



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 28.03.2018  
ORDER DELIVERED ON: 04.06.2018

WEB COPY

CORAM:

**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No. 14710 of 2015  
and  
M.P. (MD) No. 1 of 2015

M. Dharmaraja

... Petitioner

-Vs-

State by

1. The Principal Secretary to Government,  
Home (Police VI) Department,  
Secretariat, Chennai.

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

3. The Superintendent of Police,  
Sivagangai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records and to quash the order ref.no.G.O.(2d) no-408 dated 27.11.2012 passed by the 1<sup>st</sup> respondent which is served to the petitioner by the 3<sup>rd</sup> respondent on 19.08.2013 (dismissed on 13.03.1996 by the 3<sup>rd</sup> respondent) and direct the respondent to re-instate the petitioner into the service with full back wages from 02.05.1994.

|                 |                                                |
|-----------------|------------------------------------------------|
| For Petitioner  | : Mr.M.Dharmaraja (Party in person)            |
| For Respondents | : Mrs.S.Srimathi<br>Special Government Pleader |

**ORDER**

The petitioner joined the Police Department as Constable on 25.05.1988. He was confirmed in July 1990. He was implicated in Crime No.178 of 1994 on the file of the Sivagangai Town Police Station for the offence under Section 332 of I.P.C. The complaint was given by one Tamil Arasu, who was also working in the same department. The said criminal case however ended in acquittal on



07.10.2003 in C.C.No.65 of 1997 on the file of the learned Judicial Magistrate No.1, Sivagangai. In the meanwhile, based on the criminal case, the petitioner was suspended from service on 02.05.1994 by the third respondent herein. The petitioner was declared as a deserter and by order dated 13.03.1996 the petitioner was dismissed from service. Following acquittal by the Criminal Court, the petitioner submitted a Review Petition dated 24.03.2005. The said Review Petition was directed to be considered by this Court by order dated 06.07.2005 in W.P.(MD). No.597 of 2005. The said representation was however rejected by the Government on 21.10.2005. Questioning the order of rejection issued by the Government, the petitioner filed one more Writ Petition before this Court.

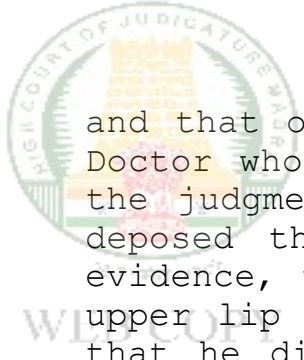
2.This Court took the view that the grounds raised by the petitioner have not been dealt with. After setting aside the rejection order dated 21.10.2005 it remitted the matter to the file of the department for fresh consideration. Thereafter, the petitioner was given an opportunity of hearing and the impugned G.O.(2D).No.408 dated 27.11.2012 came to be passed. Once again, the petitioner's request for reinstatement was rejected. Questioning the same, this Writ Petition has been filed. The writ petitioner appeared in person and made his submissions.

3.The ground taken by the writ petitioner is that the first respondent has mechanically rejected his request and failed to note the procedural irregularities committed by the third respondent.

4.This Court went through the materials on record.

5.It is true that the writ petitioner was an "A" list Permanent Constable working in the Armed Reserve of Sivagangai. It is also seen that Crime No.178 of 1994 was registered against the petitioner under Section 332 of I.P.C. on the file of the Sivagangai Town Police Station. The final report was filed in the said case and the same was taken on file as C.C.No.65 of 1997 on the file of the learned Judicial Magistrate No.1, Sivagangai. It is true that the petitioner herein was acquitted on 07.10.2003.

6.The allegations against the petitioner was that on 29.04.1996 at about 07.30 p.m., the petitioner had physically assaulted one Tamil Arasu, who was working in the same Department. Before the Criminal Court, the said Tamil Arasu was examined as P.W.2. The said Tamil Arasu had categorically deposed before the Criminal Court that there was a quarrel between the petitioner and himself on 29.04.1994 and that the petitioner had assaulted him in the eye. One P.W.1 Rajendran was examined as eye witness. He was a police Constable. P.W.3 Shanmugam was the Ministerial staff who also deposed that the petitioner had quarrelled with the said Tamil Arasu and assaulted him on his face



and that others intervened and separated the two. P.W.5 was the Doctor who had examined P.W.2 and issued Certificate Ex.P3. But the judgment of acquittal came to be rendered because P.W.2 had deposed that he had not taken treatment. As per the medical evidence, the said Tamil Arasu had suffered minor injuries on his upper lip and little finger. In view of the deposition of P.W.2 that he did not take any treatment, the entire prosecution case was thrown out. The Criminal Court chose to grant the benefit of doubt in favour of the petitioner herein. This Court has referred to the Criminal Court judgment only to show that of the prosecution witnesses had categorically deposed against the petitioner herein and yet in view of the discrepancy between the statements of the witnesses, the benefit of doubt was given to the petitioner which led to his acquittal. In view of this involvement in Crime No.178 of 1994, the petitioner was suspended on 02.05.1994. P.R.No.121 of 1991 under Rule 3(b) was also issued. But it was kept pending awaiting the disposal of the criminal case. The petitioner however deserted the Headquarters on 25.11.1994. He was therefore declared as a deserter.

7.It is also stated that attempts to serve the notices on the petitioner were not fruitful. He was set ex parte and then dismissed from service. Questioning the said order dated 13.03.1996, the petitioner filed an appeal before the Director General of Police. But the same was summarily rejected by an order dated 01.07.1998. Thereafter, nothing was heard from the petitioner. He probably awaited the disposal of the criminal case. Following the judgment of acquittal dated 07.10.2003, the petitioner submitted a representation to the third respondent seeking reinstatement. The same was dismissed on 21.10.2005. The said order was set aside in W.P.(MD).No.8980 of 2007 on 08.12.2008. Again the petitioner met with an order of rejection on 27.11.2012. It is this that is assailed in these proceedings.

8.It is relevant to mention here that the petitioner was not dismissed after holding the charges framed against him in P.R.No.121 of 1994 were proved. In fact, the said disciplinary action was put on hold till the conclusion of the criminal case. The reason for dismissing the petitioner from service was because he had deserted the Headquarters on 25.11.1994. After issuing an order declaring the petitioner as a deserter, P.R.No.93 of 1995 was issued against the petitioner. The petitioner ought to have appeared for enquiry and contested the charge of desertion.

9.A very reading of the materials on record as well as the affidavit filed in support of this writ petition, would lead to the conclusion that the petitioner did not even attempt to contest the said charge. The petitioner in paragraph 6 of the affidavit <https://hcservices.civils.gov.in/hcservices/> his representations would give an explanation that the atmosphere was so communalised and that he did not feel safe in his duty spot. This is sufficient to hold that the order dated



13.03.1996 was rightly passed. That is why, the Director General of Police also did not intervene. In fact, the case against the petitioner stood concluded as early as on 01.07.1998 itself.

10. The Director General of Police, Chennai, in his order dated 01.07.1998 rejected the petitioner's petition in the following manner:-

"3). I have gone through the appeal petition and other connected records. The appeal petition is time barred one. The charge stands proved on sufficient evidence. There are no valid reasons to interfere with the decision of the punishing authority or the punishment awarded. The time barred appeal is accordingly dismissed."

11. The petitioner has been trying to revive his stale claim on the basis of the judgment of acquittal that was given on 07.10.2003. But it is also pointed out that the said cause of action has nothing to do with the petitioner's dismissal from service. Admittedly, the petitioner was a deserter and he did not even bother to contest the charge of desertion.

12. The order impugned in this Writ Petition has been passed in cryptic manner. Hence, this Court has chosen to go through the entire records. It comes to the conclusion that no purpose will be served in keeping this issue alive. The petitioner has not made out any case for setting aside the order of dismissal.

13. However, this Court is of the view that some relief can still be granted to the petitioner. The petitioner was suspended from service on 02.05.1994. According to him, he was dismissed from service only on 13.03.1996. It appears that the petitioner was paid subsistence allowance only for a few months. This Court is of the view that the Department will have to be quantify the balance amount payable to the petitioner for the period from 02.05.1994 to 13.03.1996. The petitioner had joined his service in the year 1988 and was dismissed only on 13.03.1996. Certain two other service benefits would also be payable to him.

14. The third respondent shall verify the records and quantify the monetary benefits payable to the petitioner which of course will carry interest. The petitioner has been battling the department for the last so many years. This is his third Writ Petition before this Court. He was acquitted in the criminal case. Taking note of all these aspects, this Court is of the view that the petitioner will have to be paid the amount with interest. This will be done within a period of eight weeks from the date of

<https://hccs.eports.gov.in/laservices> for a copy of this order.

15. With this direction, this Writ Petition stands



dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,  
Home (Police VI) Department,  
Secretariat, Chennai.
2. The Director General of Police,  
Chennai-600 004.
3. The Superintendent of Police,  
Sivagangai District.

+1cc to SPECIAL GOVERNMENT PLEADER, Sr.No.66956

Tsg

MK/SB/SAR 2/21.06.2018/5P/5C

order made in  
W.P. (MD) No.14710 of 2015  
and  
M.P. (MD) No.1 of 2015  
04.06.2018