

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.1482 of 2019

K. Prem Anand

Appellant

Vs.

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: Writ Appeal is filed under Clause 15 of Letters Patent praying to allow the above appeal by setting aside the order passed in W.P.No.26129 of 2009 dated 07.02.2019.

Prayer in W.P.No.26129 of 2009:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified 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 14.3.2009 issued removing the petitioner from service as confirmed by the first respondent made in R.C.No.83102/AP.3(3)/09 dated 28.8.2009 and quash the same as null and void illegal and invalid and consequently directing the respondents to reinstate the petitioner in service with all service and monetary benefits.

For Appellants

: Mr. Aamal Raj

For Respondents

: Mr. N. Sakthivel, AGP

J U D G E M E N T

Judgment of the Court was delivered by P.T.ASHA, J)

The intra court appeal is filed at the behest of the writ petitioner. The appellant seeks to challenge the order dated 07.02.2019 in W.P.No.26129 of 2009 .

2. The facts in brief herein below narrated for morefully appreciating the case that has culminated in the filing of the Appeal are as follows:

The appellant herein joined the services of the respondents as a Grade II Police Constable on 15.04.1997. During the discharge of his duties, it appears that on 31.05.2008 he had fallen ill and was not in a position to attend the office. Though he had tried to contact the Inspector of Police of the Police Station to which he was attached, he was not able to reach him. Therefore he had asked his mother to report his sickness to the Inspector. It is stated that meanwhile the appellant had met with an accident on 31.05.2018 itself on his way to the hospital and as a result of this accident he had suffered multiple injuries and therefore could not report for work.

3. The appellant would submit that this fact was also conveyed to the Inspector of Police through his mother and he was on treatment for the period 31.05.2008 to 28.7.2008 and it was for these reasons that he could not report duty.

4. While so, the appellant had received a letter from the second respondent stating that he was absenting himself without prior permission or leave for more than 21 days from 31.05.2008 however the second respondent granted him an opportunity to report for duty on or before 29.07.2008 failing which, he would be proceeded with appropriately.

5. On receipt of this letter dated 25.06.2008 the appellant had reported for duty with the certificate of fitness but he was not permitted to join duty. He was issued with a charge memo dated 20.09.2008. The appellant would contend that the case of the prosecution was not that he had absented himself willingly but it is the case that he was absent without leave or permission.

6. The disciplinary enquiry was conducted by Assistant Commissioner, Ennore Range who held that the charge is

proved vide his order dated 30.12.2008. Thereafter by a letter dated 14.03.2019, the second respondent had removed the appellant from the services which was confirmed by the first respondent by his order dated 28.08.2009. Challenging the orders, the appellant herein had filed W.P.No.26129 of 2009.

7. The second respondent had filed a counter affidavit wherein he had contended that the appellant has not substantiated his contentions even in the explanation to the charge memo. He was not able to prove that he had telephonically informed the superior about the same.

8. The learned Single Judge by order dated 07.02.2019 was pleased to dismiss the Writ Petition. Challenging the said order, the appellant is before this Court.

9. Heard the arguments of Mr. Aamal Raj, learned counsel for the appellant and Mr. N. Sakthivel, Additional Government Pleader for the respondents.

10. It appears that by letter dated 25.06.2008, the appellant was asked to report for duty on 29.07.2008 failing which he was put on notice that appropriate proceedings would be initiated against him and he would be treated as a deserter. It is found from records that the appellant had appeared on 29.07.2008 with the fitness certificate but was not taken back into service. It is further seen that the appellant has also produced medical records to show that he had suffered multiple injuries and was in hospital for a prolonged period. These facts have not been taken note of by the authorities.

11. Neither the Disciplinary Authority nor the Revisional Authority herein have considered these factors and have proceeded to pass a severe punishment of removal from service, which in the circumstances narrated above, appears to be disproportionate. Considering the above facts, the order of the disciplinary authority removing the appellant from service as confirmed by the learned Single Judge is set aside and the matter is remitted back to the second respondent for imposing any other punishment commensurate with the nature of misconduct, except removal from service or compulsory retirement. The respondents shall also take into consideration the long service rendered by the appellant and the fact that he had reported for duty on 29.07.2008 as directed while considering his case afresh.

12. The Writ Appeal is allowed with directions as above. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

mrn

To

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

2. The Deputy Commissioner of Police,
Madhavaram District.

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

+1cc to M/s.A.Amal raj , Advocate SR.No. 72831

+1 cc to Government Pleader Sr.No. 23400

W.A.No.1482 of 2019

ad

A.SK(09/10/2019)



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