

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.14340 OF 2020

AND

W.M.P.NO.17809 OF 2020

S.Kumaresan

... Petitioner

Versus

1. The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.
2. The Deputy Inspector General of Police,
Vellore Range, Vellore.
3. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents, in connection with the impugned orders passed by the first respondent in PR No.55/2014 dated 13.04.2015, reviewed by the second respondent in Na.Ka.No.B1/007198/2015 dated 05.06.2015 and consequently enhanced by the first respondent in his P.R.No.55/2014 dated 12.06.2015 and modified by the third respondent in RC No.343546/AP2(2)/2019 dated 15.04.2020, to quash the same and direct the respondents to treat the period of out of employment of the petitioner as duty for all purposes and grant him all consequential service benefits.

For Petitioner : Mr.Nedunchezhiyan for
Mr.M.Muthappan

For Respondents : Mr.R.A.S.Senthilvel, GA

ORDER

This writ petition has been filed to call for the records of the respondents, in connection with the impugned orders passed by the first respondent in PR No.55/2014 dated 13.04.2015,

reviewed by the second respondent in Na.Ka.No.B1/007198/2015 dated 05.06.2015 and consequently enhanced by the first respondent in his P.R.No.55/2014 dated 12.06.2015 and modified by the third respondent in RC No.343546/AP2(2)/2019 dated 15.04.2020, to quash the same and direct the respondents to treat the period of out of employment of the petitioner as duty for all purposes and grant him all consequential service benefits.

2. The petitioner was appointed as Grade II Police Constable in the District Armed Reserve in 2009, selected through Tamil Nadu Uniformed Services Recruitment Board. According to him, in 2012, when he got married, there arose series of misunderstanding between him and his wife. Because of that, he was unable to concentrate on his career. The petitioner was sent for Institutional Training at Police Training School, Vellore. Thereafter, he served in TSP II Battalion, Avadi, for a period of four years. After completion of four years, he was transferred to Thiruvannamalai District Armed Reserve in 2013.

3. According to the petitioner, he was suffering from severe mental pressure and therefore, he absented from duty unauthorizedly for the period exceeding 21 days. Therefore, on 26.08.2013, he was declared as deserter by proceedings of the Superintendent of Police, Thiruvannamalai, based on the report of the Sub Inspector (AR).

4. On 28.08.2013, he was served with the desertion order and was directed to appear before the Superintendent of Police. However, the petitioner did not appear and therefore, the desertion order was confirmed on 04.10.2013. On 13.01.2014, the petitioner was also issued with the charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, for his unauthorized absence. The petitioner claims that he could not respond to the charges because of the family issues and ultimately in the enquiry which was held into the charges, the report was submitted, holding the charges proved.

5. On 13.06.2014, he was furnished with the copy of the enquiry report, directing him to submit his representation. Thereafter, he was imposed with a punishment of stoppage of increment for a period of one year and was taken back to duty by the proceedings of the Superintendent of Police, Thiruvannamalai District. The copy of the proceedings was served on the petitioner on 08.07.2014 and according to the petitioner, he could not report for duty since he was continued to be under mental pressure.

6. Thereafter, once again, he was declared as Deserter on 19.08.2014 and was directed to appear before the Superintendent of Police, Thiruvannamalai, within a period of 60 days from 06.09.2014. The petitioner once again did not appear. Hence, the desertion order was confirmed on 06.09.2014. For the delinquency of desertion, the petitioner was issued with another charge memo on 08.11.2014. During the period of enquiry which was conducted from 29.12.2014 till 27.01.2015, the petitioner did not appear and participate in the enquiry proceedings and he also did not submit any explanation to the enquiry report which obviously found him guilty of the charges for his unauthorized absence. Finally on 13.04.2015, the Superintendent of Police imposed another punishment of stoppage of increment for a period of three years and the punishment shall be operated to postponement of future increment. The order was served on the petitioner on 28.04.2015.

7. According to the petitioner, when he was proposing to report for duty after the above order, the second respondent reviewed the punishment of stoppage of increment for a period of three years, since the petitioner was not reported for duty and cancelled the punishment order dated 13.04.2015 and directed the Superintendent of Police to impose punishment which could be implemented in the petitioner's case. This was necessitated because of the fact that the petitioner was remaining absent continuously and therefore, the punishment of stoppage of increment was serving no purpose, as the same could not be practically implemented.

8. Thereafter, the disciplinary authority by an order dated 12.06.2015, imposed the punishment of dismissal from service. The petitioner even after the dismissal order passed in 2015, did not react immediately as normally in the case of anyone who is affected by the dismissal order. But the petitioner belatedly after a period of four years, appeared to have submitted a memorial to the third respondent on 31.12.2019 and requested for his reinstatement in service by condoning his prolonged absence. The petitioner thereafter has also approached this Court in W.P.No.1869 of 2020 and this Court vide order dated 19.01.2020, directed the third respondent to pass appropriate orders on the mercy petition submitted by the petitioner. In pursuance of the direction of this Court, the third respondent by an order dated 15.04.2020, graciously modified the order passed by the disciplinary authority dated 12.06.2015 and imposed the punishment into one of postponement of future increment for a period of three years which shall not operate to postpone his further increment and the petitioner is directed to be taken back for duty. Following the order passed by the third respondent, the petitioner was reinstated in service by order dated 18.03.2020 and he reported for duty on 19.04.2020. He

presently serving in the District Armed Reserve.

9. The present writ petition is filed by the petitioner, challenging the order passed by the first respondent dated 13.04.2015 which was reviewed by the second respondent by order dated 05.06.2015 and enhanced by the first respondent by subsequent order dated 12.06.2015 and the final order passed on the mercy petition by the third respondent on 15.04.2020, in this writ petition.

10. From the above narrative, it could be seen that how the petitioner could even think of challenging the mercy and grace shown by the third respondent in modifying the penalty of dismissal from service into one of postponement of future increment for a period of three years. The very conduct of the petitioner in not appreciating the mercy shown by the third respondent, in the circumstances of the case, is to be strongly deprecated.

11. This Court is unable to appreciate as to how the petitioner could be so mindlessly emboldened to assail the latest impugned order, when the mercy petition itself was made only after a period of four years on 31.12.2019, against the order of dismissal dated 12.06.2015. The petitioner had wrangled an innocuous direction from this Court on 19.01.2020 and on the basis of the direction by this Court, he had also obtained a merciful order. Despite that, the petitioner is before this Court, not being satisfied with the lenient action taken against him. The petitioner being a member of the police force, cannot take his service for granted as if he can continue to remain absent unauthorizedly, despite declaring him as deserter on two occasions followed by punishments and expect that his unrepentant acts of misconduct ought to be condoned by the Administration. In fact, this Court is aghast as to how the petitioner could even entertain an idea to challenge the punishments rightly imposed on him, brazenly oblivious to his shortcomings in discharging of his duty as a member of the Uniformed Services. When the third respondent modified the penalty of dismissal from service into relatively minor penalty out of sheer sympathy, such decision in all fairness, should have been obeyed, appreciated and acknowledged and not questioned or challenged.

12. In the considered opinion of this Court, the petitioner deserved to be dealt with more severely, as he appears to be a self-absorbed person with no sense of correctional behavior. Although this Court was inclined to direct the respondents to impose a stringent penalty on the petitioner, but refraining from issuing any such direction by giving the benefit of doubt to the petitioner that he may after all a foolhardy person.

13. In any event, the petitioner having chosen to approach this Court in the above backdrop, need to be shown as to how such ill-advised or self-assumed confidence of his to maintain the challenge before this Court, would result in being imposed with deterrent cost. In the said circumstances, the writ petition is dismissed with exemplary cost of Rs.50,000/- payable by the petitioner within a period of two weeks from the date of receipt of a copy of this order. The Cost is to be paid to the Hon'ble Chief Minister's Public Relief Fund (Covid 19). In case, the petitioner has not paid the cost within the stipulated time, the respondents are directed to deduct the same from the monthly salary of the petitioner and remit the cost to the Hon'ble Chief Minister's Public Relief Fund (Covid-19).

14. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk
To

1. The Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
2. The Deputy Inspector General of Police,
Vellore Range, Vellore.
3. The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore, Chennai-4.
4. The Secretary,
Chief Minister's Public Relief Fund (Covid 19),
Secretariat, Chennai-9.
5. S.Kumaresan, S/o.Selvaraj,
Police Constable 1521, District Armed Reserve,
Thiruvannamalai District.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.33734
+1cc to the Government Pleader, S.R.No.33306

W.P.No.14340 of 2020 and
W.M.P.No.17809 of 2020

EV(CO)
CS/02/12/2020