



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A (MD)No.871 of 2011

and

M.P.(MD) No.2 of 2011

- 1.State of Tamilnadu,
Rep.by
Secretary to Government,
Police Department,
Fort St. George, Chennai - 600 009.
- 2.The Director General of Police,
Chennai - 4.
- 3.The Additional Director General of
Police,
(Law and Order), Chennai - 600 004.
- 4.The Commissioner of Police,
Madurai City, Madurai. ... Appellants/Respondents 1 to 4

vs.

B.Subhashini ... Respondent / Petitioner

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 03.12.2010 made in WP(MD)No.10189 of 2005 on the file of this Court.

Prayer in WP(MD). 10189/ 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court a CERTIORARIFIED MANDAMUS Calling for the records relating to the impugned order of the 2nd respondent dated 26.8.2005 in Ref.RC.NO. 143482/AP.2(3)/2005 confirming the order of the 3rd respondent dated 29.4.2005 in his proceedings C.NO. 76648/AP.2(3)/2005 which confirmed the order of the 4th respondent dated 24.1.2005 in Ref.PR.NO. 159/04 and quash the same order dated 26-82005 directing the respondents to reinstate the Petitioner in service with all attendant benefits, together with backwages.



For Respondent

: Mr.S.Palanivelayutham

JUDGMENT

(Judgment of the Court was delivered by
G.R.SWAMINATHAN, J.)

This intra court appeal is directed against the order dated 03.12.2010 allowing WP(MD)No.10189 of 2005 filed by the respondent herein. The respondent herein joined the Police Department as Sub Inspector of Police on 16.04.1999. She was unauthorizedly absent from 23.01.2004. She was declared as a deserter. Later, she was dealt on a charge in PR No.159 of 2004 under Rule 3(b) of TNPSS (D&A) Rules, 1955. The Assistant Commissioner of Police, Town (Law and Order), Madurai City conducted an enquiry. He found the charge framed against the petitioner as proved. After concurring with the findings of the enquiry officer, the disciplinary authority dismissed the delinquent from service by order dated 24.01.2005. The same was also confirmed by the Appellate Authority vide order dated 29.04.2005. The revisional authority also did not find any ground to interfere in favour of the delinquent. Challenging these orders, the delinquent filed WP(MD)No.10189 of 2005. The learned Judge by order dated 03.02.2010 allowed the writ petition and directed her reinstatement. It was further held that she would be eligible to get 25% of the backwages from the date of removal till the date of reinstatement. Challenging the same, this intra court appeal has been filed by the State.

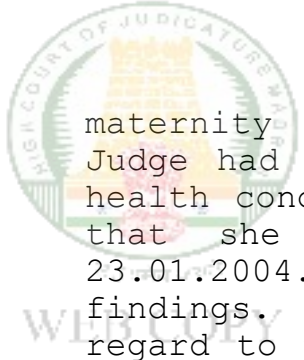
2.Heard the learned Special Government Pleader appearing for the appellants/State and the learned counsel appearing for the respondent/writ petitioner.

3.This Court directed the respondent to appear in person. Accordingly, the respondent appeared before this Court. It was obvious that the respondent had met with a major fire accident. Therefore, in order to ascertain her physical fitness, we directed her to appear before the Medical Board. The Dean, Madurai Rajaji Government Hospital was directed to constitute a medical team to examine the petitioner and assess her fitness for working in the Police Department. The Board submitted a report dated 29.08.2017 indicating that the patient sustained 40% burns and that her current disability was assessed at 30%. It was certified that she is otherwise physically fit for duties.

4.The respondent had joined the Police Department as a direct recruit as a Sub Inspector of Police. She has had a clean record. She expressed her eagerness to serve the department. In the presence of her counsel, the respondent stated that she would not press any claim for backwages and that she would also not seek further promotional opportunities. She only wanted that she could be allotted appropriate duties taking into account her current physical disability and condition.

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

5.The learned Single Judge noted that she was granted



maternity leave from 17.09.2003 till 22.01.2004. The learned Judge had given a positive finding that only on account of her health condition, she did not turn up for duty. It was also noted that she had sent leave application seeking extension of leave on 23.01.2004. We do not propose to interfere with the aforesaid findings. The order passed by the learned Single Judge with regard to payment of backwages however warrants interference. The appellants cannot be faulted. They had issued notices calling upon the petitioner to appear or otherwise respond. The petitioner had chosen to remain exparte. But, as observed earlier, her remaining exparte cannot be characterized as willful and deliberate. It was more on account of circumstances set out supra.

6. Therefore, taking a lenient view, we sustain the order passed by the learned Single Judge directing her reinstatement. But then, the writ petitioner/respondent herein will not be entitled to any backwages for the period from the date of removal till the date of reinstatement. As already stated, the respondent will not be entitled to any further promotion. The only relief that is granted to her is reinstatement in the police department in the very same post of Sub Inspector of Police. The period from the date of removal to the date of reinstatement will count for all other purposes such as continuity of service etc., The employer will allot her appropriate duties taking into account her present physical condition.

7. With this modification, this writ appeal is partly allowed. Consequently, Connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar (CS-II)

TO

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3. The Additional Director General of Police,
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+1cc to Mr. S. PALANI VELAYUTHAM, Advocate, SR.No.95517

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