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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26148 of 2015

1 D. Kanagaraj
S/o. Late. Durairaj,
1468/5 Thangappan Nagar,
Kadalaiyur Road,
Kovilpatti, Thoothukudi District.

... Petitioner

Vs.

- 1 The Director General of Police,
Tamil Nadu Office of the Director
General of Police Chennai-4
- 2 The Commissioner of Police,
Tirunelveli City i/c Dy. Inspector General
of Police Office of the Commissioner of
Police Tirunelveli Range.
- 3 The Superintendent of Police,
Office of the Superintendent of Police
Thoothukudi District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, call for the records of the 1st Respondent in proceedings in R.Dis.No.132748/AP 2(1)2014 dated 27.06.2015 and consequently the 2nd Respondents proceedings C.No.C4/Review 49/2014 dated 12.06.2014 and quash the said proceedings and direct the Respondents to reinstate the Petitioner in the Post of Head Constable with all attendant benefits.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.J.Ramesh, A.G.P.

O R D E R

Writ petitioner joined as Grade II Police Constable in the year 1993 and upgraded as Head Constable in the year 2008. The petitioner has put in unblemished service from the date of his



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joining in Police department. The petitioner was suffered from illness, he was absent from duty for 21 days from 20.6.2013 after availing three days casual leave. The petitioner was served with copy of desertion order on 18.7.2013. Since the petitioner did not appear before the third respondent, third respondent passed an order in D.O.No.1035/2013 on 20.8.2013 confirming desertion. Thereafter, the petitioner was served charge memo on 26.9.2013 for unauthorised absent from 20.6.2013 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955 for the delinquency of desertion for 21 days from 20.6.2013 directing him to give explanation within 15 days. The Enquiry Officer has held that the charge leveled against the petitioner has been proved and submitted a report on 28.11.2013. Considering the report submitted by the enquiry officer and the explanation submitted by the petitioner, the third respondent passed an order on 23.12.2013 imposing the punishment of Black mark. The second respondent has taken a suo motu review against the order of the third respondent, issued show cause notice to the petitioner on 21.3.2014 in C.No.C4/Review 49/2014. The writ petitioner submitted his explanation to the said show cause notice issued by the second respondent. The second respondent without considering the explanation submitted by the petitioner, imposed the major punishment of dismissal from service. Assailing the said order, the petitioner has preferred the present writ petition before this Court.

2. According to the petitioner, petitioner was absent from 20.6.2013 for 21 days due to bonafide reason that he was suffering from illness and hence, he unable to attend duty. The third respondent taking note of the explanation submitted by the petitioner, imposed a minor punishment of black mark. But the second respondent suo motu reviewed order passed by the third respondent, enhanced the punishment of dismissal from service thereby passed an erroneous order and the same is excessive, arbitrary and unsustainable in law.

3. According to the petitioner, the respondent has not stated any reason in the show cause notice that he disagree with the findings of the original authority. Further, the major punishment of dismissal from service awarded by the second respondent is disproportionate and excessive. Therefore, on this ground, this Court can interfere with the order of punishment of dismissal from service passed by the second respondent and to modify the said punishment.

4. On instruction, the learned Additional Government Pleader has fairly stated that there is no reason in the show cause notice for disagreeing with the order passed by the original authority. The learned Additional Government Pleader



has further stated that the petitioner unauthorisedly absent from duty for a period of 21 days. Even though no reason assigned in the show cause notice issued in suo motu proceedings, considering the nature of charge framed against the petitioner for unauthorised absent, the petitioner deserves to be imposed a punishment. He further stated that the petitioner did not deny the charges before the enquiry officer. If the Court comes to the conclusion that the punishment imposed against the petitioner is disproportionate and excessive, this Court may pass appropriate orders modifying the punishment.

5. The learned counsel appearing for the petitioner would submit that the writ petitioner has admitted his unauthorised absent for 21 days, there is no reason has been stated in the show cause notice and the punishment is disproportionate and excessive to the charges. Therefore, in the interest of justice, this Court may modify the order of punishment of dismissal from service.

6. Admittedly, the writ petitioner was unauthorisedly absent for 21 days from 20.6.2013. The petitioner has not produced any materials to justify the same. As the petitioner was working in the Police department should maintain discipline in the department. He cannot absent from duty without getting proper permission from the higher authority concerned. But considering the fact that the no reason assigned in the show cause notice issued in the suo motu proceedings by the 2nd respondent, the same cannot be sustainable and it requires fresh consideration. Hence, by taking note of the aforesaid facts and the charges were framed in the year 2013 and he was also out of service for more than 6 years, it would not be appropriate to remit back the matter to the authorities concerned for considering afresh by following the procedures as contemplated under Rules, since the writ petitioner suffered by awarding the termination order.

7. The Hon'ble Supreme Court in CHAIRMAN CUM MANAGING DIRECTOR, COAL INDIA LTD., AND ANOTHER VS. MUKUL KUMAR CHOUDHURI AND OTHERS [(2009) 8 MLJ 460 (SC)] held as under:

'26. Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by



as duty period by the respondent. The petitioner is entitled to other attendant benefits as per Rules. No cost.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Director General of Police,
Tamil Nadu Office of the Director General of Police, Chennai-4
- 2 The Commissioner of Police,
Tirunelveli City i/c Dy. Inspector General of Police,
Office of the Commissioner of Police, Tirunelveli Range.
- 3 The Superintendent of Police,
Office of the Superintendent of Police, Thoothukudi District.

+1cc to Mr.P.Ganesan , Advocate, Sr.No.17526
+1cc to Government Pleader, Sr.No.18253

W.P.No.26148 of 2015

SV(CO)
GS(07/07/2020)