

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.20719 of 2010

M.Harichandran

... Petitioner

Vs.

1. The State Government of Tamil Nadu,  
Rep. by its Secretary,  
Home Department,  
Fort St.George,  
Chennai 600 004.

2. The Director General of Police,  
Tamil Nadu, Santhome, Chennai - 600 004.

3. The Joint Commissioner of Police,  
South Zone, Chennai - 600 016.

4. The Deputy Commissioner of Police,  
Adyar District, Chennai - 600 020.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records of impugned order of removal from service passed by the 4th respondent in his proceeding in P.R.No.28/PR(S)(1)/2006 dated 12/09/2006 and consequently order passed by the 3rd respondent in his proceeding in Rc.No.10/Appeal/PR1(S)/2006 dated 28.09.2006 and compulsory retirement order passed by the 2nd respondent in his proceeding in C.No.69232/AP3(3)/2006 dated 13.06.2007 and quash the same and consequently direct the 4th respondent herein to reinstate the petitioner as Grade-II Police Constable into the service with all monetary and other attendant benefits.

For Petitioner : Mr.V.Subramani

For Respondents : Mr.M.Elumalai, Govt. Advocate

## O R D E R

The instant writ petition is filed for a Writ of Certiorarified Mandamus directing against the order passed by the Deputy Commissioner of Police, Adyar District, Chennai, removing the petitioner from service in his proceeding in P.R.No.28/PR(S)(1)/2006 dated 12/09/2006 and against the order passed by the Joint Commissioner of Police, South Zone, Chennai, in his proceeding in Rc.No.10/Appeal/PR1(S)/2006 dated 28.09.2006. Also to quash the order of compulsory retirement passed by the Director General of Police, Santhome, Chennai, in his proceeding in C.No.69232/AP3(3)/2006 dated 13.06.2007 and to direct the Deputy Commissioner of Police, Adyar District, Chennai, to reinstate the petitioner as Grade-II Police Constable into the service with all monetary and other attendant benefits.

2. The petitioner joined as Police Constable in the year 1986. The petitioner was promoted as Police Constable Grade-1 and thereafter Police Constable Grade-II. The petitioner was served with a memo dated 30.12.2005 stating that the petitioner had absented himself for more than 21 days without applying leave or taking prior permission from his superiors. It was stated absence without permission is a punishable offence under the Police Department Procedures Order 95(1). The memo/letter also stated, if the petitioner wishes to rejoin duty, he should appear before the Assistant Commissioner of Police, Adyar District before 26.01.2006 within 60 days of his desertion and explain the reason for freeing from the duty. An enquiry was conducted against the petitioner. Enquiry report dated 07.06.2006 was given to the petitioner wherein, the charges were held to be proved. The Disciplinary Authority passed an order dated 28.09.2006 imposing a punishment of removal from service. The petitioner had gave a mercy petition to the Director General of Police. The Director General of Police by an order dated 13.06.2007 modified the punishment of removal from service to one of compulsory retirement. Thereafter the petitioner gave mercy petition to the Government. The petitioner by this writ petition has challenged the order dated 13.06.2007 imposing punishment of compulsory retirement.

3. Heard the counsel for the parties.

4. The learned counsel for the petitioner has not been able to substantiate as to how the decision making process is bad. He submits that he did not attend duty from 28.11.2005 to 15.12.2005 and that he wanted to join duty on 16.12.2005, but his request to join duty was not accepted by the superior

officers. This contention cannot be accepted. There is no material on record to substantiate the assertion. Further the memo/letter dated 30.12.2005, gave the petitioner an opportunity to report for duty within 60 days. In any event, the petitioner has accepted his guilt.

5. The learned counsel for the petitioner would submit that the punishment of compulsory retirement is shockingly disproportionate to the misconduct from abstaining from duty without permission. Discipline is utmost importance in any uniformed service. Condoning absence from duty without permission will lead to indiscipline. In the absence of any material to either show that the decision making process was faulty or that the punishment is shockingly disproportionate to the misconduct, no interference is called for under Article 226 of the Constitution of India.

6. However, the learned counsel for the petitioner states that the petitioner has attained superannuation and the petitioner is entitled to retiral benefits. More than 12 years have passed from the order dated 13.06.2007. Instead of directing the petitioner to file a fresh writ petition for his retiral benefits, this Court is exercising of its jurisdiction under Article 226 of the Constitution of India is inclined to direct the respondents to settle his retiral benefits to the petitioner. The respondents therefore directed to release the retiral benefits which is entitled to the petitioner since the order is one of compulsory retirement. The respondents are directed to pass orders within a period of 10 weeks from the date of receipt of a copy of this order.

7. Writ petition is disposed of. No Costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Secretary,  
State Government of Tamil Nadu,  
Home Department, Fort St.George,  
Chennai 600 004.

2. The Director General of Police,  
Tamil Nadu, Santhome, Chennai - 600 004.

3. The Joint Commissioner of Police,  
South Zone, Chennai - 600 016.

4. The Deputy Commissioner of Police,  
Adyar District, Chennai - 600 020.

+lcc to Mr.V.Subramani, Advocate sr.84256  
+lcc to Government Pleader sr.84576, 84537

W.P.No.20719 of 2010

gj(co)  
nr 22/10/2019



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