

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.26129 of 2009

K.Prem Anand

.. Petitioner

Versus

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

2.Deputy Commissioner of Police,
Madhavaram District.

3.Assistant Commissioner of Police,
Puzhal Range, Chennai-600 057.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the respondents especially the second respondent made in P.R. No.112/H1/2008 u/r 3(b) dated 14.03.2009 issued removing the petitioner from service as confirmed by the first respondent made in R.C. No.83102/AP.3(3)/09 dated 28.08.2009 and quash the same as null and void, illegal and invalid and consequently directing the respondents to re-instate the petitioner in service with all service and monetary benefits.

For Petitioner : Mr.A.Amal Raj

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

ORDER

The writ petition has been filed questioning the correctness of the order dated 14.03.2009 made in P.R. No.112/H1/2008 u/r 3(b) passed by the second respondent, removing the petitioner from service, as confirmed by the first respondent made in R.C. No.83102/AP.3(3)/09 dated 28.08.2009 and seeking a direction to the respondents to re-instate the petitioner in service with all service and monetary benefits.

2.Assailing the impugned order, the learned counsel appearing for the petitioner would submit that when the petitioner was appointed as Grade-II Police Constable on 15.04.1997, he was posted at Tamil Nadu Special Police, VIII Battalion, Avaid and thereafter, he was transferred to Armed Reserve Police 'C' Company of 15th Platoon. While so, he fell ill on 31.05.2008 and therefore, he was not in a position to attend the office and he tried to contact the station Inspector to convey the message, but he could not get proper response from him and therefore, he asked his mother to report the sickness to the Inspector. In the meantime, the petitioner met with an accident on 31.05.2008 itself when he was on the way to hospital and hence, he remained absent for duty as per medical advice and the same has also been informed to the Station Inspector of Police through his mother. Therefore, the petitioner was under treatment for the period from 31.05.2008 to 28.07.2005 and under such circumstances, the petitioner could not report for duty. While so, on 29.07.2008, when the petitioner, after availing his medical leave, proceeded to report for duty with medical certificates before the Inspector of Police, M3 Puzhal Police Station, he was not permitted to do so instructing him to get prior permission from the Deputy Commissioner of Police, who has not permitted to report for duty stating that he has already been declared as Deserter. However, the second respondent, by proceedings dated 25.06.2008 declared the petitioner as deserter holding that he was absented for duty without leave of permission continuously for more than 21 days from 31.05.2008. According to the learned counsel for the petitioner, although the petitioner has met with an accident on 31.05.2008 and the Doctors have advised him to take rest at home, the same was conveyed to the Inspector of Police, Puzhal through his mother, but he was not permitted to report for duty.

Learned counsel appearing for the petitioner would further submit that thereafter the third respondent by Proceedings made in Ka.Ko.No.112 Tha.Pi/2008, has issued Charge Memo framing a charge that the petitioner was absented for duty from 31.05.2008 continuously for more than 21 days without obtaining leave or permission. Pursuant to the same, disciplinary enquiry was conducted by the Assistant Commissioner, Ennore Range, who has held that the charge was proved as per Minutes dated 30.12.2008. While so, the second respondent by Proceedings dated 14.03.2009 has passed a final order accepting the findings of the enquiry officer. Pursuant to the same, the petitioner preferred an Appeal dated 21.05.2009 before the first respondent pointing out all the infirmities found in the findings of the enquiry and the final order passed by the disciplinary authority. However, the first respondent, by Proceedings dated 28.08.2009, rejected the same by non application of mind.

According to the learned counsel for the petitioner, the petitioner should have been given reasonable opportunity to re-join the service as he was able to establish that while he was going to hospital, met with an accident and as a result he was unable to send any application. Learned counsel for the petitioner would further submit that till date, the petitioner and his sister were unmarried as they were unable to get any financial assistance for getting married. Therefore, the learned counsel prays for direction to the respondents to re-instate the petitioner with monetary benefits showing sympathy on the petitioner.

3.A counter affidavit filed by the second respondent would show that the petitioner, attached to M3 Puzhal Police Station, Law and order Wing, was absented himself continuously for more than 21 days from attending duty without availing leave or permission from the department. A charge memo was issued and an enquiry was conducted by the Assistant Commissioner of Police, Ennore Range and on the oral enquiry conducted, the charge was found to be proved. However, the petitioner has been awarded with black mark and his increment was also postponed holding that he was a chronic absentee.

4.A perusal of the records would show that the petitioner while serving as Police Constable at M3 Puzhal Police Station, absented for duty without leave or permission continuously for more than 21 days from 31.05.2008 and a Charge memo was issued and disciplinary enquiry was also conducted by the Assistant Commissioner, Ennore Range, who has held that the charge was proved. When the learned counsel for the petitioner pleaded that the petitioner has not suffered any black mark or adverse entry, the same has been disproved by the counter affidavit filed by the Deputy Commissioner of Police, the second respondent herein and his increment was also postponed and the petitioner had suffered with black mark in an earlier occasion.

5.Since the petitioner, while serving as Police Constable, absented continuously for more than 21 days unauthorosidely, he was termed as deserter. Subsequently, when a charge memo was issued and charge was proved, the Disciplinary Authority, taking note of the facts, removed the petitioner from service. Therefore, this Court is not inclined to entertain the writ petition and the same fails and dismissed. No costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vga

To

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

2. Deputy Commissioner of Police,
Madhavaram District.

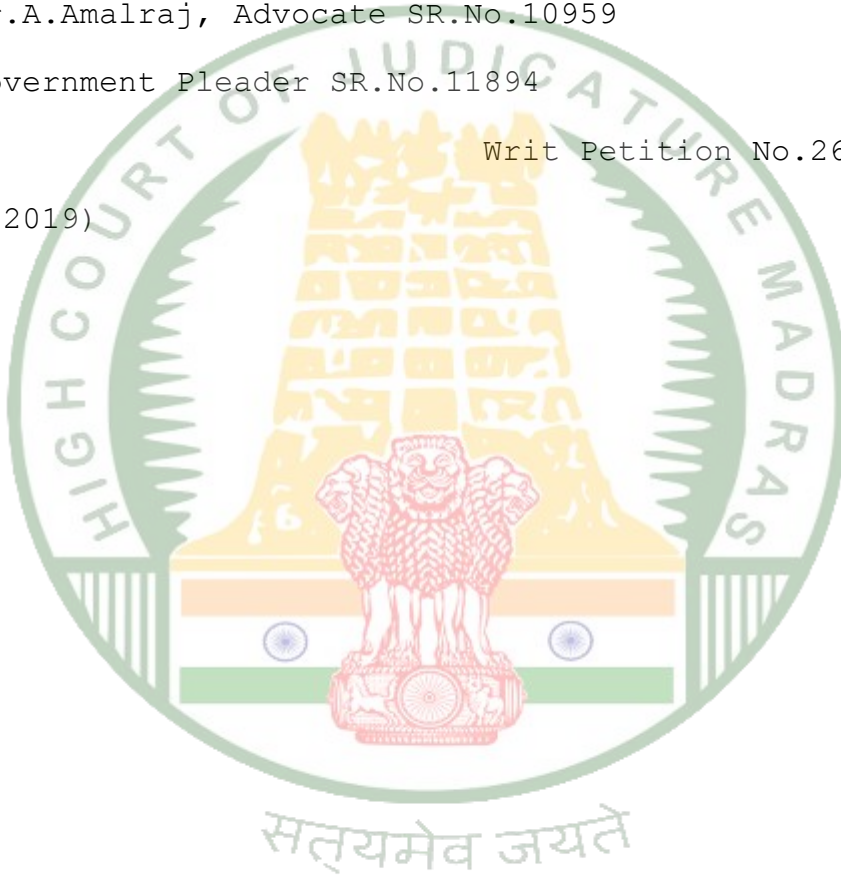
3. Assistant Commissioner of Police,
Puzhal Range, Chennai-600 057.

+1cc to Mr.A.Amalraj, Advocate SR.No.10959

+1cc to Government Pleader SR.No.11894

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GMV (21/02/2019)



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