

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.49445 of 2006
(O.A.No.2452 of 2000)

K.B.Sreekumar

...Petitioner

Versus

1.The Director General of Police,
Tamilnadu Police,
Chennai-4.

2.The Commissioner of Police,
Madras City Police,
Chennai-8.

3.The Deputy Commissioner of Police,
Motor Transport,
Madras City Police,
Chennai-8.

...Respondents

PRAYER: Originally this petition has been filed as Original Application No.2452 of 2000 before the TamilNadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and renumbered as W.P.No.49445 of 2006.

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to set aside the punishment of removal from service passed by the first respondent thereby rejecting the review appeal made by the applicant in proceedings RC.No.236580/APT(1)/99 dt.22.12.99 and the connected order of the 2nd respondent in proceedings Na.Ka.No.556/47267/TP 2(2)/99 dt.9.7.99 and all further proceedings connected thereto and direct the respondents to reinstate the applicant as Police Constable in service with all service and monetary benefits.

For Petitioner : Mrs.Sasikala Ramadoss

For Respondents : Mr.K.Magesh
Special Government Pleader

O R D E R

The petitioner has filed Application before the Tamilnadu Administrative Tribunal, Chennai in the year 2000 in O.A.No.2452 of 2000. Subsequently, due to abolition of the Administrative Tribunal, the matter has been transferred to this Court and renumbered as W.P.No.49445 of 2006.

2. This Writ Petition has been filed challenging the order passed by the first respondent in RC.No.236580/APT(1)/99 dated 22.12.99 and the connected order of the 2nd respondent in proceedings Na.Ka.No.556/47267/TP 2(2)/99 dated 09.07.1999 and all further proceedings connected thereto and to direct the respondents to reinstate the applicant as Police Constable in service with all service and monetary benefits.

3. It is the case of the petitioner that he was working as a police constable with number 10990 in Armed Reserve Motor Transport in Chennai. While he was in service, he was on casual leave from 08.03.1994 to 12.03.1994 and during the leave period he fell ill. Therefore, the petitioner applied for extension of leave for taking treatment and he had not joined the duty and unauthorizedly absented from 13.03.1994 to 30.05.1999. Since he was unauthorizedly absent, a charge memo was issued to the petitioner, oral enquiry was conducted and the disciplinary authority passed an order of removal from service. Challenging the order, he filed appeal before the appellate authority and the appellate authority also dismissed the same. Thereafter, the petitioner has filed the review application and that was also dismissed. Challenging the said orders, he has filed the Original Application in O.A.No.2452 of 2000 before the Tamilnadu Administrative Tribunal, Chennai. Subsequently, due to abolition of the Administrative Tribunal, the matter has been transferred to this Court and renumbered as W.P.No.49445 of 2006.

4. The learned counsel for the petitioner would submit that the petitioner is mentally depressed due to his illness and could not attend the office. He had not produced any certificate and not informed to the department. The department have not considered his sickness and issued charge memo and passed an order for removal from service. Thereafter, he made a representation and produced the medical certificate for the period he was mentally depressed. Therefore, he has to be considered for joining the duty and the respondents failing to consider his sickness and genuineness, have rejected his representation and violated the principles of natural justice and therefore he is entitled for reinstatement into service. The first respondent has not considered the medical certificate produced by the petitioner. Therefore, order passed by the

respondent is liable to be set aside and the respondent shall be directed to reinstate as police constable with all monetary service benefits.

5. The learned Special Government Pleader would submit that the petitioner was unauthorizedly absent and he had not applied for leave and also had not submitted leave application. As per the Police Standing Orders if any police is absent for more than 21 days without any intimation to the superior officer, he is liable to be removed from service. Therefore, a charge memo was issued and disciplinary proceedings were initiated against the petitioner and since he violated the Police Standing Orders under rule 3(b) of Tamilnadu Police Subordinate Service (Discipline & Appeal) Rule 1955 an oral enquiry was conducted as per rule. The disciplinary authority awarded the punishment of removal from service on the delinquent PC on the basis of the findings of the enquiry officer on 28.02.1995. Thereafter, the petitioner had preferred an appeal after a lapse of 4 years on 26.09.1999. The appellate authority had rejected the appeal and confirmed the order of the disciplinary authority i.e., removal from service. Subsequently, the petitioner filed review petition before the Director General of Police on 09.08.1999 and the same was also rejected by review authority stating that there is nothing in the petition of the delinquent to disprove the gravest of the delinquent in the uniformed service. That apart, the petitioner has not denied the fact that he was absent for more than 21 days and therefore, the disciplinary authority had taken action as per Police Standing Orders and there is no merit and it may be liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. Admittedly the petitioner was working as a police constable in the police department in Armed Reserve Motor Transport in Chennai City. Subsequently, he was absent from duty for more than 21 days and the disciplinary authority conducted an oral enquiry found that the petitioner has not submitted any leave application and he has not applied even medical leave. Therefore, he was removed from service. Admittedly, the petitioner has submitted the representation and also submitted the medical certificate for his absence from duty from 13.03.1994 to 30.05.1999 issued by one doctor would show that the petitioner was a hypertensive and also suffered from mental depression, therefore, he was taking treatment. But even then he has not applied any medical leave before the competent authority and he was absent from 13.03.1994 to 30.05.1999. Thereafter, he filed medical certificate that due to medical ground, he was not in a position to attend the duty. In the mean while, oral enquiry was conducted since the petitioner was absent for more

than 21 days as per the Police Standing Orders the proceedings was initiated. The petitioner filed appeal before the respondent police after lapse of 4 years.

8. The respondent also submitted in its reply affidavit which reads as follows:

"3. It is submitted that the petitioner PC 10990 Sri Kumar had availed 5 days Medical Leave from 08.03.1994 to 12.03.1994 and deserted the force without joining duty on 13.03.1994 continuously for more than 21 days without any intimation to superior officers. Therefore, the orders of desertion as per PSO 88(i) were issued against him with instructions to appear before competent authority on or before 13.05.1994 and to explain for his desertion. But, he did not carry out the instructions and he was on desertion continuously. Hence, the confirmation of desertion as per PSO 88(ii) was issued and he was dealt with u/r 3(b) of Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules 1955 and an oral enquiry was conducted as per rule. The disciplinary authority awarded the punishment of removal from service on the delinquent PC. With the findings of the enquiry officer on 28.02.1995"

9. Though, the learned counsel for the petitioner would submit that the doctor has given the certificate that due to mental depression, he was not able to join the duty, as admittedly he was under mental depression for more than 4 years. Subsequently he made representation that he should be reinstated into service and he had filed a representation on 26.09.1999. But, the record shows that he has not filed any fitness certificate for joining the duty. A person in uniform service, without making any application or obtaining permission from the superior officer left from the headquarters and was not residing in the police quarters which was allotted to him. Subsequently after 4 years he made representation that he was not feeling well, due to mental depression, he was absent from duty and even the medical certificate shows that he got depression.

10. Considering the serious nature of the allegation that the petitioner was unauthorizedly absent for more than 21 days, he is not entitled for any relief as sought for in the writ petition and there is no merit in the relief sought for by the petitioner and there is no infirmity in the order passed by the disciplinary authority, appellate authority and reviewing authority. The petitioner is not able to show any sufficient

reason for absent from duty and reasons stated by the petitioner was not substantiated. Therefore, under these circumstances there is no merit in the writ petition and it is liable to be dismissed. Accordingly, this Writ Petition is dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mpa
To

- 1.The Director General of Police,
Tamilnadu Police,
Chennai-4.
- 2.The Commissioner of Police,
Madras City Police,
Chennai-8.
3. The Deputy Commissioner of Police,
Motor Transport,
Madras City Police,
Chennai-8.

+1 CC to Mr.S.Sasikala Ramadoss, Advocate sr 36577
+1 CC to The Govt. Pleader sr 36943.

W.P.No.49445 of 2006

EV(CO)
SP(04/12/2020)

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