



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.12837 of 2013

and

M.P. (MD)No.2 of 2013

WEB COPY

M.Kandavel

:Petitioner

vs.

1.The Director General of Police,
Mylapore, Chennai -4.

2.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

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

:Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records relating to punishment order made in F1 PR/32/2008, dated 24.10.2008 on the file of the third respondent and the proceedings made in AP12/A2/2008, dated 29.12.2008 on the file of the second respondent and consequential order made in C.No.41903/AP/2(3)/2010, dated 04.11.2010 on the file of the first respondent and quash the same and to direct the third respondent to pay the reduction amount from his salary during the period from 22.10.2008 to 22.10.2011.

For Petitioner

:Mr.Veerakathiravan

Senior Counsel

for M/s.Veera Associates

For Respondents

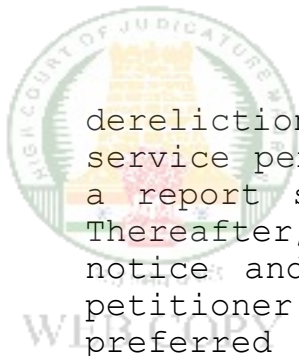
:Mr.R.Murugan

Additional Government Pleader

ORDER

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus challenging the order of punishment imposed by the respondents by reduction of time scale of pay by three stages by three years, which shall operate to postponement of future increments of petitioner with effect from 22.10.2008.

2.The petitioner was working as Junior Assistant in the third respondent Office. Vide charge memo dated 27.03.2007, three charges were framed against the petitioner. The first charge is regarding unauthorised absence and the other two charges are relating to



dereliction of duty by keeping several applications of members in service pending. An Enquiry Officer was appointed and he submitted a report stating that charges against the petitioner are proved. Thereafter, the third respondent, after issuing second show cause notice and getting explanation from the petitioner, removed the petitioner from service by order, dated 24.10.2008. The petitioner preferred an appeal before the second respondent, who in turn, modified order of removal into one of reduction in time scale of pay by three stages for three years, which shall operate to postpone future increments with effect from 22.10.2008. Though a mercy petition was filed before the first respondent, the same was also rejected by order dated 04.11.2010. Challenging the same, the above Writ Petition is filed.

3.The learned Senior Counsel appearing for the petitioner submitted that the punishment awarded by the second respondent is disproportionate to the charges proved against the petitioner and that the second respondent has not considered the relevant materials and the explanations offered by the petitioner. It is further stated that the proceedings of the respondents are without following the principles of natural justice. Though the petitioner is found guilty of negligence, it is submitted that there was no motive behind the delay in disbursing the leave applications and other applications pending in the table of petitioner. It is further stated that the second respondent ignored the fact that the performance of work is a collective responsibility of several persons, who are working in the Office and that the petitioner alone cannot be punished for such irregularity. The learned Senior Counsel further submitted that the reduction in time scale of pay by three stages for three years will affect the petitioner's entitlement, if the punishment is sustained. It is also submitted by the learned Senior Counsel that the minor punishment alone will be appropriate in this case.

4.On the other hand, the third respondent has filed a detailed counter affidavit refuting the allegations made in the affidavit filed in support of the Writ Petition.

5.It is the contention of the learned Additional Government Pleader that the over all performance of the petitioner was not upto the mark and hence, a review was held by the Section Supervisor. Since the petitioner absented himself without any prior permission on 22.04.2008, it is stated that the petitioner was guilty of unauthorised absence. It is further stated that the petitioner has not taken proper action in settling the leave applications and several petitions of Armed Reserve Men and others were pending for a long period because of petitioner's dereliction of duty. It is further stated that this has caused inconvenience to several persons. The learned Additional Government Pleader further submitted that the enquiry was properly conducted, after giving full opportunity to the petitioner and that therefore, there is no



illegality or irregularity in the findings of the Disciplinary Authority.

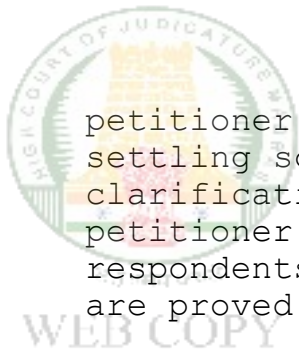
6.The first charge refers to two different delinquencies, ie., act on 22.04.2008, where, the petitioner did not report duty, even though he sought for permission to report late. The another charge is that he was unauthorizedly absent from 02.09.2008 without any permission. The second and third charges are regarding the performance of the petitioner. It is stated that several leave applications and other petitions were not settled due to poor performance of petitioner.

7.The explanation offered by the petitioner to the first charge is that on 22.04.2008, the petitioner's presence was not marked for unknown reasons and that the petitioner reported duty promptly after getting permission to come late due to personal reasons. The petitioner has produced the records to show that a leave application was submitted on 22.04.2008 on medical grounds along with medical certificates. The documents produced by the petitioner in the typed set are not disputed.

8.From the reading of entire evidence on record, this Court is convinced that the first charge is not fully proved and that the explanation offered by the petitioner with regard to the second and third charges are not seriously considered by the respondents while considering the punishment that can be inflicted on the petitioner. It is not disputed that the order of suspension was passed on 29.04.2008. The petitioner is said to have absented himself unauthorizedly from 23.04.2008. When the leave application was promptly submitted along with medical certificate, the respondents cannot treat the absence of petitioner as unauthorized particularly, when there was explanation for not reporting duty from 23.04.2008. The explanation offered by the petitioner was not considered by the first respondent. Hence, the impugned order with regard to the first charge cannot be accepted.

9.With regard to the charges relating to performance of the petitioner, the petitioner has admitted the delinquency, but according to him, the delay in settling the claims was not on account of his inability, but, because of lack of non-cooperation, in the sense that whenever, the petitioner approached his Superiors regarding *bona fide* doubts, the petitioner's Superiors have not given proper instructions or guidance and that the petitioner cannot be charged for dereliction of duty.

10.With regard to the second and third charges, which relates to poor performance of petitioner in work, it is stated that the petitioner was appointed on compassionate ground. If the petitioner is not suitable for the post, it is for the respondents to give him a suitable post anywhere, depending upon the qualification of the



petitioner. The petitioner himself has accepted his difficulty in settling some of the petitions and leave applications due to lack of clarification and assistance from his colleague. When the petitioner in his explanation has given details, it is for the respondents to consider the same before holding whether the charges are proved or not.

11.Having regard to the peculiar facts and circumstances of the case, this Court is of the view that the respondents have neither considered nor applied their mind as to how the explanations are not acceptable. Hence, this Court is convinced that the matter has to be remitted for reconsideration before the second respondent in the light of what is pointed out above.

12.As a result, this Writ Petition is partly allowed and the impugned order passed by the first respondent, dated 04.11.2010 confirming the order of second respondent, who in turn, modifying the order of punishment imposed by the third respondent is set aside and the matter is remitted to the second respondent to consider afresh in the light of the observations made above and to consider the request of the petitioner for lesser punishment within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Director General of Police,
Mylapore, Chennai -4.

2.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

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

+1 CC to SPL GP (SR-94898[F] dated 30/10/2019)

+1 CC to Mr.C.JEGANATHAN, Advocate (SR-95043[F] dated 31/10/2019)

W.P. (MD) No.12837 of 2013

25.10.2019

VB (02.12.2019) 4P 6C