

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.12948 of 2009

C.Paul Raj (deceased)

P2. P.Rasei

P3. P.Pradheep Kumar

P4. P.Ravikumar ... Petitioners

P2 to P4 are substituted as Legal Representatives of the deceased P1 vide order dated 20.03.2019 made in W.M.P. No.8585 of 2019 in W.P. No.12948 of 2009 by TRJ

-vs-

1.State of Tamil Nadu,
rep. by Secretary to Government,
Home (Police V) Department,
Fort St. George,
Chennai - 600 009.

2.Director General of Police,
Kamarajar Salai,
Mylapore, Chennai - 600 004.

3.Commissioner of Police,
Office of Commissioner of Police,
Egmore, Chennai-600 008.

4.Joint Commissioner of Police,
Central Zone,
Office of Commissioner,
Egmore, Chennai - 600 008.

5.Deputy Commissioner of Police,
Ambattur.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records in relating to order in G.O.

(2D) No.146 - Home (Pol V) Department, dated 20.03.2009 confirming the impugned order dated 20.02.2008 in reference C.No.164493/AP3(3)/2007 dated 20.02.2008 on the file of second respondent confirming the impugned order in proceedings PR. NO.36/PR-I/CZ/2006, dated 17.08.2007 on the file of the third respondent confirming the impugned order in reference R.C.No.PR-I/CZ/36/2006 dated 26.06.2007 on the file of fourth respondent and the impugned order dated in reference in C.No.PR.I/CZ/36/2006, CZO No.231/2007 dated 10.03.2007 on the file of the fifth respondent to quash the same and direct the respondents to reinstate the petitioner into service with back wages from the date of impugned order till the date of reinstatement together with arrears of salaries as per sixth pay commission together with interest.

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondents : Mr.K.Ravikumar,
Additional Government Pleader

ORDER

The writ petition has been directed against the impugned G.O. (2D) No.146 - Home (Pol V) Department, dated 20.03.2009 passed by the first respondent.

2.Learned counsel appearing for the petitioners submitted that the deceased petitioner died during the pendency of the writ petition and his legal heirs were brought on record. According to the learned counsel for the petitioners, the deceased petitioner was selected as Grade II Constable and enlisted on 25.10.1984 and his service was confirmed with effect from 05.02.1987. After putting in ten years of service, he was promoted as Head Constable. While so, he went on medical leave from 07.11.2005 to 30.11.2005. As he did not recover completely, he could not attend the work from 07.12.2005 to 27.05.2005 for 21 days because of the ill health suffered by him. However, based on the report of the Inspector, Ambattur Estate Police Station dated 08.11.2005, the Joint Commissioner of Police, Chennai, the fourth respondent herein by proceedings dated 24.01.2006 passed an order calling upon the petitioner to join duty on or before 04.02.2006 and finally, the fourth respondent by proceedings dated 10.08.2006 passed an order stating that the petitioner had submitted a petition before him and explained the cause of the alleged desertion and on that basis, he was taken back for duty. While so, he was served with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Service Rule 1955) on the ground of desertion from duty and the petitioner offered his explanation to the charge memo stating that he was taking treatment in Government

Ambattur Estate, SIDCO Hospital for 30 days from 07.11.2005 on medical leave and he could not recover from ill health and he was advised to take Homeopathy treatment at Kanniyakumari and he was unable to inform the same in advance to the T2-Ambattur Police Station.

3. According to the learned counsel appearing for the petitioners, the Assistant Commissioner of Police, Maduravoil was appointed as Enquiry Officer to enquire into the charges and he drew the minutes holding that the deceased petitioner was guilty of the charges levelled against him as the ground of desertion from the duty for 21 days without leave letter was proved. Although a telegraphic message was given to inform that he should appear for the enquiry before the Assistant Commissioner of Police, Maduravoil, no passport for movement from T2 Ambattur Police Station to Maduravoi Police Station was given to him in accordance with rules. However, the fourth respondent called upon the petitioner to submit his further representation on the proved charges as guilty within 15 days from the date of receipt of the memo. Even without intimating the proposed punishment likely to be awarded to him, the fifth respondent imposed the punishment of compulsory retirement from service by order dated 10.03.2007. Aggrieved thereby, the petitioner preferred an Appeal un-successfully and the fourth respondent treated the Appeal as Review Petition and having accepted the medical certificate, permitted the petitioner to join duty back. Thereafter, the fourth respondent passed an order dated 26.06.2007 holding that the deceased petitioner was a habitual deserter.

4. Adding further, learned counsel for the petitioners would submit that taking note of the fact that the deceased petitioner has received several awards and he has not suffered adverse remarks or entires or punishment in his service, the respondents should have given some minor lenient punishment. As he has rendered 22 long years of service, if the impugned order is set aside, the remaining period of service would be counted that would be considered while calculating the family pension and the legal heirs would be able to receive the higher family pension.

5. A detailed counter affidavit has been filed by the respondents. Learned Additional Government Pleader appearing for the respondents would submit that the deceased petitioner remained absent from 07.11.2005 to 30.11.2005 which is considered as un-authorised absent and therefore, he was issued with a proceeding calling upon him to explain as to why action should not be taken for his unauthorised long absence. In view

thereof, a charge memo was issued on 18.02.2006 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Service Rule 1955). Even after issuance of the charge memo dated 18.02.2006, he once again went on medical leave taking a ground that he was taking treatment in Government General Hospital from 07.12.2005 to 29.05.2006. The conduct of the deceased petitioner, even after issuance of charge memo clearly shows that he failed to attend duty and the same was proceeded by appointing the Assistant Commissioner of Police, who drew the minutes holding that the charges were established against him and finally, he was found guilty of the charges. However, the Deputy Commissioner of Police, Ambattur, the fifth respondent herein, accepting the report of the enquiry officer and taking note of the fact that he was frequently absented from duty even after issuance of charge memo dated 18.02.2006, imposed a punishment of compulsory retirement from service. As against the order of Deputy Commissioner of Police, Ambattur an Appeal was filed and after rejection of the Appeal, the impugned order has been passed. The petitioner himself came forward with a request not to hold any oral enquiry, besides he has not even come forward to make any representation to the Minutes of the enquiry officer. Such conduct of the petitioner would show that he was not serious in pursuing the matter.

6. Therefore, this Court, fully agreeing with the reasons given in the impugned order for passing the compulsory retirement from service which has been confirmed by the Reviewing Authority, is unable to see any merit in the writ petition. As rightly argued by the learned Additional Government Pleader appearing for the respondents, when the deceased petitioner was found un-authorisedly absent from 07.12.2005 to 27.05.2005 continuously for a period of 21 days, he was issued with a Proceeding dated 24.01.2006 calling upon him to explain as to why action should not be taken against him for his unauthorised absent. Even after receiving the charge memo under Rule 13(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Service Rules 1955) for desertion from duty, he remained un-authorised absent and not given any reply. Therefore, the Deputy Commissioner accepting the report submitted by the Assistant Commissioner of Police, imposed punishment of compulsory retirement. As the same has been confirmed by respondents 2 and 3, this Court is not inclined to interfere with the impugned order passed by the first respondent.

7. A further contention has been made by the learned counsel for the petitioners that the respondents failed to issue notice with regard to proposed punishment. As the same is no longer

maintainable after the introduction of the 42nd amendment, giving notice on the proposed punishment has been dispensed with.

8.It is made clear that since the deceased petitioner has put in 22 years of service, he is entitled to get the pensionary benefits. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga

To

1.State of Tamil Nadu,
rep. by Secretary to Government,
Home (Police V) Department,
Fort St. George,
Chennai - 600 009.

2.Director General of Police,
Kamarajar Salai,
Mylapore, Chennai - 600 004.

3.Commissioner of Police,
Office of Commissioner of Police,
Egmore, Chennai-600 008.

4.Joint Commissioner of Police,
Central Zone,
Office of Commissioner,
Egmore, Chennai - 600 008.

5.Deputy Commissioner of Police,
Ambattur.

+1 cc to The Government Pleader, Sr.No.31091

CSL/19.06.2019

W.P. No.12948 of 2009