

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30285 of 2006

- 1.Sheik Jabbar (Deceased)
- 2.Ashraf Bee

(P2 - substituted as legal representative of the deceased petitioner vide court order dated 27.08.14 in M.P.1/12 in W.P.30285/2006) Petitioners

Vs.

- 1.Deputy Inspector General of Police, Vellore Range, Vellore.
- 2.The Superintendent of Police, Vellore District.
- 3.Deputy Superintendent of Police, Thirupathur, Vellore District. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the record of the impugned order of the first respondent dated 11.4.2006, bearing proceeding No.C.No.B2/AP.28/2006 and quash the same and further direct the 2nd respondent to permit the petitioner to join service with all back wages and service benefits.

For Petitioners : Mr.Haja Nazirudeen
Senior Counsel
for M/s.H.Nazirudeen
For Respondents : Mr.K.Ravi Kumar
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the

records of the first respondent in proceedings No.C.No.B2/AP.28/2006 dated 11.04.2006 and to quash the same and to further direct the second respondent to permit the petitioner to join service with all back wages and service benefits.

2.The case of the petitioner is that while the petitioner was working as Constable in the Police Department he was issued with charge memo by the second respondent for the alleged desertion of duty from 16.03.1997. The petitioner has absented himself for duty without leave or permission from his superiors. In response to the above, the petitioner gave his explanation. However, being not satisfied with the explanation given by the petitioner and after enquiry, the second respondent awarded the major punishment of dismissal from service on 27.07.1999.

3.It is the further case of the petitioner that aggrieved by the said order, the petitioner filed original application in O.A.No.7819 of 2000 before the State Administrative Tribunal, which, on abolition of the Tribunal was transferred to the file of this Court and re-numbered as W.P.No.27018 of 2005 and this Court vide order dated 27.02.2006 directed the petitioner to file appeal before the first respondent. Thereafter, the petitioner filed appeal before the first respondent. However, the first respondent confirmed the order passed by the second respondent. Challenging the above said order, the present writ petition has been filed.

4.During the pendency of this writ petition, the petitioner died on 07.02.2012 and his wife has been impleaded as second petitioner to represent the estate of the deceased petitioner.

5.The learned Senior Counsel appearing for the petitioners would submit that the petitioner appeared before the Sub-Inspector of Police, Elagiri on 15.03.1997 and as per his directions, went to the office of the third respondent and as per his instructions, got the Thirupattur Camp Office Passport and reached Elagiri Police Station around 2 p.m., where the petitioner was directed to go to Thirupathur Women Police

Station and hand over the charges to the Sub-Inspector, Women Police Station at 07.00 a.m. on 16.03.1997.

6.The learned Senior Counsel appearing for the petitioners would further submit that on receipt of the passport from the Sub-Inspector of Police, Thirupathur, the petitioner reported to the office of the Deputy Superintendent of Police, Thirupathur at 10 p.m., on 16.03.1997. Likewise, the petitioner acted in compliance of the instructions of the third respondent and entrusted two letters at the Vellore S.P.Office. Since the DCRB Office was locked, the petitioner stayed in South Police

Station, Vellore during the night of 16.03.1997. At 7.30 a.m., on 17.03.1997, on receipt of the passport from the said Police Station, the petitioner left the DCRB Office to entrust the aforesaid letters. After entrustment of the letters, the petitioner suffered severe chest pain and immediately got admitted in a local hospital.

7.The learned Senior Counsel appearing for the petitioners would submit that after recovering from the said illness, the petitioner reported to the second respondent by furnishing proper explanation enclosing the medical certificates. However, without considering the medical certificate and the genuine reasons, the second respondent conducted enquiry and awarded the major punishment.

8.The learned Senior Counsel appearing for the petitioners would further submit that since the petitioner has died during the pendency of the writ petition, the second petitioner being his wife has been impleaded in this writ petition and she along with their two children are suffering monetary loss. Hence, this Court may consider the present case sympathetically.

9.In support of his submissions, the learned Senior Counsel appearing for the petitioners relied upon the following decisions:

(i) The decision of the Hon'ble Supreme Court reported in AIR 1994 Supreme Court 215 (Union of India and others Vs. Giriraj Sharma), the relevant portion of which reads as follows:

"2. Mr. Jain the learned Counsel for the appellant Union of India contended that the interpretation placed on Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called 'the Act') is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of dismissal. In support of his contention he invited our attention to a decision of the Rajasthan High Court reported in AIR 1965 Raj 140. He also relied on certain other decisions but it is sufficient to state that according to him the learned Judges of the High Court had committed an error in interpreting the said Sub-section. In our opinion it is not necessary for us to construe Sub-section (1) of Section 11 of the Act in the backdrop of the facts of the present case. Assuming Mr. Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having overstayed the period of leave by 12 days. The

incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been contravened in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances force him to do so. In that view of the matter the learned Counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for We agree with this submission.

3. In the result we see no merit in this appeal but we would modify the order of the High Court by stating that while we affirm the High Court's order quashing the order of dismissal and directing reinstatement in service with monetary benefits, it will be open to the department, if it so desires, to visit the respondent petitioner with a minor punishment. The appeal will stand disposed of accordingly with no order as to costs. If the reinstatement has not taken place thus far the department should reinstate him latest within two weeks from today."

(ii) The decision of the Hon'ble Supreme Court reported in (1996) 7 Supreme Court Cases 634 (Malkiat Singh Vs. State of Punjab and others), the relevant portion of which reads as follows:

"3.The appellant was appointed on April 20, 1990 and was discharged from service on July 22, 1992 on the ground that he remained absent from duty for more than 1 month 9 days. Another ground was that he was irregular in attending to the duty. So he could not prove himself to be an efficient Constable. We had sent for the records which disclose that he was absent on three occasions. On the first occasions when he was called upon to report for duty at 12 noon, he

reported on September 10, 1990 and was late by six hours. On the second occasion, he was absent, on June 30, 1991, from night duty. The third occasion was on April 24, 1995. The explanation offered for the absence on third occasion was that since in his wife's delivery certain complication had arisen, he had to attend to his wife and so he could not be present. The Medical Certificate in that behalf was produced. In view of the Medical certificate, it cannot be said that he had deliberately absented himself from duty. On the previous two occasions, the absence for one day and in another year for one night cannot be considered to be regular absence so as to reach the conclusion that he had not proved his efficiency. It is true that discipline is required to be maintained, However, absence may sometimes be inevitable. In the facts and circumstances of this case, an opportunity may be given to the appellant to work efficiently to prove his excellence. The order of discharge is set aside. The respondents are directed to take the appellant into service forthwith. If the appellant absents himself again for two consecutive days within one year without prior permission, appropriate action may be taken by dismissing him from service. The appellant, however, is not entitled to back-wages."

(iii) The decision of this Court in the case of G.Anandan Vs. The Joint Commissioner of Police, Traffic Zone, Vepery, Chennai and another in W.P.No.27930 of 2006, the relevant portion of which reads as follows:

"13.The further contention raised on behalf of the respondents that the petitioner is in the habit of absenting himself, is not relevant for the simple reason that even admittedly as it is seen in the counter affidavit, actions were taken earlier and at the intervention of

the Tribunal, the action were dropped and it cannot be said as if it can be a ground for the purpose of imposing a major punishment.

14.In any event a reference to the order of the second respondent, namely, original

authority dated 20.07.2006 as well as the appellate authority, namely, the first respondent dated 12.08.2006 shows that the respondents have not chosen to apply their mind for the purpose of giving a proper reason. In fact except stating that the respondents are accepting the enquiry report, there is no independent application of mind by the second respondent being the original authority. It is no doubt true that the judgment of the Hon'ble Apex Court reported in AIR 1999 SC 3367 rendered in Syed Zaheer Hussain Vs. Union of India and others has held that the punishment of the dismissal can be substituted by lesser punishment with reinstatement with 50% cutoff back-wages and also in a subsequent judgment rendered in Pritham Singh Vs. Union of India and others reported in JT 2004 (7) SC 576, wherein

also the order of compulsory retirement was set aside.

15. In a similar circumstance, the Hon'ble Apex Court in the judgement rendered in Union of India and others Vs. Giriraj Sharma reported in AIR 1994 Supreme Court 215, has also set aside the order of dismissal directing reinstatement into service with monetary benefits, leaving it open to the department if so desire to visit the petitioner with minor punishment."

10. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the deceased petitioner was a regular absentee. Though he served in the disciplinary post, previous to this punishment, he was awarded with nine other punishments during his service. Hence, his unauthorized absence of 21 days was viewed seriously and the major punishment of dismissal from service was awarded to him. Therefore, the impugned order need not be interfered with under Article 226 of the Constitution of India.

11. Heard the arguments advanced on either side and also perused the materials available on record.

12. The issue involved in the present case is whether the order of dismissal from service passed by the second respondent

on 27.07.1999 and the order of the first respondent dated 11.04.2006 confirming the punishment is dis-proportionate to the charge framed against the petitioner or not.

13. Admittedly, the petitioner was un-authorizedly absent for 21 days. However, in his explanation, he has clearly stated that he suffered severe chest pain and immediately he was admitted in hospital and immediately after his discharge, he reported to the second respondent. He has also produced the relevant medical certificate.

14. Perusal of the enquiry report of the Deputy Superintendent of Police dated 30.03.1999 reveals that before the Enquiry Officer, the prosecution examined three witnesses namely, Kannan - Inspector of Police, Elagiri Police Station; Junior Assistant, District Police Office,

Velur and Dhayalan - Head Constable, Elagiri Police Station and marked five documents. The documents relates to the petitioner's absence in duty. The Enquiry Officer did not discuss anything about the prosecution case but has simply stated that if the petitioner suffers from any ill health, the petitioner has to report about the same to the higher Officials. However the petitioner absented himself from duty without informing about his illness to the higher Officials. Accordingly, he has drawn the proven report against the petitioner.

15. The Disciplinary Authority as well as the Appellate Authority have also not discussed the above aspects and they have simply accepted and extracted the Enquiry Officer's report and have imposed the punishment of dismissal from service. The petitioner's case with regard to the medical certificate and other aspects were not at all considered by the Disciplinary Authority as well as the Appellate Authority.

16. Initially, the petitioner filed original application in O.A.No.7819 of 2000 before the State Administrative Tribunal challenging the order of dismissal passed by the second respondent dated 27.07.1999, which, on abolition of the Tribunal was transferred to the file of this Court and re-numbered as W.P.No.27018 of 2005 and this Court vide order dated 27.02.2006 directed the petitioner to file appeal before the first respondent. Accordingly, the petitioner filed appeal before the first respondent. However, the first respondent confirmed the order passed by the second respondent.

17. Hence, this Court is of the opinion that the procedures to be followed while awarding the major punishment like dismissal from service have not been followed in the present case. Considering the factual aspects as well as the decisions relied upon by the the learned Senior Counsel appearing for the

petitioners, this Court is inclined to set aside the impugned order. Accordingly, the impugned order dated 11.04.2006 is set aside.

18. Since the petitioner has died, there is no question of reinstatement. However, this Court is of the view that the order of punishment is too harsh and excessive. Accordingly, the matter is remitted back to the respondents for fresh consideration. The respondents shall consider the matter sympathetically and pass appropriate orders, considering the past services rendered by the deceased petitioner for more than twenty years, for awarding some retirement benefits in favour of his family. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

19. The writ petition is accordingly disposed of. No costs.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Deputy Inspector General
of Police,
Vellore Range, Vellore.
2. The Superintendent of Police,
Vellore District.
3. The Deputy Superintendent of Police,
Thirupathur,
Vellore District.

+1cc to Mr.P.Hari Babu Advocate SR.No.45153

+1cc to Government Pleader SR.No.45727

W.P.No.30285 of 2006

NRL (CO)
GN (02/08/2018)