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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.21100 of 2010

&

M.P.Nos.1 of 2014 and W.M.P.No.11032 of 2016

1.M.Krishnan (deceased)

2.K.Sumathi

w/o Krishnan

P2-submitted as legal heir of
deceased P1 K,Krishnan as per order
dated 05.02.2018 by VPNJ in

W.M.P.No.35083 of 2017

... Petitioner

Vs.

1.The Inspector General of Police (L&O)
Chennai

2.The Deputy Inspector General of Police
Coimbatore Range
Coimbatore

3.The Superintendent of Police
Coimbatore & District

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the entire records with the order of the 1st respondent in Rc.No.AP.I(1)/22556/96 dated 25.05.1998 dismissing the Review petition made by the petitioner and confirming the order of the 2nd respondent in C.No.AP.68/D2/97 dated 05.01.1998 and the 3rd respondent in J1/PR75/97 u/r 3(b) dated 26.09.1997 and quash the same and consequently direct the respondents to provide the petitioner all the service benefits including continuity of service, backwages etc.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.C.Selvaraj, Govt.Advocate



O R D E R

The petitioner was appointed as a Police Constable Grade II and promoted as Police Constable Grade I. While he was serving at Tiruppur North Police Station, he applied for medical leave on 18.11.1996 along with the medical certificate with leave application dated 19.11.1996 and it was received by the Sub Inspector of Police (L&O) Tiruppur North Police station on 20.11.1996. Due to his ill health he sought for extension of one month with effect from 01.01.1997 by his leave letter dated 15.01.1997 sent by registered post. Even this leave letter was acknowledged by the Sub Inspector of Police on 16.01.1997. However, a desertion notice was issued on 10.01.1997. He was served with a memo dated 12.01.1997 treating him as a deserter as he did not report for duty on expiry of leave on 02.12.1996. In an oral enquiry conducted, the charges were held to be proved and a punishment of compulsory retirement was imposed on the petitioner. Challenging the order of compulsory retirement the petitioner is before this Court.

2. Heard the rival submissions.

3. The gravamen of the charge framed against the petitioner was that the petitioner absented himself on 18.11.1996 without getting sick pass port and by submitting medical certificate on his own and failed to report on 02.12.1996 with fitness certificate and thereby committed the action of desertion by deserting himself for 21 days. From the averments, it is clear that his leave letter submitted on 19.11.1996 along with medical certificate has been sanctioned and it was expected that the petitioner should report duty on 02.12.1996 on expiry of medical leave. However, the petitioner without getting sick passport continued in leave by sending repeated leave applications along with medical certificates.

4. A perusal of the minutes of the enquiry produced before this Court reveal that the Sub-Inspector of Police was examined as prosecution witness No.2 and marked the General Dairy as Ex.P3 to P.6 for having submitted letters from 19.11.1996 to 16.01.1997. From this, it can be inferred that his medical leave was sanctioned from 18.11.1996 till 02.12.1996 that means he was sanctioned 14 days medical leave. Therefore, the charge that he failed to get sick passport cannot be sustained. In a similar circumstances, the Hon'ble Supreme Court in Bhagwan Lal Arya vs Commissioner of Police Delhi and another, reported in AIR 2004 SC 2431 has held thus:

.....The High Court also did not appreciate that after issuing sanction for leave for the period in question, the employee's legitimate expectation would



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be that no stern action would be taken against him with respect to the alleged act of misconduct which by no stretch of imagination can be considered act of gross misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service. It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires of Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside."

5. In that case also the Police official was sanctioned medical leave but however he was compulsorily retired for absenting himself for seven months. But in the instant case, the petitioner has absented himself for 21 days. It is not the case of the respondents that the petitioner is a habitual absentee or he willfully stayed away. There is no material to show that the petitioner did not undergo medical treatment during that period. It is pleaded that during that period he was suffering from ailment and was taking treatment. If that be so, either he should have been referred to medical board or his statement should have been accepted. But the authorities have simply stated that the charges were proved and therefore punishment of compulsory retirement has been imposed. Such cryptic order imposing the punishment without discussing the extenuating circumstances is bad.

6. The Disciplinary Authority absolutely failed to discuss the documents marked as Ex.P.3 to P.6. Only because he failed to appear before the authority within 60 days from the date of receipt of desertion notice, the punishment of compulsory retirement was imposed. He preferred an appeal challenging the order on several grounds. A reading of the order of the Appellate authority dated 05.01.1998 it is noted that the appeal was rejected in one sentence as under:

"4. I have carefully gone through the PR with connected records. Since the appeal of the appellant does not contain any valid factors worth



consideration, and the charges are well established, the appeal is rejected. "

7. Absolutely, there is no discussion as to the grounds raised by the petitioner in the appeal. The same was the order of the Reviewing Authority dated 25.05.1998. It was observed by the Reviewing Authority that the Review petitioner is found to be a habitual absentee who later tries to justify his absence through other means. The above observation is without any legal evidence. It is not the case of the prosecution that the petitioner was a habitual absentee. Such an observation is extraneous and perverse. Therefore, the cryptic order passed by the respondents suffers from non application of mind and discloses arbitrary exercise of power. For these reasons, I set aside the order of compulsory retirement.

8. It is submitted before this Court that the petitioner died on 07.09.2017 during the pendency of the writ petition. Therefore, at this circumstance, the matter cannot be remitted back for fresh enquiry. Considering, the conduct of the petitioner in not reporting before the 3rd respondent within 60 days as directed in the desertion notice, this Court is of the considered opinion that some punishment should be imposed. Considering the facts and circumstances of the case, the punishment is modified in to one of reduction in " time scale of pay by three stages for three years without cumulative effect". It is also made clear that the petitioner will not be entitled to any pay on the principles of no work no pay. The respondents are directed to count the services notionally and disburse all the terminal benefits and all other attendant benefits due to the legal heir of the petitioner within a period of four months from the date of receipt of a copy of this order.

Writ petition is order with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

kpr

To

1.The Inspector General of Police (L&O)
Chennai



2.The Deputy Inspector General of Police
Coimbatore Range
Coimbatore

3.The Superintendent of Police
Coimbatore & District.

4. The Government Pleader,
High Court, Madras.

+1cc to Mr.S.Sathia Chandran, Advocate SR.No.36635

+1cc to Government Pleader SR.No.37369

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M.P.Nos.1 of 2014 and W.M.P.No.11032 of 2016

KJ(CO)
GMY(22/10/2021)