

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.14268 of 2011
and
MP Nos.1 & 2 of 2011 & MP.No.1 of 2012

N.Chandrasekaran

.. Petitioner

Vs.

- 1.The Secretary to Government,
Home Department,
Secretariat, Chennai-600 009.
 - 2.The Commissioner of Police,
Coimbatore City, Coimbatore District.
 - 3.The Director General of Police, Tamilnadu,
Chennai-600 004.
 - 4.The Deputy Commissioner of Police,
Law & Order,
City Police Office,
Coimbatore City, Coimbatore District.
 - 5.The Assistant Commissioner of Police,
Coimbatore City, Coimbatore District.
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Ceteriorarified Mandamus calling for the records pertaining to order made in CPO No.324/2005, PR/83/F1/05 dated 07.02.2006 passed by the fourth respondent and the consequential order made in RC No.109749/AP.1(1)/2007 dated 29.08.2007 by the third respondent, and G.O.(2D) No.195, Home (Police-VI) Department dated 16.04.2010, passed by the first respondent and quash the same as illegal, improper, unreasonable and against the principles of natural justice and consequently direct the respondents to reinstate the petitioner in service with back-wages and continuity of service.

For Petitioner .. Mr.K.Venkatramani, Sr. Counsel for
M/s.M.Muthappan

For Respondents .. Mr.J.Ramesh, AGP

ORDER

This writ petition has been filed seeking for issuance of a Certiorarified Mandamus to call for the records pertaining to order made in CPO No.324/2005, PR/83/F1/05 dated 07.02.2006 passed by the fourth respondent and the consequential and order made in RC No.109749/AP.1(1)/2007 dated 29.08.2007 by the third respondent, and G.O.(2D) No.195, Home (Police-VI) Department dated 16.04.2010, passed by the first respondent and quash the same as illegal, improper, unreasonable and against the principles of natural justice and consequently direct the respondents to reinstate the petitioner in service with back-wages and continuity of service.

2. The petitioner was appointed as Grade II Police Constable on 17.11.1988 in Coimbatore City Armed Reserve. In the year 1998, he was promoted as Grade I Police Constable. The petitioner was absent without proper intimation to the department on three spells viz., one from 20.06.2004 to 09.07.2004, 04.01.2004 to 30.10.2004 and from 28.04.2005. On all three occasions, according to the petitioner, he was ill and was taking medical treatment. On the last occasion of his absence from duty, the petitioner was declared as deserter on 21.05.2005, though he was earlier taken back for duty on 21.10.2004.

3. Thereafter, a charge memo dated 20.10.2005 was issued to the petitioner for his absence and as well as for desertion of duty under Rule 3(b) of the Tamilnadu Police Subordinate Service (Disciplinary and Appeal) Rules. In response to the charge memorandum, the petitioner appears to have submitted a reply on 17.11.2005, explaining the reasons for his absence. However, despite the legitimate explanation offered by the petitioner, the enquiry officer held the charges proved by his report dated 29.12.2005. The petitioner further represented against the enquiry report on 25.01.2006. However, the fourth respondent not satisfied with the explanation of the petitioner but agreed with the findings of the enquiry officer imposed a punishment of compulsory retirement from service on the petitioner vide order dated 03.02.2006. As against the above order of the disciplinary authority, an appeal was preferred to the third respondent, but the same was rejected on 29.08.2007. The petitioner filed two mercy petitions before the first respondent and second respondent and both came to be rejected on 20.07.2007 and 16.04.2010 respectively. The punishment of compulsory retirement is the subject matter of challenge in the present writ petition.

4. Mr.K.Venkatramani, learned Senior Counsel appearing for the petitioner would submit that the petitioner had valid explanation for his absence on some occasions and unfortunately

none of the authorities who considered the representation of the petitioner, had appreciated the genuine reasons given by the petitioner for his absence and imposed the penalty of compulsory retirement on him and confirmed the same. In any event, the learned Senior Counsel would submit that this Court has time and again held in a number of decisions that punishment of removal from service of compulsory retirement is disproportionate to the gravity of offence of desertion from duty. He would therefore, submit that the punishment imposed on the petitioner may be ordered to be substituted to any other penalty other than dismissal, removal from service or compulsory retirement. The learned Senior Counsel has also added that the petitioner during the pendency of the writ petition died on account of Heart attack on 03.12.2007 and his legal heirs namely his wife and his children were brought on record in the present writ petition.

5. The learned Senior Counsel would submit the following decisions and referred to specific paragraphs, wherein, the Courts have interfered with the quantum of penalty imposed on the charged employees, viz.,

i) Decision rendered by A Division Bench of this Court dated 27.01.2011 in WA.No.58 of 2011 (R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another), wherein, in paragraph no.3 of the aforesaid judgment, it is stated as under:

'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 and set aside the impugned judgment passed by the learned Single Judge. We remit back the matter to the disciplinary authority, who is the second respondent herein, to reconsider 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, MP.No.1 of 2001 is closed.

ii) Order, dated 19.01.2011 passed by the learned Single Judge of this Court in W.P.No.16415 of 2009 (M.Gunasekaran Vs.

The Superintendent of Police, TNHB Complex, CCIW CID, Chennai-40 and 3 Others), wherein, in paragraph no.10 of the aforesaid judgment, it is stated as follows:

'10.Considering the facts and circumstances of this case and the order passed by the Division Bench holding that the order of dismissal from service for desertion is highly disproportionate and a lesser punishment should be imposed and the said order having been implemented by imposing a lesser punishment of postponement of one increment for two years in the case of one R.Ramesh, who was the appellant in W.A.No.58 of 2011 dated 27.01.2011, I am of the view that the interest of justice would be met by setting aside the order of the respondents and remitting the matter to the second respondent to consider the said issue of proportionality of the punishment alone in the light of the additional affidavit filed by R3, dated 10.06.2011 and pass fresh orders, within a period of eight weeks from the date of receipt of a copy of this order.'

iii)Order, dated 19.09.2017 passed by the learned Single Judge of this Court in W.P.No.6873 of 2013 (Thangadurai Vs. The Superintendent of Police(Armed), Thiruvannamalai District and 2 Others, wherein, in paragraph no. 6, it is stated as under:

'6. This Court, after considering the rival submissions of the learned counsel for the parties and upon perusing the relevant materials and pleadings placed on record, is of the considered view that as rightly held by the learned single Judge of this Court, as he then was, in the aforesaid writ petition, a punishment imposed on the petitioner, namely, the removal from service, is grossly disproportionate to the gravity of misconduct(Desertion) alleged against the petitioner. There cannot be two opinions that for solitary act of misconduct, punishment of removal from service is too excessive, particularly, considering the age of the petitioner, who was only 32 years at that point of time. Having concluded so, this Court has to see as to what punishment should be imposed on the petitioner instead of removal from service. Considering the evidence in the enquiry proceedings and the order passed by the disciplinary authority, this Court is of the view in the fitness of things, that the petitioner having been removed from service as early as in 2007 and has been out of employment for over 10 years, the punishment of removal from service imposed on the petitioner is modified to

the extent that the petitioner is directed to be reinstated in service without any backwages for the period from the date of his removal from service till the date of his reinstatement. Denial of back wages for a long period of 10 years is a sufficient punishment to be imposed on the petitioner in the facts and circumstances of the case''.

(iv) Order dated 08.12.2017, passed by the learned Single Judge of this Court in WP.No.24162 of 2012 in the case of N.Hariharan Vs. The Superintendent of Police, Railways, Chennai-8 and 2 Others, wherein, in Paragraph nos.16 & 17 of the aforesaid judgment, it is stated as follows :

'16. Learned counsel for the respondents would submit that the petitioner was in the habit of frequently absenting without informing to the department. In any event, the following order is passed for giving a last opportunity to the petitioner to correct himself in future. In case, the petitioner is going to continue with this attitude of absentism without proper reasons and without getting permission from the department, it is always open to the respondents to proceed against him, as they may be advised in future.

17. For all the above reasons, the petitioner is entitled to succeed. However, in view of the fact that the petitioner was absent without giving proper reasons, continuously for several weeks and such conduct does advance the cause of discipline, the petitioner has to be imposed with punishment of forfeiture of backwages as a method of corrective measure so that in future, he does not absent or commit any misconduct during his service''.

(v) Order dated 23.03.2017, passed by the learned Single Judge of this Court in WP.No.22611 of 2011 in the case of M.Baskar Vs. The Deputy Commissioner of Police and 2 Others, wherein, in Paragraph no.13 of the aforesaid judgment, it is stated as under:

'13. In all the cases, referred by the learned senior counsel this Court has consistently interfered with the quantum of the penalty imposed by the disciplinary authority for the act of desertion. In such circumstances, this Court does not think it is right to take any different view since the petitioner herein is also alleged to have deserted the police force for more than 21 days. In fact, the petitioner has some kind of

valid explanation for remaining absent during the relevant period. That being the case, this Court finds that the action of the disciplinary authority in imposing the severe penalty of removal from service is without any justification.

(vi) Order dated 17.07.2018, passed by the learned Single Judge of this Court in WP.No.28467 of 2014 in the case of M.Arokiyasamy Vs. The State of Tamilnadu, Rep. by its Secretary, Home Department, Secretariat, Chennai-9 and 3 Others, wherein, in Paragraph Nos.11 & 12 of the aforesaid judgment, it is stated as follows:

'11. At this, the learned Senior Counsel for the petitioner would submit that even in respect of multiple acts of desertion, the Courts have interfered with the quantum of penalty and substituted the same with alternate penalty other than removal from service and compulsory retirement.

12. Considering the legal principle as evolved by the Division Bench of this Court and also the decision rendered by the learned Single Judges of this Court, the order of removal from service imposed on the petitioner prima facie appears to be harsh and excessive. More over, considering the age of the petitioner being only 42 years at the time of filing of the writ petition, the order of removal from service would have adverse implication not only to the petitioner but also to his family. Although the fact that the petitioner had remained absent unauthorisedly even on earlier occasions, nevertheless, in order to give one more opportunity to the petitioner for correcting his behaviour and conduct, this Court is of the view that the order of punishment removal from service is to be set aside. Therefore, the impugned order of the 2nd respondent in R.C.No.177076/AP.3(1) 2007, dated 28.04.2008, proceedings of the 3rd respondent in Ta.Ba.07/03 rule 3(B) dated 05.06.2003 and also his proceedings in C.No.D4 16898/10 dated 29.11.2010, are hereby set aside. The respondents are directed to reinstate the petitioner with continuity of service and all other benefits except backwages for the period of his non employment. This Court finds that the denial of backwages would be sufficient punishment commensurate with the act of misconduct committed by the petitioner for the nonemployment period from 2003 to till the date

of reinstatement. The respondents are directed to comply with the above direction and pass consequential orders, within a period of eight weeks from the date of receipt of a copy of this order''.

6. The learned Senior Counsel would therefore submit that the Courts have consistently held that the punishment including compulsory retirement is not warranted in cases of desertion.

7. At this Mr.J.Ramesh, the learned Additional Government Pleader appearing for the respondents would submit that in disciplinary force, unauthorised absence is a serious misconduct and has to be viewed strictly. In this case, not only on one occasion but atleast on three occasions, the deceased petitioner was unauthorisedly absent and on a particular spell, the absence was for a longer period. Although, there was some kind of explanation from the deceased employee, that explanation was not to the satisfaction of the disciplinary authority. The reason for illness given by the petitioner was only an afterthought in order to over come the unauthorised absence. Therefore, the disciplinary authority/fourth respondent herein has rightly imposed the penalty of compulsory retirement by taking a lenient view in the matter. In fact, the disciplinary authority has not chosen to impose harsh penalty like removal or dismissal from service, therefore, the petitioner cannot have any legitimate cause for complaint against the impugned action by the respondents.

8. Heard, K.Venkatramani, learned Senior Counsel for the petitioner and Mr.J.Ramesh, learned Additional Government Pleader for the respondents. As held by the Division Bench of this Court and also by the learned Single Judges in a number of decisions as extracted above, it was uniformly ruled that the punishment of removal from service on compulsory retirement etc was disproportionate to the gravity of misconduct of desertion from duty by the policeman. In fact, even in multiple cases of desertion, this Court had interfered and substituted lesser penalty.

9. The case on hand is concerned, the deceased petitioner had some reasons for his absence. According to him, he was taking medical treatment for his illness and when the petitioner had returned for work after a period of absence and he was also taken back to duty. In the circumstances, the impugned action of the fourth respondent imposing harsh penalty of compulsory retirement was not called for at all. When the intention of the deceased petitioner was to join back duty as he returned for duty, the harshness of the misconduct of desertion gets diluted as desertion was no more in-play and continuous.

Therefore, in such circumstances, the disciplinary authority ought to have taken a lenient view in imposing lesser penalty on the petitioner. But unfortunately, the disciplinary authority has chosen to impose punishment of compulsory retirement on the petitioner, when he had several years of service left for retirement on superannuation. In any event, unfortunately, the petitioner died during the pendency of the writ petition and only his legal heirs are before this Court as on date. In view of the consistent legal position adopted by this Court in regard to the proportionality of the punishment imposed in the matters of desertion, this Court cannot take a different view in this matter.

10. In view of the above, the writ petition is allowed and the impugned order dated 07.02.2006 in CPO No.324/2005, PR/83/F1/05 passed by the fourth respondent and the consequential order made in RC No.109749/AP.1(1)/2007 dated 29.08.2007 passed by the third respondent, and the Government Order vide in G.O.(2D) No.195, Home (Police-VI) Department dated 16.04.2010, passed by the first respondent are hereby set aside on the ground that the punishment of compulsory retirement is disproportionate to the gravity of misconduct alleged against the deceased petitioner. The fourth respondent/disciplinary authority is hereby directed to pass appropriate orders imposing any other lesser penalty with effect from the date the petitioner stood compulsorily retired from service. The fourth respondent is directed to pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. On modified order being passed by the fourth respondent, the consequential financial benefits namely, pay and allowances and pensionary benefits shall become payable to the legal heirs of the petitioner, who are before this Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home Department,
Secretariat, Chennai-600 009.
- 2.The Commissioner of Police,
Coimbatore City, Coimbatore District.

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3.The Director General of Police,
Tamilnadu,
Chennai-600 004.

4.The Deputy Commissioner of Police,
Law & Order,
City Police Office,
Coimbatore City, Coimbatore District.

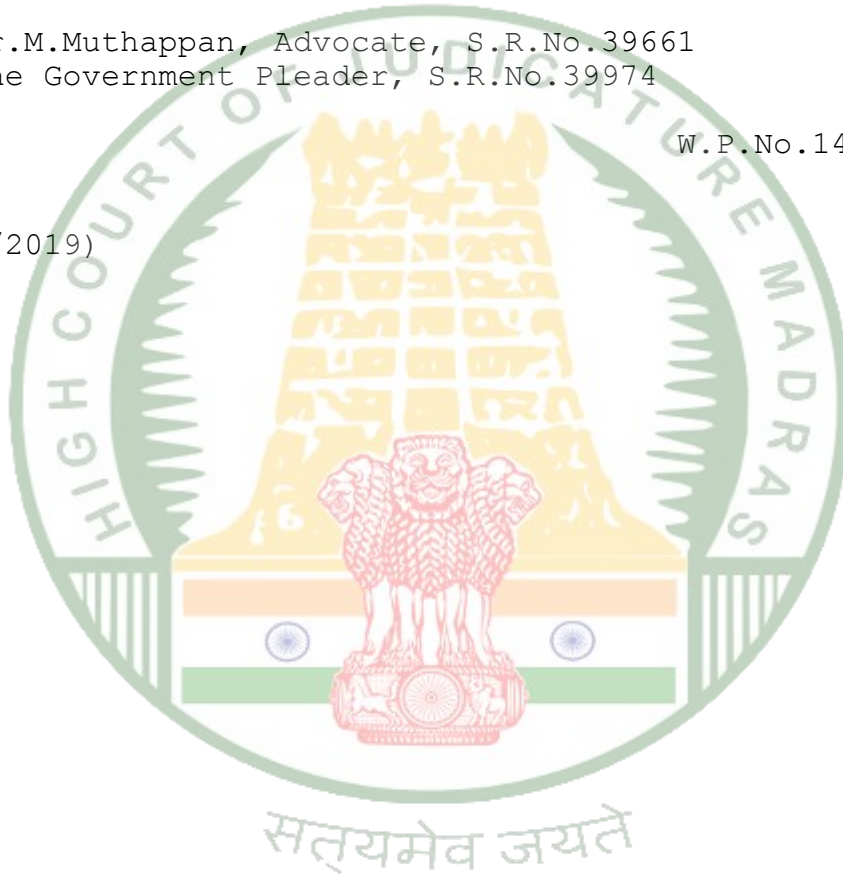
5.The Assistant Commissioner of Police,
Coimbatore City,
Coimbatore District.

+lcc to Mr.M.Muthappan, Advocate, S.R.No.39661
+lcc to the Government Pleader, S.R.No.39974

W.P.No.14268 of 2011

RJI (CO)

RRS (20/06/2019)



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