

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.07.2018

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.12825 of 2012

V.Vijayandran

..

Petitioner

Vs

1.The Superintendent of Police,
Nagapattinam District,
Nagapattinam

2.The Deputy Inspector General
of Police,
Thanjavur Range,
Thanjavur.

3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-4

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the 1st and 2nd respondents in connection with the impugned order passed by the 1st respondent in Pr.No.25/2011 u/r.3(b) dated 28.11.2011 and by the 2nd respondent in Na.Ka.No.B2/AP6/2012 dated 14.2.2012 and quash the same.

For Petitioner

... Mr.K.Venkatramani, Sr.Counsel
for Mr.M.Muthappan

For Respondents

... Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner was appointed as Grade-II Police Constable in the Tamil Nadu Special Police Battalion, on 02.04.1981. He was later upgraded as Police Constable Grade-I in 2001. According to the petitioner, he had received more than 50 rewards in his career. While he was working as Head Constable, the petitioner was issued with a Charge-Memo on

05.09.2011, alleging 'unauthorised absence', for a long period. An enquiry was conducted into the charge and on conclusion of the enquiry, a report was submitted holding the charge proved. Thereafter, the Disciplinary Authority, accepting the findings of the Enquiry Officer, imposed a penalty of 'Removal from Service' by order dated 28.11.11. An appeal was preferred against the order passed by the Disciplinary Authority to the Second Respondent on 05.12.2011. However, the same came to be rejected on 14.02.2012. The orders passed by the Disciplinary and Appellate Authority, dated 28.11.2011 and 04.02.2012, are put to challenge in this writ petition.

2.The learned Senior counsel for the petitioner Mr.Venkatramani would submit that the order of 'Removal from Service' is extremely harsh and excessive since the petitioner had some explanation for his absence during the relevant period. Therefore, without considering the explanation offered by the petitioner in proper perspective, the Enquiry Officer rendered his findings against him and the same has been accepted by the Disciplinary Authority and ultimately, the petitioner was imposed with the penalty of 'Removal from Service'. The Appellate Authority, by a non-speaking order, confirmed the appeal on 14.02.2012.

3.The learned Senior Counsel would submit that the imposition of penalty of 'Dismissal from Service' for desertion, was found to be excessive and harsh by the Division Bench of this Court in the judgment rendered in W.A.No.58 of 2011 (R.Ramesh vs. 1.The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram), dated 27.01.2011. He would draw the attention of this Court to paragraph Nos.2 and 3 of the said judgment, which are re-produced hereunder:

"2.The appellant/writ petitioner, who was serving as Grade-II Police Constable in the Police Department at Kancheepuram, was proceeded against departmentally on the charge that he remained absent from duty for a period of 21 days. The Enquiry Officer held the charge against the appellant as proved. In view of the finding of the Enquiry Officer, as also the fact that the appellant had earlier deserted the force on three occasions and absented himself from duty on two occasions, the disciplinary authority, viz., the second respondent herein, passed an order of dismissal from service against the appellant. The appellant challenged the same by filing the writ petition, which was dismissed by the learned single Judge, who held that the appellant, being employed in the Armed Reserve, was expected to

maintain strict discipline and in view of his past conduct, the punishment of dismissal cannot be termed as excessive or disproportionate.

3. After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority, viz., the second respondent herein, to re-consider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed."

The learned Senior counsel would submit that the present case is also identical to the said case and therefore, the order of 'Removal from Service' is disproportionate to the gravity of mis-conduct alleged against the petitioner.

4. Upon notice, Mr.S.Pothiraj, the learned Special Government Pleader, entered appearance and filed a detailed counter affidavit.

5. In the counter affidavit, in paragraph No.4, it is stated as follows:

"4. It is submitted that the orders passed by the first respondent and confirmed by the second respondent are in accordance with law and there is no unjust or illegal caused to the petitioner. Further, the petitioner was given all opportunity to defend himself and he has not appeared before the first respondent within 60 days from the date of desertion i.e. 18.5.2011 and hence his desertion was confirmed. The contention of the petitioner that he was undergoing treatment in a private hospital is not correct as he has not produced any supporting

documents to prove that he was admitted as inpatient and was unconscious for a long time. The petitioner is an experienced Head Constable and having rendered more than 31 years of service should follow the proper procedures and he cannot deserted the force on his own accord. Out of 18 punishments awarded to the petitioner, 6 punishments are for having deserted the force which cannot be tolerated in a discipline force. Hence, the punishing authority as well as the appellate authority, after careful consideration of all the connected records submitted by the petitioner, has rightly awarded the punishment of 'Removal from Service' which is commensurate to the delinquency."

6. According to the learned Special Government Pleader, the petitioner was awarded punishment on 18 occasions and on six occasions, he was found to be unauthorisedly absent. In spite of 18 punishments imposed on him, the petitioner did not show any improvement in his conduct and therefore, the Disciplinary Authority felt that the retention of the petitioner was not in the interest of public. According to the learned Special Government Pleader, being member of the Uniformed Force, the petitioner is expected to maintain high degree of discipline and good conduct. Remaining absent quite often, without informing the establishment, is a serious misconduct, for which, the petitioner has been adequately punished. He would therefore submit that no interference is called for in the matter. The learned Special Government Pleader would also produce the list of punishments imposed on the petitioner during various periods.

7. From the documents produced on behalf of the respondents, it is found that at least on nine occasions, the petitioner was imposed with penalty for taking leave without proper intimation and for desertion on other occasions 'black mark' was recorded.

8. As rightly contended by the learned Special Government Pleader that despite 18 punishments recorded in the service career of the petitioner, there was absolutely no improvement in the conduct of the petitioner and he continued to remain indisciplined by absenting without proper sanctioning of leave by the establishment. In the said circumstances, the retention of the petitioner was against public interest and such Police Personnel if retained can be a bad example in the Police Force, which force is expected to maintain high degree of discipline and standards.

9. In view of the number of punishments imposed on the petitioner in the past, the Disciplinary Authority felt that the

punishment of 'Removal from Service' was adequate, since the petitioner was not willing to correct himself. In the said circumstances, any indulgence to be shown to the petitioner will only be a misplaced sympathy and that would send a wrong signal to the members of the Police Force, who are otherwise rendering hard work and maintaining good conduct. Moreover, such sympathy to be shown will be against public interest and does not advance cause of good Police Administration. The judgment of the Division Bench of this Court, relied on by the learned Senior Counsel for the petitioner, cannot be applied to the factual matrix of the present case, since the proportionality of punishment can be considered only in the light of facts of each case and cannot be put in a straight jacket formula.

10. In the present case, this Court is of the view that the order removing the petitioner from service cannot be held to be disproportionate and the punishment imposed on the petitioner is only on the basis of proved misconduct. Therefore, this Court does not find any merit in the Writ Petition and therefore, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent of Police,
Nagapattinam District,
Nagapattinam
2. The Deputy Inspector General
of Police,
Thanjavur Range,
Thanjavur.
3. The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai-4

W.P.No.12825 of 2012

sv(co)
nr 27/07/2018