

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.03.2019

CORAM:
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.11993 of 2009

C.Rajalingam

... Petitioner

Vs.

1.Director General of Police,
Chennai - 600 004.

2.Superintendent of Police,
District Police Office,
Salem.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders passed by the second respondent herein in his proceedings Ta.Pa.No.109/H.3/2005, under Rule 3(b) dated 18.02.2008 and confirmed by the first respondent herein in his proceedings Rc.No.16883/AP 2(2)/2008 dated 19/03/2009 and to quash the same and consequently direct the respondents herein to reinstate the petitioner into service with all consequential attendant and service benefits.

For Petitioner : M/s.G.Bala and Daisy

For Respondents: Mr.M.Sricharan Rangarajan
Additional Government Pleader

सत्यमेव जयते

O R D E R

That the instant writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders passed by the second respondent herein in his proceedings Ta.Pa.No.109/H.3/2005, under Rule 3(b) of dated 18.02.2008 and confirmed by the first respondent herein in his proceedings Rc.No.16883/AP 2(2)/2008 dated 19/03/2009 and to quash the same and consequently direct the respondents herein to reinstate the petitioner into service with all consequential attendant and service benefits.

2.The facts in brief are as under:-

The petitioner joined the Police services as Grade II Police Constable on 20.01.1975. He was promoted to Grade II Police Constable in the year 1994. He states that while he was working in the Salem Town Police Station, a case was registered against him in Crime No. 135/95 under Sections 41(1), 102 of Cr.P.C. and 420 IPC at Pothanur Police Station, Coimbatore District. The petitioner was placed under suspension on 21.03.1995. The petitioner was released on bail with a condition to report before the Judicial Magistrate on all working days. Subsequently, the order of suspension was revoked and he was taken on duty on 23.04.2004.

3. The inquiry officer by his report dated 09.02.2007 held that all the 5 allegations framed against the petitioner were proved. The defence of the petitioner was that he was released on bail on the condition that he had to report to the Judicial Magistrate everyday, for which he had sought oral permission from his superiors. However, the petitioner has not been able to substantiate his defence during the proceedings.

4. The inquiry officer, held that there is nothing on record to show that he obtained any kind of permission, oral or written from his superior officer and that he did not report for duty, for 75 days. The plea of the petitioner, that he had not intentionally absented himself from work was not accepted. The inquiry officer also found that he had not obtained leave or permission on 26.05.2004, 03.06.2004, 17.06.2004, 05.07.2004, 19.04.2004, 21.07.2004 and 27.07.2004 and had left station without permission.

5. The respondent after issuing notice to the petitioner dismissed the petitioner from service. The Disciplinary Authority, i.e., the Superintendent of Police, held as under:-

" The explanation of the accused is not acceptable. The accused has agreed his allegation in the explanation itself. On 26.02.1995, he has taken short leave to bring traditional medicine from Coimbatore for his ailing father, the officers from Forestry Department have wrongly arrested along with other persons and case filed at Pothanur Police Station Crime No. 135/95 under subsection 41(1), 102 Cr.P.C and 420 IPC and his name added as 7th accused. Due to non availability of due witnesses and documents, the investigation could not be completed and after 8 years and final report was filed. Explanation was given that the above case after investigation at Coimbatore Criminal Magistrate No.7 was dismissed. Accused has agreed that he has taken accidental leave and without the permission of the head office had gone to 5 Pothanur at Coimbatore. From this, without the permission of the superior

officers, he left head office and he is connected to Pothanur Police Station Crime Sl.No.135/95 under subsection 41(1), 102 Cr.P.C. and 420 IPC case is clear from the statements of Government side witnesses 1 and 4 and Government side exhibits 1,2,26 and 27. Further, the above case is dismissed in the court and though judgment given as he is not the accused, on 26.02.1995 it is known that he had taken accidental leave and left the head office Salem Town Police Station without the permission of superior officer is true. As such, the first allegation against the accused is proved. As regards the second allegation against the accused, while working as second grade police at Kariyakoil Police Station, he was arrested through Pothanur Police Station Crime No.135/95 and remained in Coimbatore Central Jail for 75 days and then he was released on conditional bail then as per the court order since he was to remain at Coimbatore. The accused has accepted the allegation in his Pothanur Police station, remained 75 days in Coimbatore Central Jail and after coming out on conditional bail he was to remain present before Coimbatore Criminal Magistrate No.7 everyday, during the circumstances of remaining at Coimbatore he was temporarily suspended. Further, he mentioned that there was no purpose or intention for this. In the order issuing the temporary suspension of the accused contain clearly head office as Salem. In that circumstances, while going to Coimbatore in connection with his case, the accused should have obtained the prior permission form the superior officers. But the accused has agreed in his explanation about going without obtaining the permission of the superior officer. Further form the statement of Government side witness 4 and Government side exhibits 28 to 47, the fourth allegation is proved. In connection with the fifth allegation, after release from the temporary suspension, he has been transferred to Salem Armed Forces and while doing the postal duty he got bail in connection with Crime No.135/95 of Pothanur Police Station and in order to sign at the local Police Station of Coimbatore and due to the circumstances of attending Coimbatore Criminal Magistrate No.7, he informed that he had attended the court on 26.05.2004, 03.06.2004, 17.06.2004, 05.07.2004, 19.07.2004, 21.07.2001 and 27.07.2004. The explanation of the accused is not acceptable. While the accused was doing the postal work at Armed Forces, when he was in the state of attending Coimbatore Court in a private case, the accused could have conveyed this detail to the superior officer of the Armed Forces in writing

properly and could have gone after obtaining due permission for accidental leave. But the statement of the accused that he has attended the court on the above dates after the postal work is not justified. The accused, after going to outstation in connection with postal work, he should have reported back to Armed Forces after the work is over. In his explanation, it is clearly known that the accused did not like that. Further, from the statement of Government side witness 3 and Government side exhibits 7,8,9,14 to 25, the fifth allegation against the accused is proved. While remaining in a responsible post in the police department and to catch criminals, the involvement in these crimes by the accused would bring black mark to the Police Department, this act of the accused would become the reason for bad reputation among the people. Further, though the accused is acquitted from the case by the court, all the five allegations against the accused has been clearly proved through verbal investigation during the verbal statement of the Government side witnesses and Government side witnesses. As such, accepting to the decision of the Inquiry Officer, I hereby order the punishment of dismissal of the accused from service.

(f) That the petitioner thereafter filed an appeal before the Director General of Police. The Appellate Authority affirmed the order."

6. The said order is under challenge in the instant writ petition.

7. Heard. Mr.G.Bala and Daisy, learned counsels for the petitioner and Mr.M.Sricharan Rangarajan, learned Additional Government Pleader for the respondents.

8. The petitioner has reiterated the submissions made in the writ petition. According to the petitioner, he took oral permission from his superiors and he was only complying with the bail condition and that therefore his absence without permission cannot be a ground for dismissal. He further stated that he has been found, not guilty by the Trial Court and that in any event, the punishment is disproportionate to the misconduct. He also submits that the delay of 13 years to conclude the proceedings vitiate the proceedings.

9. The Counsel for the State would support the order of the Authorities.

10. Discipline is the hall mark of any uniformed service. Indiscipline cannot be tolerated. The Supreme Court has held that when a Policemen repeatedly absents from duty, it cannot

but be reasonably concluded that there is incorrigibility in his continued misconduct (Refer State of Punjab Vs.Sukhwinder Sing 2007 (10) SCC 511).

11. The petitioner has not been able to explain properly the unauthorized leave. That explanation of the petitioner that he had taken oral permission, cannot be accepted in the absence of any material. The 1st charge against the petitioner is that on 26.02.1995, he had taken accidental leave and without any permission from the superior officer and left Salem Town Head office and had gone to Coimbatore. On 28.02.1995, he was involved in a criminal case in Sl.No.135/95 under subsection 41 (1), 102 CrPC and 420 IPC in the Pothanur Police Station and this stands proved. The explanation of the petitioner that he had to bring traditional medicine from Coimbatore for his ailing father and he was wrongly arrested cannot be accepted. The fact that he is exonerated in the criminal case does not take away the fact that he had taken accidental leave without permission from the head office and had gone to the Pothanur police station. The leave was taken without the permission of the superior officers. There was no infirmity with the orders of the Authorities, that the 1st charge stands proved.

12. The second charge against the petitioner is that while working at the Kariyakoil Police station, after being released on bail on 12.09.2003 to 26.11.2003 till order of suspension was passed, he did not attend work for 75 days without obtaining any leave or permission from his superior officers. This charge has been admitted by the petitioner. The answer that he was on conditional bail does not absolve the petitioner from taking permission from his superior officers. Admittedly he has not taken any permission from his superior officers and had remained absent for 75 days, which is unauthorized.

13. The third charge against the petitioner, is that in order to sign in Pothanur police station in connection with the conditional bail given to the petitioner in the criminal case, he had gone to Coimbatore on 19.09.2003, 03.10.2003 and 13.10.2003 without obtaining any permission. The petitioner would submit that he had taken oral permission from his superior officers. As stated earlier the petitioner has not substantiated his defence, which he has not done. Had he obtained permission from his Superiors he would have definitely produced some evidence to support his contention. In the absence of any material his defence cannot be accepted.

14. The 4th charge against the petitioner, is that while during the period of temporary suspension from 28.06.2003, he had not attended the court on 18.12.2003, 19.01.2004, 16.02.2004, 08.03.2004, 30.03.2004, 02.04.2004, 07.04.2004 and 29.04.2004 and as the head office was fixed as Salem, he was

ordered not to leave the Salem head office without prior permission of an eligible superior officer. As stated above the suspension order categorically mentioned that the petitioner had agreed that he had gone without any written permission and that he had not attended the Court. As stated earlier, as a part of the discipline force, the petitioner could not have disobeyed order of his superior. Similarly, even for the 5th charge there is nothing to substantiate any kind of permission.

15. The only other question that is being considered, is as to whether the punishment is disproportionate to the misconduct. It is settled law that the writ court does not substitute its own decision, to the decision arrived at by the disciplinary authority unless the decision of the disciplinary authority shocks the conscience of the court, or no reasonable man would impose such punishment, or the decision maker while making his decision "must have taken leave of his senses") (Refer Mohar Lal Verma vs. District Corporate Central Bank Limited 2008 (14) SCC 445).

16. The Authorities after going through the conduct of the petitioner has found that the petitioner is not fit to remain in the police force.

17. As stated earlier, the petitioner went to Coimbaore without taking any permission and was involved in a criminal case. It is against settled law that acquittal in a criminal case does not lead to automatic reinstatement. The departmental proceedings do not become invalid, because the petitioner has been acquitted by the Trial Court. The petitioner was not found guilty on the touchstone "beyond reasonable doubt", which is not the standard of test in a disciplinary enquiry. Further, he has repeatedly left his station without taking any permission from his superiors, which sets a very bad example for other officers. However, considering the facts that the disciplinary proceedings took an already long period of 13 years, the fact that he has been acquitted in the criminal trial and the fact that the record does not show that the delay in disciplinary proceedings was because of the petitioner and further considering the fact that the petitioner would have retired from services, the order of dismissal is modified to one of compulsory retirement.

18. The writ petition is disposed of in the above terms. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. Director General of Police,
Chennai - 600 004.

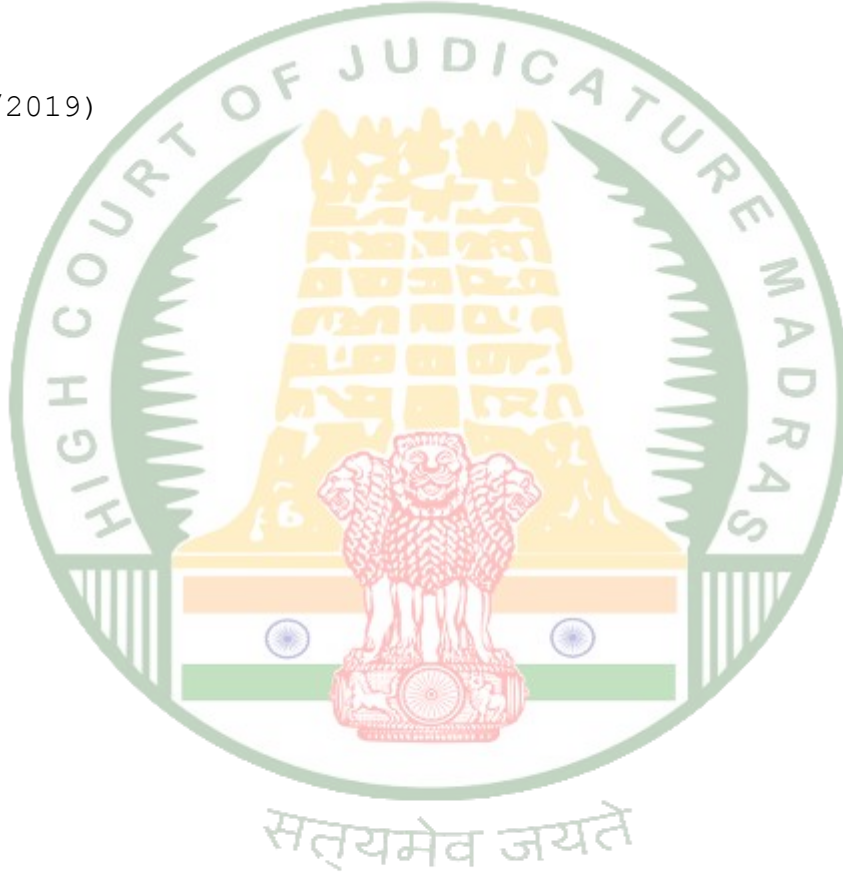
2. Superintendent of Police,
District Police Office,
Salem.

+1cc to M/s.G.Bala & Daisy, Advocate, S.R.No.19463

W.P.No.11993 of 2009

BS (CO)

RRS (29/04/2019)



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