

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.25371 of 2008

S.Mohan

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Petitioner

-vs-

1. The Director General of Police
Kamarajar Salai
Mylapore
Chennai 600 004
2. The Deputy Inspector General of Police
Villupuram Range
Villupuram
3. The Superintendent of Police
District Police Office
Cuddalore

Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the third respondent in P.R.No.26/2007 u/r 3(b) TNPSS D&A Rules dated 2.8.2007 and the order passed by the first respondent in Rc.No.241526/AP 1(2)/2007 dated 20.2.2008 and quash the same with the consequential direction directing the respondents to reinstate the petitioner into service with all attendant and monetary benefits.

For Petitioner :: Mr.V.Ravikumar

For Respondents :: Mr.N.Srinivasan
Additional Government Pleader

ORDER

This writ petition has been filed by Mr.S.Mohan, a Police Constable questioning the impugned order of punishment of compulsory retirement issued against him on 20.2.2008, modifying the punishment of removal from service.

2. Learned counsel for the petitioner submitted that the petitioner was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service and the crux of the charges would read as follows:-

- "(i) After expiry of medical leave from 6.10.2004 to 16.2.2005, remained absent from 16.2.2005 for more than 21 days, by deserting the Police Force.
- (ii) Not appeared before the Medical Board on 10.3.2005 after the expiry of medical leave from 6.10.2004 to 16.2.2005."

On receipt of the charge memo containing two charges, the petitioner gave his explanation stating that he sustained injuries to his right hand index finger in an accident and after sometime, the said finger lost its sensibleness. Therefore, he consulted a physician, who advised him to go for plastic surgery to restore its normal function. Accordingly, he underwent the surgery in the year 1999. But instead of regaining strength and energy in the right hand index finger, slowly he lost sensibleness in all the fingers in his right hand. Hence, while serving as a Police Constable in the Puthur Police Station, in the year 2005, as per the doctor's advise, the petitioner applied for medical leave from 6.10.2004 for 28 days to take treatment so as to regain sensibleness in all the fingers. Subsequently, he also extended the medical leave upto 29.11.2004 with medical certificates to adjust the said leave against the unearned leave. Again he extended the medical leave upto 16.2.2005 on two spells to adjust the leave against the unearned leave. After sometime, he also underwent another surgery and also regained sensibleness in his right hand fingers in the year 2007. But these explanations were completely overlooked and finally an enquiry officer was appointed, who also, on completion of the enquiry, found him guilty of the charges. Based on the report of the enquiry officer finding him guilty of both charges, the disciplinary authority, after issuing a show cause notice calling upon the petitioner to submit his further representation to the report of the enquiry officer and again on receipt of the further representation made by the petitioner to the report of the enquiry officer, imposed the punishment of removal from service. However, after expiry of the appeal time, the petitioner preferred a review petition before the Director General of Police, the first respondent herein, who, on considering the grounds taken in the review petition, modified the punishment of removal from service into one of compulsory retirement.

3. The learned counsel for the petitioner submitted that the major punishment imposed by the authority is shockingly disproportionate to the nature of delinquency committed by the petitioner. Therefore, the impugned order passed by the

respondents is liable to be quashed as arbitrary and illegal. Adding further, it is stated that when the findings of the enquiry officer ignoring the statement of PW2 given during cross examination in favour of the petitioner are perverse, the consequential punishment imposed by the respondents is also liable to be quashed.

4. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents submitted that when the petitioner had suffered eight punishments because of his absence from duty and out of the eight punishments, two punishments were for desertion, yet, the Director General of Police, the first respondent, taking a lenient view and on humanitarian consideration, has come forward to modify the punishment of removal from service into one of compulsory retirement. When the respondent-Department has named the petitioner as a habitual absentee and he was also repeatedly punished eight times for desertion and for habitual absence from duty, the petitioner cannot come to this Court questioning the order of compulsory retirement. Moreover, the petitioner did not show any reason for not attending the Medical Board on 10.3.2005. Contrary thereto, he simply narrated about his family situation. Hence, taking a lenient view, the Director General of Police has modified the punishment of removal from service into one of compulsory retirement, which is just, legal and fair. Therefore, the writ petition is not maintainable.

5. I fully agree with the reasoning given by the first respondent for modification of the punishment of removal from service into one of compulsory retirement. The reason being that when the petitioner was habitually absenting from duty, he was imposed with eight punishments, out of which two were major punishments for desertion. In spite of the eight punishments inflicted against the petitioner, the first respondent, taking a lenient view, which in my considered view should not have been done, has come forward to modify the major punishment of removal from service into one of compulsory retirement. Therefore, this Court finds no merit in the writ petition. Accordingly, the writ petition stands dismissed. No costs.

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Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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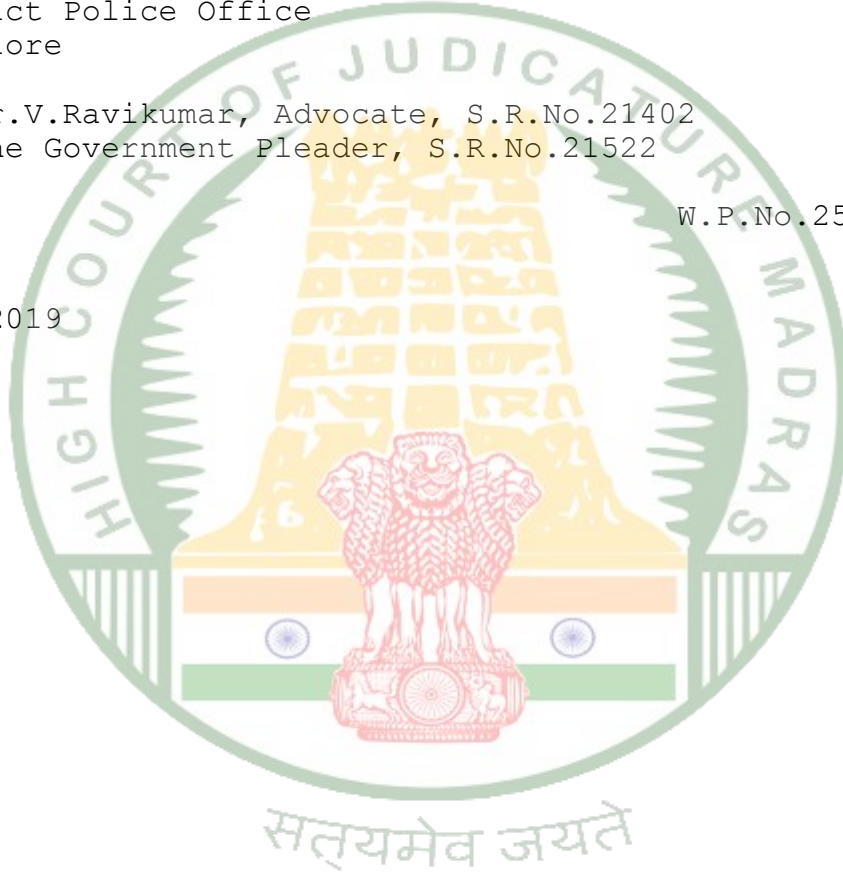
To

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+1cc to Mr.V.Ravikumar, Advocate, S.R.No.21402
+1cc to the Government Pleader, S.R.No.21522

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SSD(CO)
CS/08/04/2019



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