



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.4277 of 2014

and

M.P. (MD) .No.1 of 2014

WEB COPY

T.Vijila

.. Petitioner

Vs.

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

2.The Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli District.

3.The Principal (Thalavai),
Tamil Nadu Special Police Force,
TSP IX Battalion,
Manimuthar, Tirunelveli District.

4.The Vice Principal (Asst. Thalavai),
Tamil Nadu Special Police Force,
TSP IX Battalion,
Manimuthar, Tirunelveli District.

5.The Director General of Police,
Santhom, Chennai -5.

... Respondents

(The 5th respondent impleaded as per the order of this Court dated 27.01.2020 made in W.M.P.(MD).No.19809 of 2019 in WP(MD) No.4277/2014)

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings C.No.A4/PRO8/07, B.O.No.489/2007 dated 26.10.2007 and consequential rejection order passed by the Director General of Police in his proceedings No.2709/AP.3(1)/2009, dated 17.11.2009 and the order passed by the 1st respondent in his proceedings in G.O.(2D).No.273 Home (Pol.IX) Department, dated 03.06.2010 and quash the same as illegal and consequently to direct the respondents to reinstate the petitioner in service with all attendant monetary benefits within the period that may be stipulated by this Court.

(Prayer amended as per the order of this Court dated 27.01.2020 made in W.M.P. (MD) .No.19588 of 2019 in WP(MD)No.4277 of 2014)



For petitioner : Mr.M.Ajmal Khan,
Senior Counsel for Mr.R.Vignesh
For respondents : Mr.P.Kannidevan,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the order of dismissal from service and the order of the appeal as well as review confirming the same.

2. The learned counsel for the petitioner submitted that on 18.02.2003 the petitioner was appointed as Grade II Police Constable at Tamil Nadu Special Police IX Battalion, Manimutharu and subsequently, she was enlisted as Women Nayak. On 15.12.2005 she married one Mr.Stephen, who was working as a Crane operator at Gujarat. Subsequently, due to sever chest and abdominal pain, she took medical leave on 10.09.2006 and the same granted till 29.09.2006. On 30.09.2006 she applied for extension of leave, but no orders passed on the leave application submitted by the petitioner. Due to compulsion of the petitioner's husband, she went to Gujarat and took treatment in Gujarat Maritime Medical College and Surgical Hospital from 06.01.2007 to 10.06.2007. While so, she became pregnant. She was also affected by kidney stone and pancreatitis. In the meantime, the respondents by communication dated 10.01.2007 directed the petitioner to appear before the Medical Board on 31.01.2007. As the parents of the petitioner were illiterate and the petitioner's father was taking treatment for cancer disease, they had failed to intimate the said order of the respondents dated 10.01.2007 to the petitioner.

3. The learned counsel for the petitioner would further submit that the 3rd respondent, by order dated 19.02.2007, declared the petitioner as a deserter from service since 28.11.2006. On 29.05.2007 a charge memo was issued containing three charges against the petitioner. The first charge is that the petitioner failed to appear before the Medical Board. The second charge is that the petitioner failed to appear duty despite various communications sent to her. The third charge is that the petitioner failed to inform the change of residential address. The petitioner was issued with an enquiry notice on 18.06.2007 directing to appear for enquiry on 23.06.2007. In view of the non appearance of the petitioner, the Enquiry Officer set the petitioner ex parte and concluded that all the charges are proved. On 11.08.2007 the petitioner gave birth to a girl child. On 28.08.2007, the 2nd respondent issued a show cause notice calling for explanation to the report of the Enquiry Officer. By the impugned order dated 26.10.2007, the 2nd respondent / disciplinary authority dismissed the petitioner from service. Challenging the same, the petitioner has filed an appeal before the 5th respondent / Director General of Police, but the same was dismissed on 17.11.2009. Then, the petitioner has filed a mercy petition to the 1st respondent, which was rejected on 03.06.2010. Questioning these orders, the petitioner has filed this writ



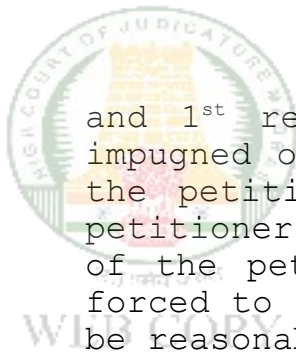
4. The learned counsel for the petitioner would further submit that because of illness, pregnancy, family circumstances and depression, she could not attend duty and enquiry. The petitioner has also produced medical certificates and birth certificate of her child in support of her contentions, but the respondents without considering the same has imposed a major punishment of dismissal from service, which is disproportionate to the charges. Hence, this Court may set aside all the impugned orders and direct the respondents to reinstate the petitioner in service with all attendant and monetary benefits. Thus, he prayed to allow this writ petition.

5. The learned Additional Government Pleader appearing for the respondents submitted that having worked in an uniformed service, the petitioner did not attend duty properly and she had been taking leaves excessively and that though the petitioner had been given sufficient opportunities, the petitioner neither attended enquiry nor submitted any written explanation to prove her innocence. Therefore, the 2nd respondent had dismissed the petitioner from service and the same was confirmed by the 5th respondent in the appeal and by the first respondent in review. The impugned orders passed by the respondents need not be interfered with. Thus, he prayed to dismiss this writ petition.

6. Heard the learned counsel for both sides and perused the records carefully.

7. It is not in dispute that the petitioner took medical leave from 10.09.2006 to 29.09.2006 and the same was approved. Thereafter, the petitioner has submitted letter for extending the medical leave from 30.09.2006 to 27.11.2006 along with medical certificate. But, the respondents did not pass any orders on the same. According to the petitioner, on compulsion she went to Gujarat where her husband was working and she took treatment in Gujarat Maritime Medical College and Surgical Hospital for abdominal pain and she took treatment for kidney stones, pre-natal maternal care treatments, pancreatitis, pregnancy and stress, etc. Hence, she could not attend duty and enquiry. More over, according to her, the orders issued by the respondents have not been brought to the notice of her by her parents as they are illiterates and further, as the father of the petitioner was suffering by cancer, they did not see even such notices.

8. Admittedly, the petitioner did not attend enquiry and in *ex parte* the enquiry officer has held that the charges are proved. Based on the report of the enquiry officer, the disciplinary authority has imposed the major punishment of dismissal from service, without looking into the fact that the absence of the petitioner was wilful or not. Though the petitioner brought to the



and 1st respondents did not consider the same and confirmed the impugned order of dismissal from service. In order to prove that the petitioner was under illness during the relevant period, the petitioner has produced various medical certificates. The statement of the petitioner that due to compulsion of her husband, she was forced to stay at Gujarat for some time and took treatment, found to be reasonable considering the family system in India.

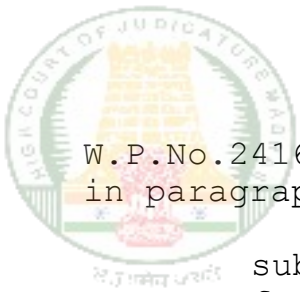
9. Whether for unauthorised absence, a Police person can be dismissed from service was considered by the Hon'ble Supreme Court in a decision in **Malkiat Singh Vs. State of Punjab and others**, reported in **(1996) 7 SCC 634**. In that case, a Police Constable was dismissed from service for his absence for two months due to ill-health. The said punishment was considered as disproportionate and ordered reinstatement without continuity of service. The said judgment was followed by this Court in W.P.No.26072 of 2004, dated 08.08.2008; W.P.No.5505 of 2008, dated 25.09.2008 and in W.P.No.20442 of 1998, dated 01.07.2008.

10. In the case of **Krushnakant B.Parmar Vs. Union of India**, reported in **(2012) 3 SCC 178**, the Hon'ble Supreme Court has held in paragraph Nos.17 and 18 as follows:

"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case, the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."

11. Following the above decision (Krushnakant B.Parmar case) of the Hon'ble Supreme Court, a Division Bench of this Court in the case of **Samaruth Begum Vs. Director General of Police**, reported in **2019 (2) CWC 359** has set aside the order of dismissal from service imposed for not reporting duty for more than 21 days and directed the respondents to provide terminal benefits to the petitioner therein.



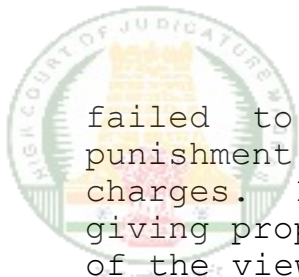
12. In similar circumstances, in the writ petition in W.P.No.24162 of 2012, by order dated 08.12.2007, this Court has held in paragraph Nos.16 to 18 as follows:

"16.Learned counsel for the respondents would submit that the petitioner was in the habit of frequently absenting without informing to the department. In any event, the following order is passed for giving a last opportunity to the petitioner to correct himself in future. In case, the petitioner is going to continue with this attitude of absentism without proper reasons and without getting permission from the department, it is always open to the respondents to proceed against him, as they may be advised in future.

17. For all the above reasons, the petitioner is entitled to succeed. However, in view of the fact that the petitioner was absent without giving proper reasons, continuously for several weeks and such conduct will not sufficiently satisfy the respondents to pay him the backwages, the petitioner has to be imposed with punishment of forfeiture of backwages as a method of corrective measure so that in future, he does not absent or commit any misconduct during his service.

18. In the above said circumstances, this Court is of the considered view that the writ petition is allowed and the impugned orders passed by the respondents 1 and 2 in Na.Ka.No.G1/PR No.26/2010, dated 05.05.2011 and RC.No.A2/3436/2011, dated 22.12.2011, are set aside and the respondents herein are directed to reinstate the petitioner in service with all other attendant benefits, etc. However, the petitioner is not entitled to backwages from the date of compulsory retirement till the date of reinstatement into service. The denial of backwages for the period of punishment is sufficient penalty to be imposed on the petitioner in the facts and circumstances of the case. The respondents are directed to pass the consequential order within a period of eight weeks from the date of receipt of a copy of this order."

13. The principles laid down in the above decisions are squarely applicable to this case, as in this case also the disciplinary authority has not proved that the absence of the petitioner is wilful, but imposed the major punishment of dismissal from service for her absence of duty. Though the 5th and 1st respondents were brought to the notice about the circumstances under which the petitioner could not attend duty and enquiry, they were



failed to consider the same. More over, the imposition of punishment of dismissal from service is disproportionate to the charges. In view of the fact that the petitioner was absent without giving proper reasons continuously for several months, this Court is of the view that the petitioner has to be imposed with punishment of forfeiture of backwages as a method of corrective measure so that in future, she will not absent or commit any misconduct during her service.

14. In view of the above, all the impugned orders are set aside and the respondents are directed to reinstate the petitioner with continuity of service but without backwages. The above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

15. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary
to the Government, Home Department,
Secretariat, Chennai - 600 009.

2.The Commandant,
TSP IX Battalion, Manimuthar, Tirunelveli District.

3.The Principal (Thalavai),
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TSP IX Battalion, Manimuthar,
Tirunelveli District.

5.The Director General of Police,
Santhom, Chennai -5.

+2 CC to M/s.R.VIGNESH, Advocate (SR-3268[F] dated 27/01/2020)

+1 CC to M/s.SPL.GP (SR-3346[F] dated 28/01/2020)

Order made in
W.P(MD)No.4277 of 2014
27.01.2020