

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 656 of 2017
and
C.M.P. Nos. 9125 & 9126 of 2017

1. The Commandant,
Tamil Nadu Special Police (Special Force),
Veerapuram,
Chennai.
2. The Inspector General of Police,
Armed Police,
Trichy - 12.
3. N. Tamilselvan, I.P.S.,
I/c Inspector General of Police,
Additional Director General of Police,
Armed Police,
Kilpauk,
Chennai - 600 010. Appellants/Respondents

-vs-

S. Shanmuga Rajan Respondent/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order dated 05.09.2013 made in W.P. No. 18616 of 2013. Writ petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records of the respondents 1 and 3 in connection with the impugned order passed by them in C No. A4/PR/39/SF/2004 B.O.No.399/2004 dt 1.12.04 and RC No. C1/27017/2011 dt 8.5.13 and quash the same and further direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Appellants : Mrs. A. Sri Jayanthi,
Special Government Pleader

For Respondent : Mr. A. Tamilrajan

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 05.09.2013 passed by Learned Judge of this Court in W.P. No. 18616 of 2013. The parties are hereinafter referred to as per their description in the Writ Petition for the same of convenience.

2. The facts leading to the filing of the Writ Petition have been extensively captured in the order dated 05.09.2013 passed in W.P. No. 18616 of 2013 and hence, the same are not repeated in this order except with regard to the material facts relevant for the purpose of disposal of this Appeal.

3. The Petitioner, who was working as Grade-II Police Constable was issued a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, in P.R. No. 39 of 2004 dated 26.10.2004 for absence from duty without permission for more than twenty days and was declared as a deserter. The disciplinary proceedings culminated in imposing punishment of removal from service on the Petitioner by order C. No. A4/PR/39/SF/2004 dated 01.12.2004 issued by the First Respondent, which was confirmed by order dated 05.07.2005 in Review Petition passed by the Second Respondent and in the further order dated 22.10.2005 in the Mercy Petition passed by the Director General of Police. The same was unsuccessfully challenged by the Petitioner in the Writ Petition in W.P. No. 11164 of 2006 before this Court by order dated 22.09.2008. However, on appeal, the Division Bench of this Court by order dated 26.02.2013 in W.A. No. 1608 of 2011, interfered in the matter and concluded as follows:-

"8. In an identical set of fact, the Division Bench of this Court in paragraph 3 of the order in W.A.No.58 of 2011 dated 27.1.2011, R.RAMESH V. THE DEPUTY INSPECTOR GENERAL OF POLICE AND OTHER, held as follows:-

".....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, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority viz., the second respondent herein, to reconsider the matter with regard to the 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"

In the said case the appellant who served as Grade II Police Constable deserted the force on three occasions and absented from duty on two occasions. The said order was also implemented by the very same Police Department by its order dated 10.06.2011. The appellant therein was imposed with a punishment of postponement of next increment for two years which shall operate to postpone his future increments. He also joined duty on 28.04.2011. 9. Thus proportionality of the punishment has to be gone into by the Disciplinary Authority as well as by the Appellate Authority. The said aspect has not been considered in this case by the learned Single Judge. Hence, the order of the learned Single Judge is set aside and the matter is remitted back to the fourth respondent to consider the issue regarding the proportionality of the punishment and pass fresh orders within a period of eight weeks from the date of receipt of copy of this order. It is also made clear that in the event the quantum of punishment is reduced, the appellant shall not claim backwages for the period in which he has not performed his duty."

In pursuance thereof, the Additional Director General of Police, i/c Inspector General of Police, Armed Police, Chennai by order Rc. No. C1/27017/2011 dated 08.05.2013 held that the punishment of removal from service awarded to the Petitioner earlier was proportionate to his delinquency and he was rightly punished and the Petitioner challenged that order in W.P. No. 18616 of 2013 before this Court. The Learned Judge, who heard the Writ Petition, in the order dated 05.09.2013 has pointed out that the Division Bench of this Court in the earlier order dated 26.02.2013 in W.A. No. 1608 of 2011 has taken note of the fact that the order dated 27.01.2011 in W.A. No. 58 of 2011 related to cases of identical set of facts and in such circumstances, it was not open to the Second Respondent to uphold the punishment of removal from service awarded to the Petitioner. In consequence of that finding, the order Rc. No. C1/27017/2011 dated 08.05.2013 impugned in W.P. No. 18616 of 2013 was set aside and the Respondents were directed to reinstate the Petitioner in service, but without backwages with an observation that the continuity of service of the Petitioner will not be affected. Aggrieved thereby, the Respondents have preferred this appeal.

4. We have heard Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the Respondents and Mr. A. Tamilrajan, Learned Counsel appearing for the Petitioner and also perused the materials placed on record, apart from the pleadings of the parties.

5. While we are broadly in agreement with the finding of the Learned Judge in the order dated 05.09.2013 in W.P. No. 18616 of 2013 that the Petitioner was entitled to reinstatement in service, but at the same time, we also deem it appropriate to point out that the Petitioner has to be treated on par with the Appellant in W.A. No. 58 of 2011 for the purpose of punishment as both the cases have been found to be identical in the earlier order dated 26.02.2013 in W.A. No. 1608 of 2011.

6. It is informed that since no stay was granted by this Court during the pendency of this Appeal, the Petitioner has been reinstated in service with immediate effect subject to the outcome of this appeal by order C. No. A4/8290/2011 dated 10.02.2014. As we have observed earlier, though the Petitioner has been rightly directed to be reinstated in service, he is also liable to be imposed with punishment of postponement of increment for two years, which shall operate to postpone his future increments. Accordingly, the pay of the Petitioner has to be necessarily revised and the reduced amount shall be effected forthwith and the aggregate amount found to be paid in excess to the Petitioner shall be recovered in 36 equated monthly instalments from the future salary of the Petitioner commencing from 01.05.2019. Necessary orders in this regard shall be issued by the concerned authority to the Petitioner and the same shall be communicated to the Petitioner by 15.04.2019 along with a working-sheet showing the calculation for the excess payment found to have been made to the Petitioner.

7. In the upshot, the Writ Appeal is allowed in part and the order dated 05.09.2013 in W.P. No. 18616 of 2013 shall stand modified to that extent. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vjt

To

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+1 cc to Mr.A.Tamilrajan, Advocate, S.R.No.18063

+1 cc to the Government Pleader, S.R.No.18951

W.A. No. 656 of 2017

KS (CO)
SSM(20/03/2019) .



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