

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2021

PRONOUNCED ON : 05.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.No.18993 of 2016
and WMP.No.16554 of 2016

P.Palaniswamy ... Petitioner

Vs.

- 1.The Commandant,
TSP XII Battalion,
Mandapam Camp,
Manimutharu, Tirunelveli District.
- 2.The Director General of Police,
Chennai-600 004,
Tamil Nadu.
- 3.The Principal Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai-600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed by him in PR No.25/2007 dated 29.11.2007 and confirmed by the second respondent in Na.Ka.No.100691/AP3(1)/2014 dated 01.09.2014 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For Respondents:Mr.K.V.Sajeev Kumar,
Counsel for Government

O R D E R

The present Writ Petition is heard through Video Conferencing on 28.06.2021.

2. Heard Mr.K.Venkataramani, learned Senior counsel appearing for the petitioner and Mr.K.V.Sajeev Kumar, learned counsel appearing on behalf of the Official respondents.

3. The petitioner herein, who was appointed as a Grade II Police Constable by the third respondent herein, was removed from service by the first respondent herein, through the impugned order dated 29.11.2007, as confirmed by the second respondent on 01.09.2014, has filed the present Writ Petition, challenging these orders.

4. The petitioner was initially appointed as Gr-II Police Constable on 01.12.2003 and transferred to the TSP I Battalion in June 2006. At that time, he had taken three days casual leave from 14.03.2007 to 16.03.2007, which he had extended on two occasions from 17.03.2007 to 20.03.2007. Thereafter, he had failed to report for duty on 21.03.2007, owing to which, a desertion order was issued on 11.04.2007. Consequently, he was dealt with charges under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Disciplinary and Appeal) Rules, 1955 for desertion. The Disciplinary Authority had awarded the punishment of removal from service, which was confirmed by the Director General of Police, in the mercy petition filed by him.

5. The learned Senior counsel for the petitioner would submit that there were no previous delinquencies or punishments against the petitioner and therefore the major punishment of removal from service, is excessive. In this connection, he relied upon the decision of the Hon'ble Division Bench of this Court in the case of R.Ramesh Vs. Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another passed in W.A.No.58 of 2011 dated 27.01.2011, as well as, the decisions of few other learned Single Judges of this Court, following the ratio laid down by the Hon'ble Division Bench.

6. Per contra, the learned counsel appearing on behalf of the Government submitted that it is mandatory to follow a strict discipline in the Armed Forces and the reason assigned by the petitioner for the unauthorised absence of 21 days, is not satisfactory. According to the learned counsel for the Government, the personal family problems between the petitioner's wife and his mother, cannot be a valid explanation for his absence. In support of his claim, the learned Government Advocate placed reliance on the decisions of the Hon'ble Supreme Court in the case of Union of India and others Vs. Ash Kulbeer Singh reported in 2019 (4) Supreme 511.

7. I have given careful consideration to the submissions made by the respective counsels.

8. It is not in dispute that the petitioner herein had remained absent unauthorisedly for 21 days and that he had no

adverse antecedents earlier in his service. In other words, this is the first time that the petitioner had remained unauthorisedly absent from service. In these circumstances, the issue that arises for consideration would be as to whether the punishment of removal from service for unauthorised absence of 21 days, is proportionate to the levelled charges or not?

9. In identical set of facts, the Hon'ble Division Bench of this Court in R.Ramesh's case (supra), had dealt with the punishment of dismissal from service for unauthorised absence of 21 days and held the punishment to be disproportionate to the levelled charges and accordingly directed the respondents to modify the punishment with continuity of service. The relevant portion of the order reads as follows:-

"3. After hearing the learned senior counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the disciplinary authority, viz. the second respondent herein, to re-consider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not be affected."

10. The facts in the aforesaid decision of the Hon'ble Division Bench is clearly applicable to the present case on hand, wherein the petitioner herein was also unauthorisedly absent for 21 days and was imposed with the punishment of removal from service. As a matter of fact, the facts in the present case stand at better footing than that of the case before the Hon'ble Division Bench, since the petitioner therein had committed acts of delinquency on three earlier occasions, which is not so in the present case. By applying the ratio laid down by the Hon'ble Division Bench in R.Ramesh's case, it can be said that the punishment of removal from service is grossly disproportionate to the charges levelled against the petitioner.

11. In normal course, this Court would be inclined to remit the issue back to the Disciplinary Authority to

reconsider the punishment of removal from service into a lesser one. However, the very fact that the petitioner was not involved in any adverse delinquency earlier and that the petitioner had given some reasons for his absence, would indicate that the respondents have not properly appreciated the issue in hand and without any justification had chosen to impose the ultimate punishment.

12. The petitioner herein was aged about 26 years when he was removed from service. The family reasons assigned by the petitioner for his absence cannot be brushed aside as unacceptable but ought to have been taken into consideration, atleast for the sake of awarding a lesser punishment. The failure to do so shocks the conscience of this Court and therefore, it would be appropriate to modify the major punishment into a lesser one, in order to avoid any further litigation.

13. In similar circumstances, the Hon'ble Supreme Court in the case of Shri Bhagwan Lal Arya Vs. The Commissioner of Police, Delhi & others reported in 2004 (4) SCC 560, had held that the High Court would be justified in altering the punishment when the original punishment shocks the conscience of the Court. The relevant portion of the order reads as follows:-

"In the said judgment the Supreme Court instead of remanding the matter to the department, following the earlier decision reported in 1995(6) SCC 749: AIR 1996 SC 484 [B.C.Chaturvedi vs. Union of India] AIR 1996 SC 484 , (three Judges Bench)] imposed punishment by itself. In AIR 1996, in para 18, it is held thus:-

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate

punishment with cogent reasons in support thereof."

14. The learned Government counsel had placed reliance on the decision of the Hon'ble Apex Court in the case of Ash Kulbeer Singh's case (supra) and submitted that the Armed Forces are disciplined forces, which requires its members to observe strict discipline in matters of attendance. The facts in Ash Kulbeer Singh's case (supra) relied upon by the learned counsel for the Government may not be strictly applicable to the facts of the present case. Firstly, in the facts before the Hon'ble Supreme Court, the member of the Armed Force was on unauthorised absence for a period of 302 days. By taking into account this huge number of unauthorised absence, it was held therein that the Armed Force Tribunal's findings that the punishment was harsh, was reversed. Contrary to the facts, the 14 days of unauthorised absence may not be termed to be inordinate in the present case. The Hon'ble Supreme Court, had referred to the inordinate absence of 302 days alone and thereby found fault with the Tribunal's view that the punishment was harsh and disproportionate. Hence, the ratio laid down by the Hon'ble Supreme Court, based on the facts of that case, is clearly distinguishable.

15. In the light of the decisions rendered by the Hon'ble Division Bench of this Court in R.Ramesh's case (supra) and by taking into account of the power vested with this Court in view of the decision rendered by the Hon'ble Supreme Court in Bhagwan Lal Arya's case (supra), I deem the present case, as a fit case, to pass orders modifying the major punishment into a lesser one. Since the petitioner herein had not been in employment from the date of his original punishment, he may not be entitled for the monetary benefits that may accrue from the date of this order.

16. At this juncture, the learned Senior counsel submitted that the petitioner undertakes not to claim any monetary benefits with regard to the salaries during the period of his non employment. The Hon'ble Division Bench of this Court in R.Ramesh's case, had however extended the benefit of continuity of service for the similarly placed person in R.Ramesh's case and I am also of the view that the service of the petitioner can be extended, without monetary benefits.

17. In the light of the above observations, the impugned orders passed by the first respondent in PR No.25/2007 dated 29.11.2007 and confirmed by the second respondent in Na.Ka.No.100691/AP3(1)/2014 dated 01.09.2014, are set aside. Consequently, the petitioner's original punishment of removal from service awarded on 29.11.2007 by the first respondent herein, is modified into one of stoppage of increment for a period of two years, 'without' cumulative effect, which

punishment shall commence from 29.11.2007, the date on which the original punishment was imposed by the first respondent, together with continuity of his service from the date of the original punishment.

18. In view of the undertaking given by the petitioner, as well as the observations made in this order, the petitioner shall not be entitled for any monetary benefits for the period of his non employment. Thus, the Writ Petition stands partially allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Commandant,
TSP XII Battalion,
Mandapam Camp,
Manimutharu, Tirunelveli District.

2.The Director General of Police,
Chennai-600 004,
Tamil Nadu.

3.The Principal Secretary to Government,
Home (Police II) Department,
Fort St. George, Chennai-600 009.

+1 cc to Government Pleader Sr.No. 30211
+1cc to Mr.M.Muthappan , Advocate SR.No. 31260

W.P.No.18993 of 2016
and
WMP.No.16554 of 2016

JP(CO)
A.SK(12.07.2021)