

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.08.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN
and
The Honourable Ms.JUSTICE P.T.ASHA

W.A.No.2318 of 2019

and

CMP.No.15265 of 2019

1. The Director General of Police,
Mylapore, Chennai- 600004.

2. The Deputy Inspector General of Police,
Vellore Range,
Vellore, Vellore District.

3. Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.

...Appellants/ Respondents

Vs.

N. Ganesan
S/o. Narayanasamy,
Formerly Gr-I Police Constable 390,
No.64 Muthuvinayagar Street,
Thiruvannamalai,
Thiruvannamalai District.

... Respondent/ Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent praying to set aside the order passed in W.P.No.8733 of 2017 dated 29.08.2018 and allow the Writ Appeal.

Prayer in W.P.No.8733 of 2017: - Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned orders issued by the respondents 1-3 in Rc. No.072486/ AP.2 (2)/ 2016 dated 26.01.2017 C. NO.B1/ AP.15/ 003419/ 2016 dated 31.03.2016 Ma. No.163/2016 Na.Ka. NO.H.2/ P.R.80/ 2015 dated 03.03.2016 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

For Appellants : Mr. N. Sakthivel,
Additional Government Pleader

For Respondent : Mr. R. Dinesh Kumar

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The challenge in this Writ Appeal is to the order dated 29.08.2018 in W.P.No.8733 of 2017 whereby and whereunder the learned Single Judge, after setting aside the punishment imposed by the Disciplinary Authority, directed the appellants to revisit the punishment taking into account the background facts.

2. The respondent was appointed as a Police Constable in the year 1999. He was posted at Kamudhi on special duty from 28.10.2015 to 30.10.2015. On 29.10.2015, the respondent, on receipt of a phone call that his wife had met with an accident, left the place of duty without taking permission from the superior officers and rejoined duty on the very next day. Since the respondent was absent for one day without taking prior permission, disciplinary proceedings were initiated against him.

3. The respondent in his explanation to the charge memo submitted that his wife had met with an accident and she was admitted in a hospital and therefore, he had to rush to see her, and to give her proper treatment.

4. Before the Enquiry Officer, besides the defense statement, the respondent also produced medical records to show that his wife had met with an accident on 29.10.2015 and she was under observation till 2.11.2015. The Enquiry Officer, notwithstanding the explanation given by the respondent, along with supporting documents, and evidence opined that it was a case of unauthorized absence. The report submitted by the Enquiry Officer was accepted by the Disciplinary Authority. The Disciplinary Authority imposed the punishment of dismissal from service. The order was unsuccessfully challenged before the Appellate Authority. Thereafter, a Review Petition was filed before the Director General of Police. The Director General of Police was pleased to modify the punishment into one of compulsory retirement. The said order was challenged by the respondent before the Writ Court.

5. The learned Single Judge found that the absence was on account of a valid reason, as the respondent was compelled to leave the Station on account of the hospitalization of his wife. The learned Single Judge opined that the punishment imposed is

shockingly disproportionate to the misconduct. The learned Single Judge therefore directed the appellants to revisit the punishment and impose any other punishment. Feeling aggrieved, the appellants have come with this Intra Court Appeal.

6. We have heard Mr. N. Sakthivel, the learned Additional Government Pleader on behalf of the appellants and Mr. R. Dinesh Kumar, learned counsel for the respondent.

7. The factual matrix indicates that the respondent was posted at Kamuthi for the period from 28.10.2015 to 30.10.2015. The respondent reported for duty along with the team on 28.10.2015 and discharged duty till the midnight of 29.10.2015.

8. The respondent appears to have left the place without informing his superior officers on account of the sudden hospitalization of his wife as she had met with a road accident on 29.10.2015.

9. The respondent in his explanation to the charge memo as well as in his defence before the Enquiry Officer contended that it was only on account of the accident and hospitalization of his wife that he left the place of duty. The respondent therefore pleaded that it was not a case of intentional abandonment of service. It is also a fact that the respondent was absent only on 30.10.2015 and thereafter he reported for duty.

10. Though the medical certificate issued by the registered medical practitioner on 2.11.2015 was to the effect that the wife of the respondent was under observation from 29.10.2015 to 2.11.2015, the same was not taken into consideration by the Enquiry Officer who reported before the Disciplinary Authority that both the charges were proved. There was no attempt made by the Disciplinary Authority to consider the background facts and the plea taken by the respondent that it was not a case of wilful absence or a case of desertion. It was during the evening of 29.10.2015, the respondent came to know that his wife had met with an accident and therefore he rushed to meet her in the hospital. This crucial fact was not considered by the Disciplinary Authority.

11. Even though the appellate authority is entitled to reappreciate the evidence, no such effort was taken by the said authority. The Appellate Authority has simply rejected the appeal on the ground that new materials were not produced by the respondent herein.

12. When a review petition was filed before the Director General of Police, the said authority modified the punishment of dismissal into one of compulsory retirement.

13. There is a factual error in the order passed by the first-appellant. The first-appellant proceeded as if the plea taken by the respondent that his wife had met with an accident was an after thought and in the said process, the reviewing authority, failed to take note of the substantial materials produced by the respondent and thereby committed an error in coming to the above conclusion.

14. The absence from duty appears to be for just one day. The respondent has given valid reasons for absenting himself from duty for one day and the reason is also supported by documents in the form of medical certificate issued by a registered medical practitioner, indicating that his wife was hospitalised from 29.10.2015 to 2.11.2015.

15. The learned Single Judge has considered the entire background facts and arrived at a right conclusion. Since the learned single Judge has taken into account all the background facts, there is no reason to take a different view in the Intra Court Appeal.

16. We direct the appellants to comply with the order passed by the Writ Court by revisiting the punishment of compulsory retirement by reinstating him into service and by passing any other punishment other than compulsory retirement. Such exercise shall be completed within a period of one (1) month from the date of receipt of a copy of this Judgment.

17. It is open to the appellants to indicate in the said order that in the event of any misconduct of the like nature in future, no leniency would be shown to the respondent.

18. The Intra Court Appeal is dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

mrn

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director General of Police,
Mylapore,
Chennai- 600004.

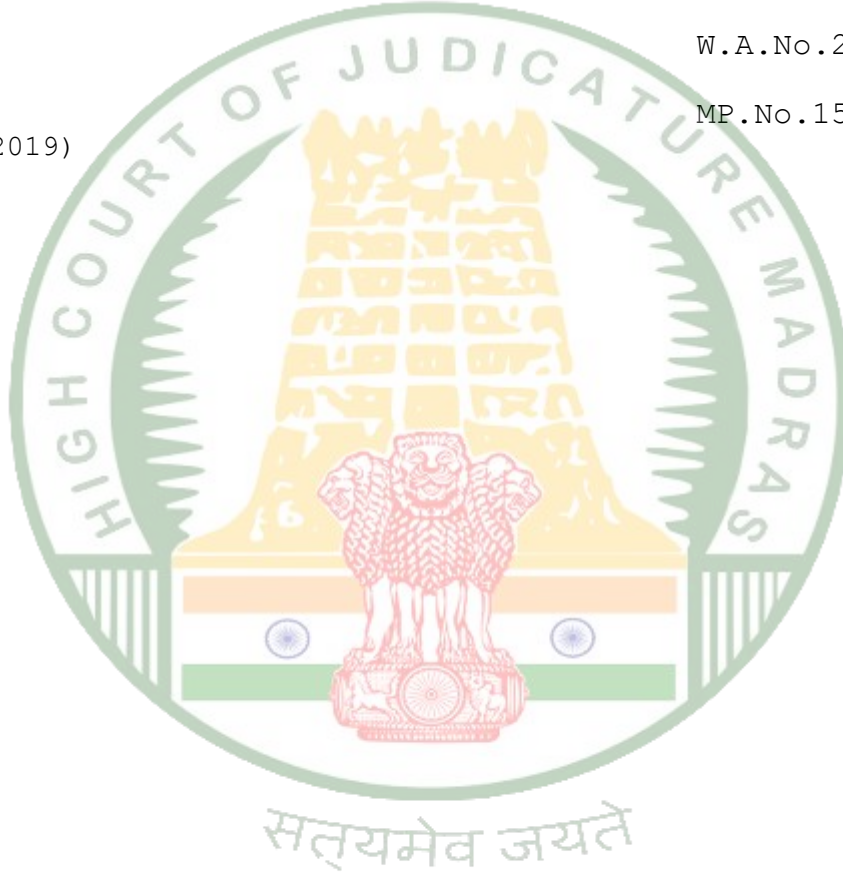
2. The Deputy Inspector General of Police,
Vellore Range,
Vellore,
Vellore District.

3. The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.

+lcc to Mr.R.Dhinesh Kumar, Advocate, SR.No.72518
+lcc to the Govt.Pleader, Vide Sr.No.73398

W.A.No.2318 of 2019
and
MP.No.15265 of 2019

Kak(01.10.2019)



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