

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.07.2019

Pronounced on : 11.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.17714 of 2018

Mahalakshmi

...Petitioner

Vs.

1. The Deputy Commissioner of Police
(Motor Transport), I/c.Armed Reserve,
Pudupet, Chennai.
2. The Commissioner of Police,
Greater Chennai Police, Vepery, Chennai.
3. The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore,
Chennai - 600 004.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order passed by him in PR No.25/3(2)/2011 dated 28.09.2012 and confirmed by the third respondent in his RC No.179358/AP3(2)/2017 dated 16.05.2018 and quash the same and direct the respondents to reinstate the petitioner into service and grant her all consequential service and monetary benefits.

For Petitioner : Mrs.K.Venkatramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.I.Sathish, AGP

ORDER

The petitioner joined the Police Department as Grade II Constable in the year 1997. According to the petitioner, while serving in the Armed Reserve, Chennai City Police, she got married in 2002 and there was some misunderstanding between the petitioner and her husband, which resulted in frequent quarrels. This led the petitioner taking leave quite often while serving

in the Police Force. Due to her unauthorised absence, in 2005, a disciplinary action was initiated against her and on conclusion of the disciplinary proceedings, she was removed from service on 02.03.2005. The petitioner had filed a mercy petition and she was reinstated into service by the Director General of Police, Tamil Nadu with a modified punishment of 'reduction of Pay by one stage for one year without cumulative effect', on 15.10.2009.

2. Thereafter, in 2010, the petitioner had gone on a long medical leave on the ground that she was suffering from Urinary Infection from 04.09.2010 to 08.09.2010 and continued thereafter, for about 35 days. Even on completion of the leave period, she had not reported to duty. Therefore, another charge memorandum was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 for misconduct of 'desertion'. An enquiry was conducted and ultimately the charge against the petitioner came to be proved. Once again, the petitioner was removed from service, vide order dated 28.09.2012. Once again, the petitioner filed a mercy petition to the third respondent on 14.11.2016 and the third respondent, by order dated 16.05.2018 rejected the petition stating that the petitioner had absented for duty on earlier occasion and was reinstated in service and therefore, not entitled to any further indulgence. The order passed in the mercy petition is put to challenge in the present writ petition along with the order of removal from service passed on 28.09.2012.

3. Shri.K.Venkatramani, learned Senior Counsel appearing for the petitioner would submit that the petitioner was physically and mentally affected because of her estrangement with her husband, which led to unrest in the family. Because of that, the petitioner remained absent on some days. Further, in 2010, the petitioner had suffered severe Urinary Infection in view of strenuous duty as Constable in the Police Force. In order to cure the illness, the petitioner had taken leave and as she was mentally disturbed, she could not report for duty on the completion of the leave period.

4. The learned Senior counsel would submit that in any case, the imposition of penalty of 'removal from service' is disproportionate, since the Division Bench of this Court and Single Judges have constantly held that for the misconduct of 'desertion', removal or dismissal from service is disproportionate and interfered in such punishments. He would therefore implore this Court to consider the case of the petitioner as well and apply the principle laid down by this Court, by moderating the punishment of 'removal from service' into any other punishment, which deemed fit in the circumstances of the case.

5.The learned Senior Counsel would draw the attention of this Court to the following five decisions viz.,

(i)R.Ramesh Vs. 1.The Deputy Inspector General of Police and another (W.A.No.58 of 2011, dated 27.01.2011). Paragraph No.3 of the order is reproduced hereunder;

"3. After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal and set aside the impugned judgment passed by the learned Single Judge and remit back the matter to the Disciplinary Authority viz., the first respondent herein, to re-consider the matter with moderate quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed."

(ii)M.Gunasekaran Vs. The Superintendent of Police, Chennai and two others, (W.P.No.16415 of 2009 dated 15.06.2011), paragraph No. 10 of the order reads as under;

"10.Considering the facts and circumstances of this case and the order passed by the Division Bench holding that the order of dismissal from service for desertion is highly disproportionate and a lesser punishment should be imposed and the said order having been implemented by imposing a lesser punishment of postponement of one increment for two years in the case of one R.Ramesh, who was the appellant in W.A.No.58 of 2011 dated 28.01.2011, I am of the view that the interest of justice would be met by setting aside the order of the respondents and remitting the matter to the second respondent to consider the said issue of proportionality of the punishment alone in the light of the additional affidavit filed b R3, dated 10.06.2011 and pass fresh orders, within a period of eight weeks from the date of receipt of copy of this Order."

(iii)Thangadurai Vs. The Superintendent of Police (Armed), Thiruvannamalai District & two others, (W.P.No.6873 of 2013 dated 19.09.2017), the relevant portions of which are extracted hereunder;

"6. This Court, after considering the rival submissions of the learned counsel for the parties and upon perusing the relevant materials and pleadings placed on record, is of the considered view that as rightly held by the learned Single Judge of this Court, as he then was, in the aforesaid writ petition, a punishment imposed on the petitioner, namely, the removal from service, is grossly disproportionate to the gravity of misconduct (Desertion) alleged against the petitioner. There cannot be two opinions that for solitary act of misconduct, punishment of removal from service is too excessive, particularly, considering the age of the petitioner, who was only 32 years at that point of time. Having concluded so, this Court has to see as to what punishment should be imposed on the petitioner instead of removal from service. Considering the evidence in the enquiry proceedings and the order passed by the disciplinary authority, this Court is of the view in the fitness of things, that the petitioner having been removed from service as early as in 2007 and has been out of employment for over 10 years, the punishment of removal from service imposed on the petitioner is modified to the extent that the petitioner is directed to be reinstated in service without any backwages for a long period of 10 years is a sufficient punishment to be imposed on the petitioner in the facts and circumstances of the case.

7. In the light of the above, the respondents are directed to pass reinstatement of the petitioner in service without backwages within a period of two months from the date of receipt of copy of this order. On being reinstated, the petitioner is entitled to all other attendant benefits."

(iv)N.Hariharan Vs. The Superintendent of Police, Railways, Chennai - 8 & two other (W.P.No.24162 of 2012 dated 08.12.2017), the relevant paragraphs are extracted hereunder;

"12.The learned counsel for the petitioner would finally submit that apart from vitiating factors as pointed above in the matter of conducting enquiry and imposition of penalty, the punishment imposed on the petitioner who has rendered less than 10 years of service, is disproportionate. He would submit that the punishment of compulsory retirement is akin to removal from service for unauthorised absence for a few days and such punishment was found to be misappreciated by the learned Division Bench of this Court. In the similar circumstances, it has also been followed by the learned Single Judge of this Court recently in W.P.No.6873 of 2013 dated 09.09.2017. He would draw the attention of this Court to para-6 of the judgment of the learned Single Judge, which held the similar issue, is extracted below:

This Court, after considering the rival submissions of the learned counsel for the parties and upon perusing the relevant materials and pleadings placed on record is of the considered view that as rightly held by the learned Single Judge of this Court, as he then was, in the aforesaid writ petition, a punishment imposed on the petitioner, namely, the removal from service, is grossly disproportionate to the gravity of misconduct (Desertion) alleged against the petitioner. There cannot be two opinions that for solitary act of misconduct, punishment of removal from service is too excessive, particularly, considering the age of the petitioner, who was only 32 years at the point of time. Having concluded so, this Court has to see as to what punishment should be imposed on the petitioner instead of removal from service. Considering the evidence in the enquiry proceedings and the order passed by the disciplinary authority, this Court is of the view that the fitness of things, that the petitioner having been removed from service as early as in 2007 and has been out of employment for over 10 years, the punishment of removal from service imposed on the petitioner is modified to the extent that the petitioner is directed to be reinstated in service without any backwages for the period from the date of his removal from service till the date of his reinstatement. Denial of backwages for a long period of 10 years

is a sufficient punishment to be imposed on the petitioner in the facts and circumstances of the case.

13. In the above case, this Court has finally substituted the penalty as follows:

"7. In the light of above, the respondents are directed to pass orders of reinstatement of the petitioner in service without backwages within a period of two months from the date of receipt of a copy of this order. On being reinstated, the petitioner is entitled to all other attendant benefits."

16. Learned counsel for the respondents would submit that the petitioner was in the habit of frequently absenting without informing to the department. In any event, the following order is passed for giving a last opportunity to the petitioner to correct himself in future. In case, the petitioner is going to continue with this attitude of absentism without proper reasons and without getting permission from the department, it is always open to the respondents to proceed against him, as they may be advised in future.

17. For all the above reasons, the petitioner is entitled to succeed. However, in view of the fact that the petitioner was absent without giving proper reasons, continuously for several weeks and such conduct will not sufficiently satisfy the respondents to pay him the backwages, the petitioner has to be imposed with punishment of forfeiture of backwages as a method of corrective measure so that in future, he does not absent or commit any misconduct during his service.

18. In the above said circumstances, this Court is of the considered view that the writ petition is allowed and the impugned orders passed by respondents 1 and 2 in Na.Ka.No.G1/PR No.26/2010, dated 05.05.2011 and RC No.A2/3436/2011 dated 22.12.2011, are set aside and the respondents herein are directed to reinstate the petitioner in service with all other attendant benefits etc., However, the petitioner is not entitled to the backwages from the date of compulsory retirement till the date

of reinstatement into service. The denial of backwages for the period of punishment is sufficient penalty to be imposed on the petitioner in the facts and circumstances of the case. The respondents are directed to pass the consequential order within a period of eight weeks from the date of receipt of a copy of this order. No costs."

(v) M. Baskar Vs. The Deputy Commissioner of Police, Armed Reserve, Coimbatore City & two others (W.P.No.22611 of 2011 dated 23.03.2018). The relevant paragraphs are extracted hereunder;

"12. As rightly contended by the learned senior counsel for the petitioner, this Court has held that imposition of penalty of removal from service for the act of desertion is disproportionate to the gravity of the misconduct alleged against the police personnel and interfered in such matters with regard to the quantum of penalty imposed on such police personnel. In fact, even in one of the cases, in similar facts and circumstances, where repeated desertion was pointed out, inspite of the same, as a matter of grace such punishment was interfered by this Court by giving one more opportunity to the petitioner therein to correct himself.

13. In all the cases, referred by the learned senior counsel this Court has consistently interfered with the quantum of the penalty imposed by the disciplinary authority for the act of desertion. In such circumstances, this Court does not think it is right to take any different view since the petitioner herein is also alleged to have deserted the police force for more than 21 days. In fact, the petitioner has some kind of valid explanation for remaining absent during the relevant period. That being the case, this Court finds that the action of the disciplinary authority in imposing the severe penalty of removal from service is without any justification.

14. In fact, in two of such cases, the learned single Judge of this Court has imposed penalty of denial of backwages for the period of non employment and ordered reinstatement of the petitioner therein. In this case also, it is found that the petitioner was dismissed from

service on 10.11.2009 and it is nearly 8 years, the petitioner is out of employment from the date of removal from service. Therefore, this Court is of the considered view that instead of remanding the matter back to the authority for consideration for imposition of lesser punishment, this Court on the facts and circumstances of the case, imposes penalty of denial of backwages, as done in respect of two other similarly placed Writ Petitioners, as aforesaid. The denial of back wages for the entire period of non employment would be sufficient punishment since, the punishment of removal from service was imposed as early as 18.02.2009.

15. In view of the above, this Court is of the considered view that the writ petition is allowed and impugned proceedings passed by the 1st respondent in PR No.48/F4/2008 dated 18.02.2009 and confirmed by the 3rd respondent in RC No.160692/API(1)/2009, dated 10.11.2009 are hereby set aside and the respondents are directed to reinstate the petitioner in service with all other attendant benefits and the petitioner is not entitled to backwages from the date of removal from service (ie) 18.02.2009 until the date of his reinstatement. The denial of backwages for the period of non-employment is a sufficient penalty to be imposed on the petitioner in the facts and circumstances of the cases. The respondents are directed to pass consequential orders within a period of eight weeks from the date of receipt of copy of this order."

6. The learned Senior counsel would submit that even in cases where multiple desertions had taken place, the Courts have intervened in the quantum of penalty. In this case, the petitioner has a valid explanation for her absence due to her family problems as also due to her severe health issues.

7. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner is habitual absentee and already the third respondent had shown indulgence to her, by allowing her mercy petition earlier when she was removed from service on 02.03.2005. However, the petitioner appears to have not learnt from her past mistake and has remained absent once again for number of days unauthorizedly. Therefore, she is not fit to be retained in

service, in public interest. In such circumstances, her removal order is perfectly justified and does not call for any interference.

8. In fact, the learned Additional Government Pleader appearing for the respondents would submit that even earlier to 2005, the petitioner was awarded with the punishment of postponement of increment for one year without cumulative effect for her unauthorized absence. According to him, this is the third occasion the petitioner was proceeded with departmentally for the same and repeated misconduct of remaining absent unauthorizedly. Therefore, no indulgence need be shown to the petitioner, as that would send wrong signal to the other Police Personnel employed in the Department, where high degree of discipline is to be maintained.

9. Considered the submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

10. No doubt, high degree of discipline has to be maintained in Police Force and the conduct of the petitioner of remaining absent quite frequently unauthorizedly cannot be condoned for the asking. However, taking into consideration the line of decisions cited by the learned Senior counsel appearing for the petitioner and also the fact that the petitioner was having severe health issues and also family problems, this Court is of the view that the petitioner is entitled to be extended the legal principles as laid down by this Court, as extracted above.

11. Although, this Court has its own apprehension about the future conduct of the petitioner, but as a matter of grace, this Court had to conclude that the punishment of 'removal or dismissal from service' can be resorted to only in extreme cases of corruption and other severe acts of misconduct by the Member of the Disciplinary Force. At the same time, this Court is also conscious of the fact that remaining frequently absent unauthorizedly is a serious act of misconduct, particularly in Police Force, where high degree of discipline is expected from every member of the service. Therefore, in order to give one more chance to the petitioner to correct herself, this Court is inclined to interfere with the quantum of penalty imposed on her. This Court is also guided by the fact that the petitioner is only 36 years old and she has a long way to go to complete her tenure.

12. In view of the circumstances narrated above, by treating this case as one of exception, the impugned order passed by the first respondent in PR No.25/3(2)/2011 dated 28.09.2012 and the order of the third respondent in RC No.179358/AP3(2)/2017 dated

16.05.2018 are hereby set aside, as being disproportionate to gravity of misconduct of desertion proved against the petitioner. The respondents are directed to substitute and moderate any penalty other than 'dismissal', 'removal' or 'compulsory retirement' from service on the petitioner, with a warning note to her that it will be the last chance for her to redeem herself from her past deeds of misconduct. It is made clear that in case any such act of unauthorized absence is repeated by the petitioner, no further indulgence to be shown to her under any circumstances.

13. The respondents are directed to pass appropriate orders imposing any punishment as indicated above within a period of four weeks from the date of receipt of copy of this order. It is also made clear that the petitioner is not entitled to backwages during the period of her non-employment on the principle of 'No work No pay', but is entitled to other attendant benefits on such substituted penalty being imposed.

14. In the result, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrm/msk

To

1. The Deputy Commissioner of Police
(Motor Transport), I/c.Armed Reserve,
Pudupet, Chennai.
2. The Commissioner of Police,
Greater Chennai Police, Vepery, Chennai.
3. The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore,
Chennai - 600 004.

+1 cc to Mr.M.Muthappan, Advocate, S.R.No.59323

+1 cc to the Government Pleader, S.R.No.59185

Writ Petition No.17714 of 2018

RSV(CO)

SSM(22/07/2019).