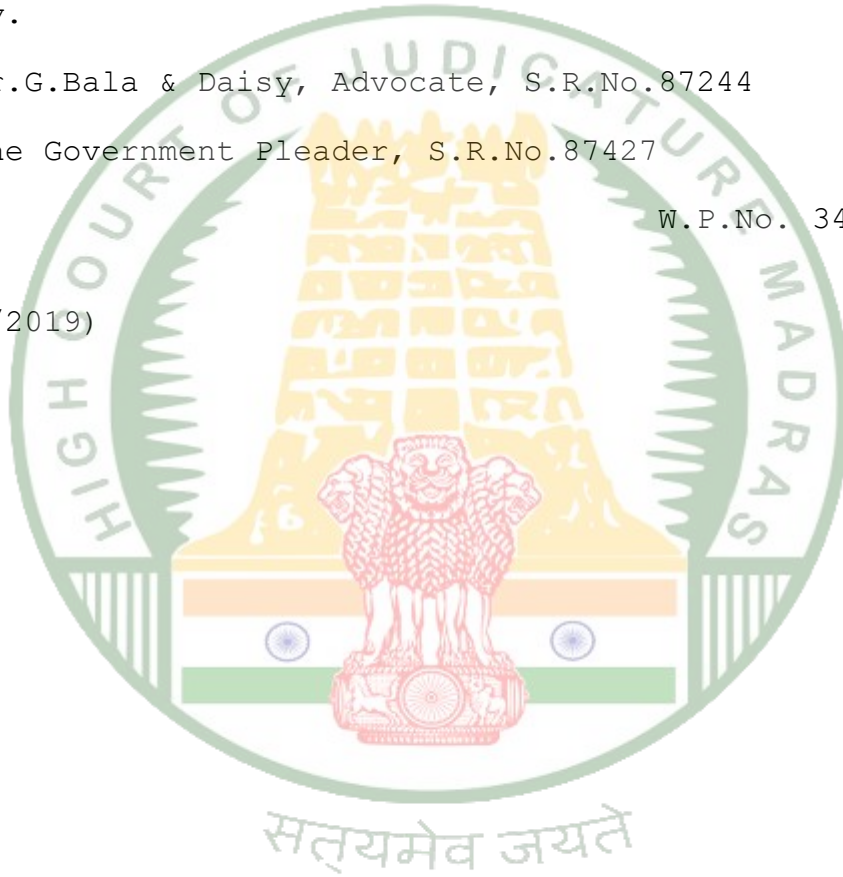
3. Superintendent of Police,
District Police Office,
Trichy.

+1cc to Mr.G.Bala & Daisy, Advocate, S.R.No.87244

+1cc to the Government Pleader, S.R.No.87427

W.P.No. 34354 of 2013

VSN-II (CO)
GSP (21/01/2019)



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