



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.16230 of 2018

Selvin Paul

...Petitioner

Vs.

1. The State of Tamil Nadu
Represented by the Principal Secretary to Government,
Home (Police-V) Department,
Fort St. George, Chennai-9.
2. The Director General of Police,
Mylapore,
Chennai - 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Veppery, Chennai - 600 007.
4. The Deputy Commissioner of Police,
(Reserve Armed)
Chennai - 08.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records of the 4th respondent made in PR No.22/3(d)/2004 dated 29.7.2005, 3rd respondent's order made in C.No.280/135346/PR.III(2)/2012 dated 25.5.2013 and that of the 2nd respondent order made in Rc.No.116196/AP.3(2)/2013 dated 1.3.2016 and as confirmed by the first respondent in G.O.(D) No.1011, Home (Police -V) Department, dated 20.10.2016 respectively, to quash the same and direct the respondents 1 to 4 to forthwith reinstate the petitioner with all consequential services flow both service and monetary including back wages etc.

For Petitioner : Mr.L.Chandrakumar
for Mr.E.MartinJayakumar

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



O R D E R

Through the impugned order dated 29.07.2005, the petitioner was removed from service for his alleged involvement in a criminal case in Crime No.1478 of 2003, dated 26.11.2003, and his unauthorised absence of duty from 26.11.2003. Prior to the order of removal from service, the petitioner was kept under suspension from service with effect from 26.11.2003.

2.The learned counsel for the petitioner submitted that the criminal case in Crime No.1478 of 2003 culminated into framing of charges and was taken on file in C.C.No.184 of 2004 by the II Additional Special Court under NDPS Act, Chennai, and through a judgment dated 04.05.2012, the petitioner herein was honourably acquitted from the criminal charges. It is in this background, the learned counsel for the petitioner submitted that the petitioner is entitled for reinstatement into service.

3.On the other hand, the learned Government Pleader placed reliance on the various averments made in the counter affidavit and submitted that the respondent is a disciplined Police Force and the petitioner's involvement in a criminal case is a highly condemnable act. He would also submit that, pursuant to the petitioner's involvement in the criminal case, an oral enquiry was conducted and though the petitioner was extended with reasonable opportunity, he had not attended the oral enquiry, and in this background, the Disciplinary Authority had awarded him the punishment of removal from service. He further submitted that the petitioner herein had not approached the Appellate Authorities within a reasonable time and therefore, his appeal against the order of removal from service came to be rightly rejected.

4.The two grounds on which the impugned order removing the petitioner from service came to be passed are as follows :

"PC 17872 Selvin Paul of 36 Pln.F.coy. Armed Reserve, who was placed under suspension with effect from 27.11.2003 is removed from service with immediate effect for the following delinquencies.

1.Alleged involvement in R1 Mambalam PS Cr.No.1478/2003 dated 26.11.2003 u/s.420, 511 IPC.

2.Unauthorised absent for duty from 26.11.2003."

5.It is not the case of the respondents that the services of the petitioner were terminated because he had brought disrespect or had involved himself in a condemnable act to the disciplined Police Force. But, on the other hand, the impugned order summarily relieves the petitioner for his involvement in the



criminal case and nothing more. Therefore, when the criminal case itself has ended in acquittal and the petitioner has been absolved from the criminal charges, the question of involvement in the criminal case does not extend any further and therefore, the first ground on which the petitioner's services were terminated, has to necessarily be struck down.

6. Insofar as the second ground on which the petitioner was removed from service is concerned, it is claimed that he had been on unauthorised absence of duty from 26.11.2003 onwards. Admittedly, the petitioner herein was placed under suspension on 27.11.2003. This Court is enable to comprehend as to how the respondent can expect the presence of the petitioner on or after 27.11.2003. If at all the petitioner was not present in his place of work after 27.11.2003, the same cannot be termed as unauthorised absence by any stretch of imagination. As a matter of fact, it could be termed as 'authorised absence'. As such, the second reason for which the petitioner was removed from service also cannot be sustained.

7. In view of this, the subsequent orders passed in the appeal by the 3rd respondent herein and in the mercy petition by the 2nd respondent also cannot be sustained.

8. In the result, the impugned order in PR No.22/3(d)/2004 dated 29.07.2005 made by the 4th respondent, C.No.280/135346/PR.III(2)/2012 dated 25.05.2013 made by the 3rd respondent and Rc.No.116196/AP.3(2)/2013 dated 01.03.2016 made by the 2nd respondent and as confirmed by the 1st respondent in G.O.(D) No.1011, Home (Police -V) Department, dated 20.10.2016, are hereby quashed, and consequently, the respondents 1 and 2 are called upon to forthwith reinstate the petitioner with all continuity of services. However, the petitioner shall not be entitled to any monetary benefit, including the back wages, for the period of his non-employment.

9. The writ petition is allowed accordingly. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Home (Police-V) Department,
Fort St. George, Chennai-9.



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

3. The Commissioner of Police,
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Veppery, Chennai - 600 007.

4. The Deputy Commissioner of Police,
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+1 CC to Mr.E.Martin Jayakumar, Advocate, Sr 33668.

W.P.No.16230 of 2018

PCH(CO)
LS(10/08/2021)