

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No. 20105 of 2007

K.Manikandan

.. Petitioner

Vs

1. The Deputy Inspector General of Police (Training)
Ashok Nagar, Chennai-83

2.The Inspector General of Police (Training)
Ashok Nagar, Chennai - 83

3. The Director General of Police
Chennai-4

4.The Secretary to Government
Home (Police IV) Department
Fort St. George
Chennai - 9

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned orders passed by the respondents 1, 2, 3 and 4 in R.C.No.G1/3760/157/2000 dated 05.07.2000, R C No.G1/157/3760/2000 dated 02.03.2001 Na.Ka.No.32292/Appointment 3/2001 dated 12.06.2005 and G.O.2(D) NO.265 Home (Police-IX) Department, Dated 21/7/2005 and quash the same and direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

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For Petitioner : Mr.M.Muthappan

For Respondents: Mr.K.Ravikumar
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a writ of certiorarified mandamus to quash the impugned orders of termination passed by the first respondent vide proceedings in R.C.No.G1/3760/157/2000 dated 05.07.2000, the Appellate Authority, the third respondent herein, vide proceedings in Na.Ka.No.32292/Appointment.3/2001 dated 12.06.2001 and the revisional Authority, the fourth respondent herein, in G.O 2(D) No.265, Home (Police - IX) Department dated 21.07.2005 and to direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

2.The case of the petitioner is that the petitioner was selected and appointment for the post of Grade II Police Constable in the year 1999. Immediately thereafter, he reported for training in the Police Training School, Coimbatore on 24.05.1999. During the course of training, due to change of food and strain, he has developed Hepatitis and left the training school for taking treatment with the knowledge of the superior officers. The petitioner has taken treatment with one Dr. Mohan, Civil Assistant Surgeon, Govt. Primary Health Centre, Kothagiri, Nilgiris District from 01.08.1999 and since the ailment was so severe, he could not inform the higher officials about the continuous treatment and after taking treatment for more than a month, the petitioner was convalescing at his residence and thereafter reported for duty. However, the petitioner was served with an order of desertion stating that he has been deserted from the police force from 01.08.1999 afternoon, as he was continuously absent for more than 21 days without leave or permission and he was declared as a deserter by the Principal, Police Recruit School, Coimbatore on 27.08.1999. The said order was served on the petitioner on 01.09.1999 with a clause that he should report for duty within 60 days from the date of desertion.

3. The petitioner appeared before the Principal, Police Training School, on 07.09.1999 with medical certificate and the petitioner was taken back for duty on 07.09.1999. Even thereafter, the petitioner has not attended the duty. Hence, the petitioner was declared as a deserter on 08.09.1999 and the desertion order was served on him belatedly. Since the petitioner underwent treatment for 53 days from 09.09.1999, the petitioner reported for duty on 03.11.1999 with a request to take him back for duty with medical certificate and valid

reasons. However, the petitioner was not taken back. On the other hand, he was served with a charge memo dated 25.12.1999 under Rule 3(b) of TNPSS (D & A) Rules for the delinquency of desertion containing two charges and both the charges relate to the delinquency of desertion for continuous period from 01.08.1999 to 09.09.1999 respectively for a period of 21 days without leave or permission. On receipt of the charge memo, the petitioner has submitted an explanation denying the charges and mentioned that due to ill-health and due to reasons beyond his control, he could not report for the training in training centre and when he reported for duty on 07.11.1999, he was not taken back for duty for obvious reasons.

4. Thereafter, an Enquiry Officer contacted enquiry against the petitioner and on the side of the prosecution, three witnesses were examined for establishing the prosecution case in order to prove that the petitioner was absent for more than 21 days on two occasions and marked 11 exhibits. The petitioner denied the charges by submitting an explanation on 17.02.2000 stating that due to severe hepatitis during the course of training, to the knowledge of the superior officers, he left the training for taking treatment and there was no deliberate intention to desert the force. However, based on the Punishment Roll drawn by the Enquiry Officer, the Enquiry Officer drawn a report dated 28.04.2000 and forwarded the same to the Original Authority, namely the Deputy Inspector General of Police (Training), the first respondent herein. The first respondent, without any discussion and without any valid reasons, simply accepted the Punishment Roll filed by the Enquiry Officer on 05.07.2000. As against the non-speaking order, the petitioner filed an appeal before the Inspector General of Police on 07.11.2000. The second respondent confirmed the Original Authority order and rejected the appeal on 02.03.2001. Thereafter, the petitioner filed a further appeal before the Director General of Police, the third respondent herein. The third respondent also confirmed the Original Authority order by order dated 12.06.2001. The petitioner also filed mercy petition, which was also dismissed by the fourth respondent on 21.07.2005, against which the present writ petition has been filed.

5. The learned senior counsel for the petitioner submitted that since the petitioner did not desert the force for months or years together and he was absent only for 21 days on two occasions for taking treatment for Hepatitis with a competent doctor. He further submitted that as the petitioner was advised to take treatment continuously and physically the petitioner was

not fit for training for a particular period, he was absent for duty with the knowledge of the superior. However, without analyzing the medical certificate produced by the petitioner, the impugned orders have been passed.

6. Per contra, the respondents in the counter affidavit has averred as follows:

The petitioner was selected as a Grade II Police Constable in Tamil Nadu Uniformed Service in the year 1999 and he reported for basic training in the Police Recruits School, Coimbatore on 24.05.1999 and he absented himself for training from 01.08.1999 on the ground that he was suffering from severe ailment and he could not inform the office. If the petitioner was suffering from any ailment, he could have informed the duty officer or Assistant Drill Instructor about his illness, so that they would have brought him to the Police Hospital, which is available in the Police Recruits School campus itself. The Medical Officer in the police hospital would have either admitted him as an inpatient or recommended for Medical Leave and the petitioner without following the procedure, left the training centre without getting passport or permission and taken treatment at Kothagiri, Nilgiris District on his own accord.

7. It is further stated in the counter affidavit that while undergoing police training, during the night roll call, the duty Sub-Inspector of Police found that the petitioner left the Police Recruits School and stayed away without leave or permission to the Authority and absented himself from 01.08.1999 for more than 21 days continuously and on the basis of the report of the duty Sub-Inspector of Police in Memo No.29/GM/DSI/PRS/99 dated 03.08.1999, he was issued with an order of desertion as per Rule 95(1) of Police Standing Order dated 27.08.1999 of Police Recruits School, Coimbatore and the petitioner has acknowledged the same on 04.09.1999. The petitioner, who acknowledged the Desertion Order, has appeared before the Superintendent of Police/Principal, Police Training College, Chennai on 07.09.1999 forenoon with the Medical Certificate and he was taken back to duty on 08.09.1999. Further it is submitted that in spite of the instructions and briefing of procedures for leave, he has failed to follow the same and left the training again on 09.09.1999 on his own will and the contention of the petitioner is not acceptable. Since the petitioner absented from recruit school on two occasions, it is clear violation and contrary to the procedure of the Disciplinary force. Therefore, the petitioner was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules of Police Recruits School, Coimbatore for the above said two spells of "desertion". It is

further stated that before the Enquiry Officer, he did not produce any document to show that he was suffering from Jaundice and the Enquiry Officer drawn a adverse Punishment Roll and the same was submitted before the Disciplinary Authority.

8. The learned senior counsel for the petitioner would further submit that though the petitioner was taken back duty, he was not able to participate in the training in the police training school and hence, he was forced to take leave with the consent of the superior officer and taken treatment. However, the Enquiry Officer without considering the documents produced by the petitioner, drawn a Punishment Roll against the petitioner without any discussion either on merits or on documents.

9. On a perusal of the impugned order passed by the first respondent dated 05.07.2000, it is seen that the first respondent did not discuss anything and he passed a four line order approving the minutes drawn by the Enquiry Officer and awarded punishment of removal from service and the same was confirmed by the Appellate Authority as well as the revisional Authority. In view of the above, I am of the considered view that in order to comply with the principles of natural justice, the matter has to be remanded back to the Original Authority for fresh consideration.

Accordingly, the order of the first respondent dated 05.07.2000 and consequential order passed by the Appellate Authority as well as the Revisional Authority are hereby set aside and the writ petition is allowed in part and the matter is remanded to the Deputy Inspector General of Police for fresh consideration and pass orders without reinstating the petitioner and monetary benefits. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gpa
To

1. The Deputy Inspector General of Police (Training)
Ashok Nagar, Chennai-83.

2.The Inspector General of Police (Training)
Ashok Nagar, Chennai - 83

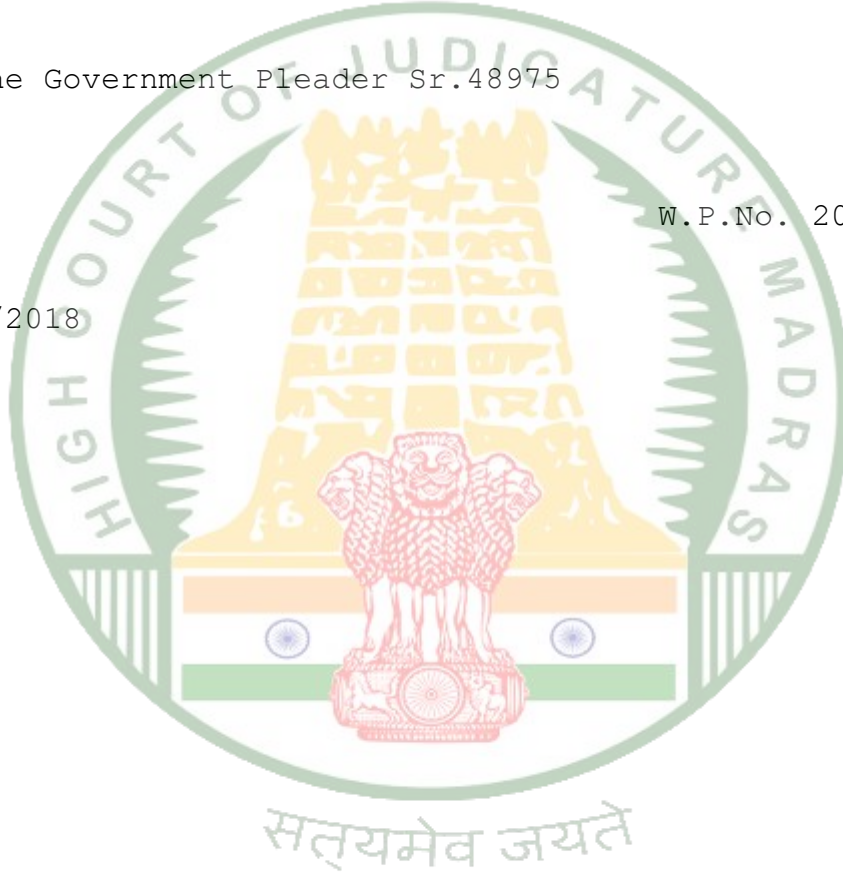
3. The Director General of Police
Chennai-4

4.The Secretary to Government
Home (Police IV) Department
Fort St. George
Chennai - 9.

+lcc to the Government Pleader Sr.48975

W.P.No. 20105 of 2007

srg 28/08/2018



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