



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.01.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4439 of 2016

C.Rajkumar

... Petitioner

Vs.

1. The Director General of Police,
Chennai -4.
2. The Deputy Inspector General of Police,
Armed Police, Chennai.
3. The Commandant,
Tamil Nadu Special Police XV Battalion,
Vellor at Avadi, Chennai.
4. The Deputy Commandant,
Tamil Nadu Special Poice XV Battalion,
Vellore at Avadi, Chennai.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent pertaining to its order bearing C.No.P.R.No.093(p) of 2013 dated 05.06.2013 and the consequential order passed by the first respondent in mercy petition bearing Rc.No.130347/AP3(1)/2015 dated 23.11.2015 and to quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service and back wages.

For Petitioner	: Mr.S.C.Herold Singh
For Respondents	: Mr.M.Jeyakumar
	Additional Government Pleader

O R D E R

The writ petitioner joined the Police department as a Grade-II Police constable on 01.04.2010. Subsequently, he was promoted as Grade-I police constable. The writ petitioner applied for 15 days medical leave on 24.04.2012. When he was on leave, the writ petitioner was afflicted with jaundice. He applied for extension



of medical leave and the same was sent through registered post. Though the petitioner's request for extension of leave was granted and the same was extended upto 02.06.2016, the writ petitioner did not report for duty thereafter. Since the writ petitioner was unauthorizedly absent, the authorities initiated disciplinary action against him. An enquiry officer was appointed. The charge was held as proved. The disciplinary authority imposed the punishment of removal from service. Instead of filing an appeal, the writ petitioner filed a mercy petition before the first respondent. The first respondent by the impugned order dated 23.11.2015 viewed the delinquency of the writ petitioner as serious and rejected the petition. It is this that is under challenge in this writ petition.

2.As pointed out by the learned Additional Government Pleader appearing for the respondents, the charge initiated against the writ petitioner was rightly held as proved and there was due compliance with the principles of natural justice.

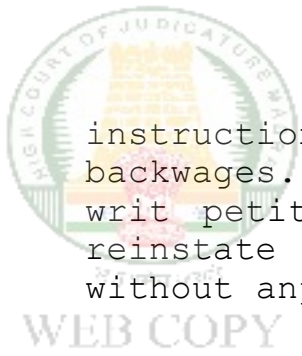
3.The question that is raised by the writ petitioner is whether the penalty imposed on the writ petitioner is commensurate with the gravity of the misconduct by him. The learned counsel appearing for the writ petitioner drew the attention of this Court to the representation lodged by him before the authorities. The writ petitioner's father was afflicted with HIV and he died on 30.09.2013. The writ petitioner was thus suffering from a major domestic tragedy. It was not a case of dying of old age.

4.In these circumstances, the writ petitioner pleaded that his condition should be viewed with indulgence and sympathy. The petitioner had to be away from his duty for reasons beyond his control. The Hon'ble Supreme Court in the decision reported in **(2004) 4 SCC 560 (Shir Bhagwan Lal Arya v. Commr. of Police)** held that the absence of more than two months on medical grounds cannot be regarded as a grave misconduct rendering him completely unfit for police service. The Hon'ble Supreme Court held that dismissal on the said ground would be excessive and disproportionate.

5.In the present case, the first respondent has observed that the petitioner's unauthorized absence from duty for about 15 months is a serious delinquency and cannot be condoned. While it is undoubtedly true, the conclusion of the authority that the delinquency cannot be condoned is not correct. The authority has observed that the delinquent has no satisfactory explanation to justify his unauthorized absence. This Court is of the view that the writ petitioner has placed convincing material for explaining his unauthorized absence.

<https://hcservices.ecourts.gov.in/hcservices/>

6.The learned counsel appearing for the writ petitioner on



instructions would submit that he would forego the claim for backwages. Thus, therefore, the impugned order is quashed and the writ petition stands allowed. The respondents are directed to reinstate the petitioner in service with continuity of service without any backwages. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police, Chennai -4.
2. The Deputy Inspector General of Police,
Armed Police, Chennai.
3. The Commandant,
Tamil Nadu Special Police XV Battalion,
Vellor at Avadi, Chennai.
4. The Deputy Commandant,
Tamil Nadu Special Police XV Battalion,
Vellore at Avadi, Chennai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 42561
+ 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No.42180

SKM

TE/MR/SAR-1 : 02/02/2018 : 3P/7C

W.P(MD)No.4439 of 2016
12.01.2018