

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.310 of 2014
and
WMP No.15275 of 2018

M.Raju

.... Petitioner

vs.

1.The State of Tamil Nadu,
Rep.by Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.

2.The Director General of Police,
Kamarajar Road,
Chennai - 600 004.

3.The Superintendent of Police,
District Police Office,
Trichy.

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondents 3 & 2 in connection with the orders passed in the Proc. D.O.1945/91 RC. No.PR 260/H2/90 dated 29.10.1991 and RC. No.244269/AP IV (1)/2007 dated 9.5.2008 respectively and also on the file of the 1st respondent in connection with the order passed by him in G.O. (2D). No.23 Home (Pol.VI) Department dated 23.1.2009, served on the petitioner by the 3rd respondent vide his Proc.C.No.HI/36016/2013 dated 6.12.2013 and quash the same and direct the respondent to reinstate the petitioner in service with all monetary and service benefits.

For Petitioner: Mr.Singaravelan
Senior Counsel
for M.Srividhya

For Respondent:Mr.A.N.Thambidurai
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records on the file of the respondents 3 & 2 in connection with the orders passed in the Proceedings D.O.1945/91 RC. No.PR 260/H2/90 dated 29.10.1991 and RC. No.244269/AP IV (1)/2007 dated 9.5.2008 respectively and also on the file of the 1st respondent in connection with the order passed by him in G.O. (2D). No.23 Home (Pol.VI) Department dated 23.1.2009, served on the petitioner by the 3rd respondent vide his Proceedings C.No.HI/36016/2013 dated 6.12.2013 and quash the same and direct the respondent to reinstate the petitioner in service with all monetary and service benefits.

2. It is the case of the petitioner that he joined the service as Police Constable on 22.01.1975 and subsequently, while on medical leave, without assigning any reasons, the petitioner was transferred to Armed Reserve, Trichy. As he could not join the transferred place, the petitioner was declared as a deserter and, thereafter, his services were terminated with effect from 25.10.1991. That being so, he submitted mercy petition on 18.12.2007 to modify the said order of termination and to reinstate him in service, but the said mercy petition was rejected by order dated 9.5.2008 by the 2nd respondent. Thereafter, he preferred appeal before the 1st respondent. Non disposal of the said appeal led to the filing of W.P. No.24691 of 2013 and directions were issued by this Court on 18.09.2008 to dispose of the said appeal. Later, the 3rd respondent vide his letter dated 6.12.2013 forwarded the copy of the rejection order in the of appeal passed by the 1st respondent, however, the the same could not be served on the petitioner as he was not residing in the said address. Hence, it is his contention that without providing sufficient opportunity to participate in the enquiry proceedings, the order of dismissal was issued and the same is disproportionate in nature. Hence, he prays to quash the order dated 29.10.1991, 9.5.2008 and 23.01.2009 and to reinstate him in service with all monetary and service benefits.

3.Learned Senior Counsel appearing for the petitioner submits that while the petitioner was in Medical Leave, transfer order was issued to him, which is arbitrary in nature. Due to ill-health of the petitioner, he was unable be able to report at the transferred place and subsequently he was declared as deserter. Furthermore, due opportunity has to be provided to the petitioner to participate in the enquiry proceedings, whereas without doing so, the order of dismissal from service was issued. He further argued that the mercy petition submitted by the petitioner was rejected by the 2nd respondent vide order dated 09.05.2008, hence the petitioner preferred

appeal before the 1st respondent. Moreso, the dismissal of appeal order dated 23.01.2009 issued by the 1st respondent has also not been communicated to the petitioner. In such circumstances, he prays for setting aside the orders dated 29.10.1991, 9.5.2008 and 23.01.2009 and to reinstate him in service with all monetary and service benefits.

4. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents reiterating the counter affidavit submits that the petitioner failed to appear before the Medical Board for examination. Moreover, as per standing orders, the respondents treated the petitioner as deserter. It is further submitted that the petitioner has not preferred any application for reinstatement within the prescribed time. In such circumstances, due to non participation in enquiry proceedings, ex-parte orders were passed. Even though the petitioner was given opportunity, he failed to avail the said opportunity. He further submits that without challenging the order of dismissal by filing appeal, the petitioner filed mercy petition that too after a lapse of 16 years. Though the impugned order dated 23.01.2009 issued by the 1st respondent dismissing the appeal preferred by the petitioner was forwarded through Special Messenger, due to non availability of such address, the said order was not served, but the report of the messenger has been filed in the PR. Due laches on the part of the petitioner cannot be put against the respondents to provide the relief sought for by the petitioner and, therefore, prays for dismissal of this petition.

5. This Court bestowed its best attention to contentions advanced by the learned counsel on either side and perused the materials available on record.

6. It is not in dispute that at the time when the order of transfer was issued, the petitioner was on medical leave and as such he could not join the transferred place. However, it is borne out by record that inspite of not joining at the transferred place, the petitioner has not communicated his leave and his non-joining at the transferred place led to him being labelled as a deserter. These facts are not in dispute.

7. Further, the materials available on record reveal that enquiry has been conducted in accordance with law as per the procedure contemplated under the relevant rules. Moreover it is seen that the enquiry officer took strenuous efforts to serve the proceedings of each and every stage on the petitioner, but only in vain, as the petitioner was not available at the address, which was available with the employer/respondents. The proceedings for summoning him were pasted in his residential address in the presence of two witness and inspite of his non-

appearance at the enquiry, he was set ex-parte and enquiry proceedings were concluded.

8. It may be that the petitioner, due to ill-health, had not approached the respondents during the relevant time when the enquiry had taken place. However, even thereafter, the petitioner has not taken any steps to approach the respondents for considering his order of dismissal. It is further to be pointed out that the petitioner has not challenged the order of dismissal which was passed on 25.10.1991, but, the same has been challenged only after a lapse of almost a decade and a half, viz., in the year 2007. The delay in not approaching the respondents to set aside the order of dismissal has not been explained by the petitioner. Further, the mercy petition has been filed only after a period of 16 years and dismissal of the mercy petition resulted in filing of appeal before the 1st respondent. Appreciating all the above facts, the order of dismissal passed was confirmed even by the appellate authority.

9. Now the only issue that falls for consideration before this Court is whether the punishment of dismissal from service imposed on the petitioner is disproportionate to the delinquency and shocks the conscience of this Court. In this regard, the consistent ratio laid down by the Courts with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution deserves to be looked into.

10. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

11. Keeping the above ratio in mind, a perusal of the materials, as noted above, reveals that the petitioner had not taken any steps to attend the enquiry nor taken any steps to have the order of dismissal set aside at the earliest point of time. The petitioner has kept silent for almost a decade and a half and had, thereafter, gone before the 2nd respondent with the mercy petition seeking reinstatement. The delay on the part of the petitioner in approaching the respondents, having not been explained, the laches on the part of the petitioner definitely acts as a detriment to consider his case even sympathetically. On an overall consideration of the materials placed before this Court, this Court is of the considered view that the delay and laches on the part of the petitioner coupled with the non-participation of the petitioner in the enquiry proceedings even after affording of opportunities and communications being addressed to the petitioner, the petitioner is not entitled to claim the benefit of reinstatement of service and consequential monetary benefits. The punishment has been inflicted on the petitioner on proper application of mind to the materials by the disciplinary authority and the same has been approved by the revisionary and appellate authorities on independent application of mind and the punishment, considering the nature of avocation of the petitioner, being a member of the disciplined force, could neither be termed to be disproportionate nor shocking the conscience of this Court for this Court to intervene in the said punishment. The punishment imposed on the petitioner is just and reasonable and no interference is warranted with the impugned orders passed by the respondents.

12. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi2

To

- 1.The Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.
- 2.The Director General of Police,
Kamarajar Road,
Chennai - 600 004.
- 3.The Superintendent of Police,
District Police Office,
Trichy.

+lcc to the Government Pleader Sr.41423
+lcc to Mrs.M.Srividhya, Advocate Sr.41015

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W.P.No.310 of 2014

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srg 09/02/2021

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