

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.3.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.316 of 2018

Tmt.M.Hemalatha

Appellant

Versus

1. The Director General of Police,
Mylapore, Chennai 600 004.
 2. The Additional Director General of Police,
Armed Police, Chennai 600 010.
(I/c.) Deputy General of Police,
Armed Police, Chennai 600 010.
 3. The Commandant,
Tamilnadu Special Police XV th Batallion
Vellore @ Avadi, Chennai 600 054.
- Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 6.10.2017 passed in W.P.No.24356 of 2015 on the file of this court

Petition filed under Article 226 of the constitution of India seeking a writ of certiorarified mandamus to call for the records of the proceedings of the 1st respondent herein namely the Director General of Police, Mylapore, Chennai-4, bearing Na.Ka.No. 006351/Ma.Mu.4(1)/2013 dated 16.12.2013, Proceedings bearing PR No.06/12 dated 17.08.2012 of the Commandant, 15th Battalion, Tamil Nadu Special Police, Avadi @ Vellore, Chennai-600054, the proceedings of the 2nd respondent herein namely the Additional Director General of Police, Armed Police, Chennai-600010, (i/c), Deputy Inspector General of Police, Armed Police, Chennai-600010, bearing Rc.No. C1/Appeal 14/2012 dated 02.11.2012, quash all the three proceedings and consequently direct the 1st to 3rd respondents herein to reinstate the Petitioner into service as Grade II Police constable in the Tamil Nadu Special Police, Vellore @ Avadi, Chennai-54 with effect from 10-07-2011 and to treat the period of service from 10.07.2011 to date of rejoining duty as one of duty for all

purposes with attendant, service and monetary benefits and continuity of service for the above said period together with back wages for the period from 10.07.2011 to date of joining duty.

praying to issue a Writ of Certiorarified mandamus,

For appellant : Appeared in person
For respondents : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the appellant, who appeared in person and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, who takes notice on behalf of the respondents.

2. This writ appeal has been filed by the writ petitioner, challenging the order passed by the learned Single Judge dismissing the writ petition filed by her as against the impugned order of removal from service.

3. It appears that the appellant was appointed as Grade II Women Police Constable in the Tamil Nadu Special Police on 21.1.2011 through proper selection process and subsequently, during the month of May 2011, she went on leave on the ground that her mother fell sick, but, without informing properly, which ended in disciplinary proceedings against her and ultimately in removal from service, which was challenged before the learned Single Judge.

4. The grievance expressed by the appellant before this court and also throughout the proceedings is that during the relevant time, her mother fell sick and she alone had to take care her newborn baby and as a consequence, she also fell sick which constrained her to abstain herself from duty without properly informing the higher officials. Her further contention is that though she had attempted to explain her position for the unauthorised absence, it was not properly appreciated and her mercy petition also came to be rejected by the higher official and therefore, she craves indulgence of this court, having failed in the writ petition.

5. It is mainly contended on behalf of the Department that the appellant was unauthorisedly absent on different occasions and that too when she was under probation and hence, she was removed from service after holding proper enquiry.

6. On appreciating the contentions of the appellant as well as the Department and on appraising the punishment imposed for the misconduct of unauthorised absence which occurred in the scenario explained by the appellant in person and also in her

mercy petition, we are of the view that the punishment imposed upon her is disproportionate and her case needs sympathetic consideration for her pathetic situation at the relevant time. It is also brought to our notice that in a similar situation, the Supreme Court has held in CHAIRMAN CUM MANAGING DIRECTOR, COAL INDIA LIMITED v. MUKUL KUMAR CHOUDHURI AND OTHERS ((2009) 8 MLJ 460) that removal from service of an employee for the misconduct of absenting without leave will be a harsh one and denial of backwages would be sufficient punishment and this court in W.P.No.30199 of 2012 (K.KUMAR v. THE COMMANDANT AND ANOTHER), while dealing with a similar situation, has modified the order of removal from service and remanded the matter to the authorities to reconsider the issue by imposing lesser punishment by reinstating the petitioner therein.

7. Therefore, in the facts and circumstances of the case on hand, while setting aside the order passed by the learned Single Judge as well as the impugned order, we direct for reinstatement of the appellant in service, without any backwages, within a period of three months from the date of receipt of a copy of this judgement. But, at the same time, we are of the view that she cannot be left to go scot-free for her misconduct of unauthorised absence that too in the Uniformed Service. Therefore, we make it clear that the probation period already served by her would not be taken into account and it will start running afresh. We also make it clear that despite this episode, if she indulges in similar misconduct in future, the authorities shall initiate severe action upon her. The writ appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS II)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

ssk.

To:

1. The Director General of Police,
Mylapore, Chennai 600 004.
2. The Additional Director General of Police,
Armed Police, Chennai 600 010.
(I/c.) Deputy General of Police,
Armed Police, Chennai 600 010.

3. The Commandant,
Tamilnadu Special Police XV Batallion
Vellore @ Avadi, Chennai 600 054.

+1cc to Mr.S.Arivazhagan, Advocate SR.No.18513
+1cc to Government Pleader SR.No.18806

W.A.No.316 of 2018

NRJK (CO)
GN (28/03/2018)



WEB COPY