

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25-08-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 3279 of 2019

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1. Deputy Inspector General of Police
Vellore Range, Vellore
 2. The Superintendent of Police
Vellore District
 3. Deputy Superintendent of Police
Thirupathur
Vellore District
- ... Appellants/Respondents

Versus

Sheik Jabbar (deceased)

Ashraf Bee

Wife of Late. Sheik Jabbar

.. Respondents/Petitioner

Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 10.07.2018 passed in WP No. 30285 of 2006 on the file of this Court.

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the record of the impugned order of the first respondent dated 11.4.2006, bearing proceeding No.C.No.B2/AP.2B/2006 and quash the same and further direct the 2nd respondent to permit the petitioner to join service with all back wages and service benefits.

For Appellants : Mrs. A. Srijeyanthi
Special Government Pleader

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

This appeal is taken up for hearing today through Video-conferencing.

2. The appellants herein are the respondents in Writ Petition No. 30285 of 2006 before the learned single Judge. They are aggrieved by the order dated 10.07.2018 passed in the said writ petition by which the learned single Judge remanded the matter back to the appellants herein to re-consider the order of dismissal passed against the sole respondent (since deceased) in the writ petition and to pass a fresh order.

3. The said writ petition was filed by the deceased-Sheik Jabbar challenging the order dated 11.04.2006 passed against him by the first appellant herein by which he was dismissed from service as a constable in the Police Department.

4. During the pendency of the writ petition, the said Sheik Jabbar/writ petitioner, died and therefore his wife was substituted in his place as writ petitioner.

5. Before the Writ Court, it was contended that the deceased-writ petitioner was appointed as Constable on 10.10.1977 and during the course of his service, for his unauthorised absence from duty, from 16.03.1997, he was treated as a 'deserter', hence, a charge memo was issued to him under Rule 3 (b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1995. Thereafter, an enquiry was conducted and the enquiry officer found that the charges levelled against the deceased-writ petitioner was proved and he was dealt with a Punishment Roll No. 240 of 1998 under Rule 3 (b) of the said Rules and by an order dated 27.07.1999 passed by the second appellant, the deceased-writ petitioner was awarded with punishment of dismissal from service and his period of absence from 16.03.1997 till the date of the order of dismissal was ordered to be treated as eligible leave including extra-ordinary leave to the extent necessary.

6. Aggrieved by the order of dismissal dated 27.07.1999 passed by the second appellant herein, the deceased-writ petitioner filed Original Application No. 7819 of 2000 before the Tamil Nadu Administrative Tribunal, Chennai. On abolition of the Tribunal, the Original Application stood transferred to this Court and re-numbered as WP No. 27018 of 2005. The said

writ petition was disposed of on 27.02.2006 with a direction to the deceased- writ petitioner to approach the first appellant by filing an appeal against the order of termination passed by the second appellant, as contemplated under the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, within a period of four weeks. Accordingly, the deceased-writ petitioner preferred an appeal before the first appellant on 23.03.2006. It is the case of the deceased- writ petitioner that due to his ill health, he could not attend duty and his absence from duty is neither wilful nor wanton. He also enclosed all the medical certificates in support of his assertion. The first appellant posted the appeal for hearing on 20.04.2006 on which date, the deceased-writ petitioner appeared for the hearing, however, without hearing the deceased-writ petitioner, on 20.04.2006, the first appellant has handed over a copy of the order dated 11.04.2006 dismissing him from service. Aggrieved by the same, the deceased-writ petitioner has filed the second writ petition being WP No. 30285 of 2006.

7. Before the writ court, it was contended on behalf of the deceased- writ petitioner that the first appellant did not consider the merits of the claim made by the deceased-writ petitioner, rather, the appeal was rejected only on the ground that the appeal has not been filed within the time stipulated under the Rules. It was also contended that the first appellant did not take note of the fact that the punishment of dismissal from service is too harsh and it is not befitting the nature of delinquency committed by the deceased-writ petitioner. It was further contended that even though the first appellant issued notice for personal hearing on 20.04.2006, without giving an opportunity of hearing to the deceased writ petitioner, the order of dismissal dated 11.04.2006 was passed and it was handed over to the deceased-writ petitioner on 20.04.2006. Thus, it was contended that the order of dismissal was passed without affording an opportunity of hearing and it is in violation of principles of natural justice.

8. The writ petition was opposed by the appellants by contending that the deceased-writ petitioner was a regular absentee during the course of his service, which warranted the imposition of major punishment of dismissal from service against him. It was contended that the order of dismissal was not passed only for his unauthorised absence of duty for 21 days from 16.03.1997, but the second appellant had taken note of his periodical absence from duty earlier. Therefore, before the learned single Judge, the appellants have justified the passing of the order of dismissal against the deceased-writ petitioner and prayed for dismissal of the writ petition.

9. The learned single Judge, upon considering the rival

submission had concluded that the appellants did not follow the procedure while awarding the major punishment like dismissal from service. The learned single Judge also found that the deceased-writ petitioner has submitted his explanation for his unauthorised absence but it was not properly considered while passing the order of dismissal. Therefore, the learned single Judge has concluded that the order of punishment, dismissing the deceased-writ petitioner from service, is too harsh and excessive. By holding so, the learned single Judge remanded the matter back to the appellants to consider the matter sympathetically and pass appropriate orders, considering the past service rendered by the deceased-writ petitioner for more than 20 years, for awarding some retirement benefits in favour of his family.

10. Assailing the order of the learned single Judge, the learned Special Government Pleader appearing for the appellants would contend that the deceased-writ petitioner was a habitual absentee and he absented himself from duty periodically, which cannot be countenanced in a disciplinary force. The learned Special Government Pleader has invited our attention to the fact that the deceased-writ petitioner has absented himself from duty periodically and was also awarded several punishments. The learned Special Government Pleader relied upon a tabulated statement indicating the number of punishments awarded to the deceased writ petitioner, which are tabulated below:-

S.No.	PR No.	Desertion from	Punishment awarded
1.	165/82	02.06.1982 to 20.06.1982	Black mark on 20.11.1982
2.	45/83	28.08.1982 to 29.08.1982	Deferred Black mark for 6 months on 19.08.1983
3.	66/84	02.03.1984 to 13.03.1984	Black mark on 18.06.1984
4.	191/84	15.04.1984 to 21.05.1984	Pay reduction by 2 stages for 2 years without cumulative effect on 21.05.1985
5.	161/85	02.12.1985	Pay reduction by 1 stage for 1 year without cumulative effect on 23.07.1986
6.	239/86	02.10.1986 to 08.10.1986	Black mark on 11.12.1986

7. 278/86 16.10.1986 to 05.11.1986 Black mark on 17.02.1987
8. 63/87 06.04.1987 Pay reduction of 2 time scale for 2 years without cumulative effect on 30.11.1987
9. 59/88 01.03.1988 dismissal from service on 31.01.1989 modified by DIG into pay reduction by 3 years with cumulative effect on 17.1.90
10. 84/88 02.01.1988 to 03.01.1988 Black mark on 29.11.1988
11. 23/94 01.10.1993 to 21.10.1993 dismissal from service on 27.06.95 modified by DIG into pay reduction by 2 years with cumulative effect on 09.12.95
12. 98/93 23.04.1993 Postponement of increment for one year without cumulative effect on 09.12.95
13. 84/96 09.12.1995 reduction from rank Gr.I PC to Gr.II PC for 3 years on 09.02.1997
14. 10/97 02.06.1996 Pay reduction by 1 stages for 2 years without cumulative effect on 18.05.97
15. 240/98 16.03.1997 to 15.04.1997 Dismissal from service on 27.07.1999

11. By pointing out the aforesaid punishments suffered by the deceased-writ petitioner for his earlier unauthorised absence or for deserting the force, the learned Special Government Pleader would contend that even on 27.06.1995, an order of dismissal was passed against the deceased-writ petitioner, however, on appeal, it was modified by the appellate authority on 28.10.1995 into one of reduction of pay by two years with cumulative effect. Thus, a lenient view was taken by the appellate authority and set aside the order of dismissal passed by the deceased-writ petitioner on 27.06.1995. Notwithstanding the same, the deceased-writ petitioner continued to exhibit indisciplined attitude in a disciplinary force by absenting himself unauthorisedly, for which he had earned

periodical punishments. By taking note of the past record of the deceased-writ petitioner, the second respondent refused to show any more leniency and imposed the punishment of dismissal from service, which was rightly confirmed by the first appellate. However, the learned single Judge, in exercise of his jurisdiction conferred under Article 226 of The Constitution of India, concluded that the punishment of dismissal is too harsh and excessive. According to the learned Special Government Pleader, as against the order passed by the Appellate Authority namely the first appellant, the deceased-writ petitioner ought to have preferred a Review to the Additional Director General of Police, Chennai. As against the order passed by the Reviewing Authority, a Mercy Petition ought to have been filed by the deceased-writ petitioner and a further Memorial Petition to the Government of Tamil Nadu. After exhausting all the statutory remedies, the deceased-writ petitioner ought to have approached this Court with the writ petition. Therefore, the learned Special Government Pleader would contend that the writ petition itself is not maintainable without exhausting the alternative remedies and therefore, she prayed for setting aside the order passed by the learned single Judge.

12. We have heard the learned Special Government Pleader for the appellants and perused the materials placed on record. At the outset, we are not inclined to go into the merits or otherwise of the charges levelled against the deceased-writ petitioner relating to his unauthorised absence. The fact remains that the deceased-writ petitioner absented himself from duty 16.03.1997 and when he was called upon to submit his explanation, he had stated that he suffered from illness, which warranted him to take leave. Such an explanation was however was not accepted by the disciplinary authority, who passed the order of dismissal from service. In the order of dismissal dated 11.04.2006, there was no reference made to the past conduct of the deceased-writ petitioner. The order of dismissal was passed only for the unauthorised absence of the deceased-writ petitioner from 16.03.1997. Further, during the pendency of the writ petition, the writ petitioner/delinquent died and his wife was substituted in his place. Taking note of the above situation, the learned single Judge, in exercise of the powers conferred under Article 226 of The Constitution of India, had set aside the order dated 11.04.2006, impugned in the writ petition. The learned single Judge thought it fit that if the order of dismissal is set aside and any other punishment other than dismissal from service is imposed, it will enure to the benefit of the family of the deceased employee. The learned single Judge also taken note of the fact that the deceased-writ petitioner had rendered 20 years of service in the Department before the order of dismissal dated 11.04.2006 was passed against him. Having regard to the above fact, particularly when

the writ petitioner/employee died during the pendency of the writ petition and in his place, his wife was ordered to be substituted in the writ petition, we feel that interest of justice will be best served if the order passed by the learned single Judge is confirmed.

13. Accordingly, the writ appeal fails and it is dismissed.
No costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1.The Deputy Inspector General of Police,
Vellore Range,Vellore.

2.The Superintendent of Police,
Vellore District

3.The Deputy Superintendent of Police,
Thirupattur,Vellore District

WA No. 3279 of 2019

KK(CO)
GS(22/10/2020)

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