

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P. No.35549 of 2007

S.Saravanan

...Petitioner

Versus

1. The Superintendent of Police
Cuddalore District.

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

3. The Director General of Police,
Chennai 4.

4. The Secretary to Government,
Home (Police) Department,
Fort St. George, Chennai 9

...Respondents

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the respondent in connection with the impugned orders passed by the respondents 1 to 4 in D.O.742/05 C.No.DI(1)/P.R.18/05 dated 02.08.2005, C.No.B3/A.P.2/2006 dated 14.03.2006, Rc No.API(2)/47477/2006 dated 05.05.2006 and G.O.(2D) No.374 Home (Police V) Department dated 15.06.2007 respectively and quash the same and direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : No appearance

For Respondents : Mr.K.Magesh (R1 to R4)
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the impugned orders passed by the respondents 1 to 4 in D.O.742/05 C.No.DI(1)/P.R.18/05 dated 02.08.2005, C.No.B3/A.P.2/2006 dated 14.03.2006, R.C No.API(2)/47477/2006 dated 05.05.2006 and G.O.(2D) No.374, Home (Police V) Department dated 15.06.2007 respectively and quash the same and direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

2. Despite several opportunities being given to the petitioner and despite the matter is pending from 2007, there is no representation for the petitioner. Heard Mr.K.Magesh, learned Special Government Pleader appearing for the respondents 1 to 4.

3. The case of the petitioner is that the petitioner entered service as police constable in the year of 2002 in the TSP VIII Battalion, Palani and thereafter transferred to the District Armed Reserve, Cuddalore in the year of 2004. He availed leave from 02.12.2004 to 06.12.2004 for five days to visit his native village and meet his aged parents. It is further stated that on arrival at his native village, he fell sick due to Hepatitis, pulmonary tuberculosis and taken treatment from 07.12.2004 till 30.09.2005 and due to which he cannot attend office. It is further stated that during illness several communications have been sent by the authorities calling for his absence of duty and the same were received by his parents. Since the petitioner was hospitalized and not knowing the seriousness and value of letters, they neither informed the petitioner about the same nor taken effective steps to know the contents of letters, but the hospitalization of the petitioner was informed to the concerned police station, but without considering the same, all of a sudden the petitioner was served with order of desertion for taking 21 days leave without leave or permission. The said order was issued on 28.12.2004 and due to severe ill health he could not report for duty. Subsequently, the petitioner was served with charge memo in P.R.No.12/2005 through registered post and his father received the same. Since the petitioner was unwell and undergoing treatment, he cannot submit reply and he was not served summons for oral enquiry and the same was served on his parents. Since, he was not well his parents did not inform the petitioner. Therefore, the petitioner did not appear for enquiry and an exparte enquiry was conducted by the enquiry officer. Based on the evidence of P.W.1 and P.W.2, the official witnesses, the enquiry officer has held that the charge levelled against the petitioner has been proved and submitted a proved minute to the disciplinary authority. The petitioner was served with a copy of the enquiry officer report on 27.07.2005. The disciplinary authority viz., the first respondent even without waiting for 15 days, agreed with the findings of the enquiry officer held that the charges have been proved and for the proven charges imposed a penalty of removal from service by an order dated 02.08.2005. The petitioner was not immediately served with the copy of the order, but it was served only on 05.12.2020. Aggrieved by the same, the petitioner submitted an appeal before the second respondent on 20.12.2005, who confirmed the order of the disciplinary authority as against which, the petitioner preferred a review to the third respondent on 06.03.2006 and the same was also rejected by an order dated 05.05.2006. It is further stated that the petitioner preferred

a memorial to the Government on 07.06.2006 and the fourth respondent also did not consider any of the points raised by the petitioner, but straightaway rejected the same by an order dated 05.06.2006. Therefore, the petitioner has filed this Writ Petition challenging the aforesaid orders passed by the respondents.

4. None appeared on behalf of the petitioner. Heard Mr. K.Magesh Learned Special Government Pleader for the respondents 1 to 4.

5. The learned Special Government Pleader would submit that the petitioner was voluntarily absent from duty for morethan 21 days and as per Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, the police who is in uniformed service has to avail leave with permission and if without informing the Department if he absented from duty it can be treated as deserted from service. Since the petitioner has not attended the office for morethan 21 days without leave or permission the charge memo was issued against him, but the petitioner neither replied to charge memo nor participated in the enquiry. Therefore, the enquiry officer conducted exparte enquiry and submitted report before the first respondent. He would further submit that further representation was called for, but the petitioner did not send any representation. Therefore, he passed the order of dismissal from service. Eventhough the petitioner has stated that he informed the leave, the respondents have not received the same and further the petitioner has not proved that he sent leave application with medical certificate. Therefore, under these circumstances, despite opportunity being given to the petitioner, the petitioner has not chosen to make representation and there is no valid reason given by the petitioner for not reporting the duty for morethan 21 days. Therefore, the first respondent by accepting the findings of the enquiry officer and passed the order of removal from service and since there is no merit in the Appeal and Review petition filed by the petitioner, the second and third respondents also dismissed the same. As the memorial preferred to the Government also without any substance, the Government has rejected the same. There is no merit in this Writ Petition and therefore he prays for the dismissal of this Writ Petition.

6. Admittedly the petitioner entered the service as Police constable in TSP VIII Battalion, Palani and thereafter transferred to District Armed Reserve, Cuddalore and he was absented from duty from 07.12.2004 to 30.09.2005 and the petitioner himself admitted that he has not attended duty for morethan 21 days. However, he has not informed the Department after coming to his native place because he suffered with the aforesaid disease and therefore he was admitted in the hospital

and therefore he could not receive summons. Even after reasonable time, the petitioner has neither reported duty nor sent leave application with sufficient documents within reasonable time. Further though notices were served to him, the petitioner has not participated and the said fact has been accepted by the petitioner. Since the petitioner was voluntarily absented from duty for morethan 21 days and the respondents have not received any leave application with the medical certificate from the petitioner. Enquiry officer concluded that the charge levelled against the petitioner is proved. Once the petitioner admitted that he had not attended the office for morethan 21 days and absented from duty for morethan 21 days, it is for the petitioner to prove that he got the valid permission or he availed leave with permission and therefore in the absence of the same and when he admitted all the communications, Charge Memo and summons and enquiry report were received, there is no violation of the principles of natural justice. The petitioner did not participate in the enquiry the reason given was not substantiated with material documentary proof in the manner known to law. In this case, admittedly the petitioner has not reported duty and he was absented from duty for morethan 21 days, without any information or permission and therefore there is no merit in this Writ Petition and the same is liable to be dismissed.

In view of the same, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent of Police
Cuddalore District.
2. The Deputy Inspector General of Police
Villupuram Range, Villupuram.
3. The Director General of Police,
Chennai 4.
4. The Secretary to Government,
Home (Police) Department,
Fort St. George, Chennai 9

+1cc to the Government Pleader, S.R.No.40097

W.P. No. 35549 of 2007

rsi(CO)

rv(21/01/2021)