

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24021 of 2018
and
W.M.P.Nos.27982 & 27983 of 2018
and
W.M.P.No.5124 of 2019

P.Muthu

..Petitioner

vs

- 1.The Secretary to Government,
Home Department
Rajaji Road, Fort St.George
Chennai - 600 009
- 2.The Director General of Police
Law and Order Dept,
Mylapore,
Chennai - 600 004
- 3.The Additional Director General of Police
Armed Police
Chennai.
- 4.The Deputy Inspector General of Police
Armed Police,
Chennai-10.
- 5.The Commandant,
TSP VII Bn, Pochampalli
Krishnagiri District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings in Rc.No.C1/18123/2018, R.O.O.231/2018 dated 20.8.2018 on the file of the 4th respondent and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to transfer the petitioner to TSP XIII BN, Poonamallee, Chennai or any other vancancy in Chennai.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mrs.P.Rajalakshmi
Additional Government Pleader

O R D E R

The order of desertion dated 20.08.2018 is under challenge in the present writ petition.

2.The writ petitioner is holding the Post of Inspector of Police.

3.The facts in nutshell required to be considered in the present writ petition is that the writ petitioner in his capacity as an Inspector of Police, TSP VII Battalion, remained absent for duty from 14.07.2018, without any informations/Prior permission or leave. As the period of absence of 21 days has completed on 03.08.2018 as per PSO 95(i), the writ petitioner was treated as a deserter from the force with effect from 14.07.2018.

4.The impugned order itself says that the writ petitioner shall report before the Deputy Inspector General of Police, Armed Police, Chennai - 10 to explain reasons for desertion within 60 days from the date of desertion. Failing which, the desertion will be confirmed and disciplinary action will be initiated against him.

5.Prima facie, this Court would like to place on record that the writ petitioner came to Chennai and signed the affidavit filed in support of the present writ petition. The Affidavit solemnly affirmed at Chennai on 4th September 2018 and signed by the writ petitioner before the Advocate at Chennai. When the writ petitioner has come over to Chennai and signed the affidavit filed in support of the present writ petition, this Court is unable to understand, what prevented the writ petitioner to report before the Deputy Inspector General of Police, Armed Police, Chennai -10. When the impugned order of desertion itself states that the writ petitioner shall report before the Deputy Inspector General of Police to explain reasons for desertion within 60 days from the date of desertion. The writ petitioner has chosen not to report before the Deputy Inspector of Police and explain reasons in obedience to the order of desertion passed by the respondents in proceedings

dated 20.08.2018. Contrarily, the writ petitioner came over to Chennai and signed the affidavit on 4th September 2018. Such an attitude and conduct of a Police official in the rank of Inspector of Police can never be accepted and the force being a Uniformed one, the discipline is of paramount importance. There cannot be any compromise on discipline.

6.The growing indiscipline within the police force are visible to the public. Negligence, lapses, dereliction of duty etc., are mostly common. The Police men and women, on duty, are indiscriminately using smart phones for playing games, for chatting, for viewing movies etc., No adequate checks and measures are undertaken to monitor and control the misconduct by the Department.

7.Causes for indiscipline are necessarily to be analyzed in the interest of public safety and for an orderly society. Appointing over qualified candidates at entry cadres like Grade-II Constables, Jail Warder Grade-II, Fireman, Head Constable etc., are contributing for growing indiscipline and insubordination.

8.For instance, a candidate possessing the educational qualification of M.A., M.Sc., other P.G.Courses like B.E., M.B.A., etc., are appointed at entry level cadres, then it would be very difficult for the higher officials to control these over qualified police personnel.

9.The educational qualifications and other eligibility criteria for particular post/cadre is fixed by the competent authorities normally in commensuration with the job profile, duties and responsibilities. Prescription of such criterias and qualifications have got certain purpose and object. In the event of appointing over qualified candidates, the purpose and object for that particular recruitment gets defeated.

10.In the constitutional perspective, appointment of over qualified persons are to be construed as violation of Articles 14 and 16 of the Constitution of India. The equality clause enunciated in the Constitution is well interpreted by the Constitutional Courts. Equality amongst the Equals is the Constitutional mandate. Unequals cannot be treated equally. If the concept of treating unequals as equals is developed, then we are breaching the Fundamental rights.

11.Once the minimum educational qualification is prescribed for a particular post/cadre, then providing appointment to the over qualified persons will usurp the rights of the persons, who all are qualified in accordance with the recruitment Notification.

12. In the context of the Police Department, persons possessing Master Degrees, and Professional Degrees like B.E., M.B.A., etc., are allowed to participate in the written examinations along with the candidates possessing the qualification of S.S.L.C or Higher Secondary course, would squarely falls within the concept of unequals being treated equally. Thus, the situation causes infringement of the rights of the candidates, who all are qualified in commensuration with the educational qualifications prescribed for recruitment. Thus, the appointment of over qualified persons for the post of Grade-II Constables is the clear violation of Article 14 of the Constitution of India.

13. Article 16 guarantees equality of opportunity for all citizens in matters relating to employment or appointment. The equality of opportunity can be achieved, only if the competition is amongst the equally qualified persons. Making the unequal persons to sit in a common examination will cause discrimination and naturally the over qualified person can easily secure more marks in the written examination. It is discriminatory. Equal opportunity is denied.

14. In this context, the growing indiscipline and committal of suicides by number of police personnels are to be viewed. The higher officials cannot command police discipline and respect from these over qualified persons, as their mindset would be entirely different.

15. In every recruitment notification, minimum and maximum age limits are prescribed. Time limits are prescribed. Limitations in various aspects are prescribed. In the same line, the requisite qualification and the maximum qualification are also to be prescribed, so as to ensure the competition for securing public employment is done amongst equal persons. For example, if the qualification for the Post of Grade-II Constable is XII Standard, then the maximum qualification may be any Degree in Art, Science and Commerce i.e., B.A., B.Sc., and B.Com and not the Professional Degrees i.e., B.E., M.B.A., etc., If no steps are taken to amend the requisite qualification prescribed for these Group-III, and Group-IV posts, then undoubtedly, the efficiency in public administration will be not only be paralyzed, but will face disastrous consequences.

16. Even in High Courts, the administration is facing these issues and consequences. P.G., Degree holders are appointed to the Post of Sweeper/Scavengers and Office Assistants etc., After joining in the public services, they are refusing or neglecting from performing certain menial jobs, which all are the duties and responsibilities prescribed in the Service Rules.

Conflicting situations are arising. Higher officials are unable to function effectively and efficiently for want of adequate support from these employees. If the situation continues, the same would affect the public administration, solemn functions etc., as a whole. Thus, review in this regard are warranted.

17.As far as the present writ petition is concerned, admittedly, the writ petitioner remained unauthorizedly absent for more than 21 days and even after the order of desertion, the petitioner has not chosen to report before the competent authority by explaining the reasons for desertion. Contrarily, he has chosen to file the present writ petition.

18.The learned counsel for the writ petitioner states that the writ petitioner is a Heart Patient and therefore, he was not in a position to attend the duty. If so, the writ petitioner ought to have submitted his application for Medical Leave or at least informed the reasons to the higher officials.

19.The learned Additional Government Pleader appearing on behalf of the respondents states that the Medical grounds raised by the writ petitioner is also incorrect and explaining the circumstances, the 5th respondent / The Commandant, TSP VII Bn, Pochampalli, filed an affidavit stating as follows:

"9.With regard to the averments made in para 9 & 10 of affidavit, it is respectfully submitted that the petitioner Thiru.P.Muthu, has availed Medical Leave from 16.06.2018 to 13.07.2018 and due for report to duty on 14.07.2018. Though, he was found medically fit to resume his duty with effect from 14.07.2018 by the Chief Civil Surgeon & AMA, Govt. TSP Hospital, Avadi, Chennai - 54 and issued a certificate to this effect, the said petitioner had sent the medical fitness certificate by post instead of reporting for duty in person. Then, he was found absent for duty from 14.07.2018 without any information/prior permission or leave, as the period of absence of 21 days has completed on 03.08.2018 and thereby the petitioner deliberately committed the offence of desertion from the force, as such he had violated the Police Standing Order(PSO)No.95(i) Volume-I, then, the said writ petitioner is treated as a deserter from force w.e.f 14.07.2018. Accordingly, the Desertion Order was issued by the 4th respondent herein being the authority competent to issue orders to the post hold by the petitioner herein vide Rc.No.C1/18123/2018, R.O.O.No.231/2018, Dt:20.08.2018 and the order itself, it has been specifically stated that he will report

before the undersigned(i.e., 4th respondent) to explain reasons for desertion within 60 days from the date of desertion. Failing which, the desertion will be confirmed and disciplinary action will be initiated against him. The said desertion order was acknowledged by him on 30.08.2018. He had been afforded the opportunity to defend himself. Thus, it is very clear that nothing prevented the petitioner for appearing before the 4th respondent and joining for duty.

Hon'ble High Court of Madras, in its order dated 04.07.2018 in W.P.No.12999/2018 and W.M.P.No.15270/2018 had passed orders inter alia that "no coercive action shall be taken against the petitioner for non-joining in the present place of posting" i.e., TSP IX Battalion, Manimuthar". While this being so, the petitioner is determined that the department should not take any action even if the petitioner committed any offence deliberately. As such, there is no disobedience of the order passed by the Hon'ble Court."

20.The learned Additional Government Pleader further states that in order to circumvent the order of transfer, the writ petitioner remained unauthorizedly absent and further, he was already declared as a deserter and even after passing an order of desertion, the writ petitioner has not chosen to report for duty by assigning reasons to the competent authority.

21.This being the conduct and attitude of the Police Personnel working in the rank of Inspector of Police, this Court is of an opinion that there is no reason to consider his case for quashing of the order on desertion dated 20.08.2018. It is left open to the writ petitioner to approach the competent authorities for the purpose of redressing grievances and in the event of any such approach, the competent authority is empowered to consider the case on merits and take a decision in accordance with law. In view of these facts, the writ petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition and accordingly, the writ petition is liable to be dismissed.

22.This being the factum, the following orders are passed:

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The Respondents 1 and 2 are directed to consider the issues in detail for prescription of requisite and maximum educational qualifications for appointment to the Posts of Grade-II Police Constables,

Jail Warder Grade-II, Fireman and to similar categories, take a decision and pass orders within a period of 8 weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home Department
Rajaji Road, Fort St.George
Chennai - 600 009
- 2.The Director General of Police
Law and Order Dept,
Mylapore,
Chennai - 600 004
- 3.The Additional Director General of Police
Armed Police
Chennai.
- 4.The Commandant,
TSP VII Bn, Pochampalli
Krishnagiri District.

+1cc to Mr.R.Jayaprakash, Advocate SR.No.27859

+1cc to Government Pleader, High Court, Madras SR.No.28571

W.P.No.24021 of 2018

MR(CO)
GMY(24/04/2019)