



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.10862 of 2015

C.Harikrishnan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Secretary to Government
Home Department,
Fort St.George, Secretariat,
Chennai-9.

2.The Director General of Police,
O/o.The Director General of Police,
Beach Road,
Chennai-4.

3.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul District.

4.The Superintendent of Police,
Dindigul District,
Dindigul.

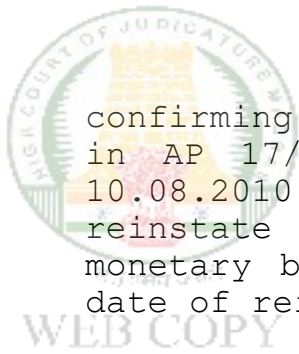
... Respondents

Prayer: Writ Petition filed under Article 26 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent resulting in the impugned order of the 2nd respondent dated 17.03.2011 passed in No.C.No.242594/AP.2(3)/2010 confirming the order of the 3rd respondent dated 27.09.2010 passed in AP 17/A2/2010 and the order of the fourth respondent dated 10.08.2010 passed in D.O.669/2010 Rc.No.F1/PR.40/2009 and quash the same and direction directing the respondents to reinstate the petitioner with back wages and all attendant and monetary benefits and treat the periods from 14.11.2009 till the date of reinstatement as on duty with due promotion.

For Petitioner	:	Mr.V.R.Venkatesan
For Respondents	:	Mr. S.Sureshkumar Government Advocate

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the second respondent dated 17.03.2011 passed in No.C.No.242594/AP.2(3)/2010



confirming the order of the third respondent dated 27.09.2010 passed in AP 17/A2/2010 and the order of the fourth respondent dated 10.08.2010 passed in D.O.669/2010 Rc.No.F1/PR.40/2009 and to reinstate the petitioner with back wages and all attendant and monetary benefits by treating the period from 14.11.2009 till the date of reinstatement as on duty with due promotion.

2.The petitioner joined as Police Constable on 25.05.1988 in the Armed Reserved Police at Dindigul. It is stated that the petitioner was promoted as Head Constable on 30.04.2004. While he was in service as Head Constable, charge memo was issued to the petitioner for unauthorized absence. The petitioner availed medical leave from 15.10.2009 for 15 days originally and thereafter he got extended his leave for another 15 days. When the petitioner was supposed to report duty on 14.11.2009, he did not come to office without any leave application or permission to take leave continuously for more than 21 days. Thereafter, the petitioner was declared as deserted. A charge memo was issued to the petitioner on 29.03.2010 for unauthorized absence. The enquiry officer held that the charges are proved. After the petitioner was served with a copy of the enquiry report on 10.06.2010, the petitioner submitted his explanation. After considering further representation of the petitioner, the fourth respondent awarded the punishment of compulsory retirement by proceeding dated 04.08.2010. Thereafter, the petitioner filed an appeal petition before the third respondent/appellate authority. The third respondent, after considering the case of the petitioner, rejected the appeal as the petitioner was found guilty of similar delinquency and that his continuance in the police force is not useful. Thereafter, the petitioner submitted a review petition before the second respondent and the second respondent also rejected the review petition. The petitioner also submitted a mercy petition before the first respondent and the same was also rejected. Thereafter, the petitioner has filed the above writ petition.

3.The learned counsel appearing for the petitioner submitted initially that no enquiry was conducted and the enquiry report was not furnished to the petitioner. The learned counsel did not advance further arguments on this aspect after seeing the specific averments in the counter affidavit about the manner in which the enquiry was conducted and about the further explanation offered by the petitioner to the enquiry report submitted by the enquiry officer. The learned counsel appearing for the petitioner has not made any submission on merits of the case regarding the findings of the enquiry officer based on materials regarding the charges. Further, this Court has no reason to reject the case of the fourth respondent in the counter. It is stated that the enquiry officer completed the enquiry on 17.5.2010 and the report dated 18.05.2010 was served to the petitioner on 10.06.2010. Since the petitioner himself has submitted his further explanation, this Court cannot disbelieve the



appointment of the enquiry officer and his report holding that the charges against the petitioner are proved.

4.The learned counsel for the petitioner mainly relied upon the judgment of the learned Single Judge of this Court in **W.P.No.37313 of 2004, dated 25.09.2013**, in the case of **K.SELVAMANI -VS-THE STATE OF TAMIL NADU REP. BY ITS SECRETARY, HOME DEPARTMENT, FORT ST.GEORGE, CHENNAI, AND OTHERS** and submitted that the punishment is disproportionate to the charges. The petitioner therein did not report duty between 07.08.1998 and 28.08.1998 and the explanation offered by the petitioner therein was that his absence was due to mental depression. Though the punishment of dismissal was imposed, following another judgment of the Division Bench of this Court in W.A.No.58 of 2011 held that the punishment imposed on the petitioner was disproportionate to the charges levelled against him. The Division Bench of this Court, in W.A.No.58 of 2011, remitted the matter to reconsider with regard to quantum of punishment. After remand, the petitioner therein was reinstated into service and later the punishment of postponement of next increment for a period of two years. Since lesser punishment was given for similar misconduct, the learned Single Judge of this Court in **K.SELVAMANI** case (cited supra) allowed the writ petition and remitted the matter following the order of remand passed by this Court in a different case. Since the learned counsel appearing for the petitioner relied upon the facts and circumstances of the case dealt with by the learned Single Judge of this Court in the aforesaid judgment, the relevant paragraphs of the judgment are extracted hear under:

"8.The admitted case of the petitioner is that he was not able to attend the duty between 07.08.1998 to 28.08.1998. The reason adduced by the petitioner for his absence was mental illness due to depression. Thus, 21 days of desertion was stated as the reason for issuing the charge memo and thereafter, passing an order of dismissal from service. The correctness or otherwise of the order of dismissal from service on the ground that the delinquent was absented from the duty for a period of 21 days had come up for consideration before the Hon'ble Division Bench of this Court in W.A.No.58 of 2011, wherein the Hon'ble Division Bench has observed at paragraph Nos.2 and 3 as follows:

"2.The appellant/writ petitioner who was serving as Grade-II Police Constable in the Police Department at Kancheepuram, was proceeded against departmentally on the charge that he remained absent from duty for a period of 21 days. The Enquiry Officer held the charge against the appellant as proved. In view of the



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finding of the Enquiry Officer, as also the fact that the appellant had earlier deserted the force on three occasions and absented himself from duty on two occasions, the disciplinary authority, viz., the second respondent herein, passed an order of dismissal from service against the appellant. The appellant challenged the same by filing the writ petition, which was dismissed by the learned Single Judge, who held that the appellant, being employed in the Armed Reserve was expected to maintain strict discipline and in view of this past conduct, the punishment of dismissal cannot be termed as excessive or disproportionate.

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. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 is closed."

9. Thus, the Hon'ble Division Bench by considering the punishment of dismissal from service as disproportionate, remitted the matter back to the Authorities for reconsidering the same for reconsidering the quantum of punishment imposed on the appellant therein. The above said decision of the Hon'ble Division Bench was considered by a learned Single Judge of this Court in W.P.No.16415 of 2009 dated 15.06.2011 and the learned Judge has observed at paragraph No.6 as follows:

"6. The learned counsel for the petitioner also relied upon the judgments of the Division Bench of this Court made in W.A.No.58 of 2011 dated 27.01.2011 and contended that the Division Bench considered the disproportionate nature of

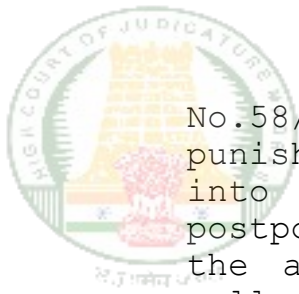


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punishment of dismissal for desertion and set aside the order of the learned single Judge upholding order of termination and remitted the matter to the department to reconsider the matter with regard to the quantum of punishment and to take a decision within six weeks. The learned counsel also produced the order passed by the learned Single Judge which was reversed in the writ appeal, wherein the learned Single Judge refused to interfere with the order of punishment on the ground that the writ petitioner therein absented from duty thrice. The learned counsel further submitted that in spite of desertion thrice, the Division Bench though that the punishment of dismissal from service on the sole ground of desertion is highly disproportionate. When such point was raised by the learned counsel for the petitioner during the course of the argument, the learned Additional Government Pleader appearing for the respondents was directed to ascertain the said fact and file additional counter affidavit as to whether the order made in the writ appeal was implemented or not. The Director General of Police has filed a counter affidavit dated 10.06.2011 wherein it is stated as follows:

"It is submitted that PC 1323 R.Ramesh, Armed Reserve, Kanchipuram District was dismissed from service by the superintendent of Police, Kanchipuram District on 27.07.2005 for the delinquency of desertion from 14.12.2004 AN. His appeal against the punishment was rejected by the Deputy Inspector General of Police, Kanchipuram range on 18.08.2005. Aggrieved over this, he filed W.P.33624 of 2005 before the Hon'ble High Court of Judicature at Madras and the case was dismissed. Then he filed a Writ Appeal No.58/2011 before the Hon'ble High Court of Judicature at Madras. As directed by the Hon'ble High Court of Judicature, Madras in their order dated 27.01.2011 EX PC 1323, R.Ramesh of Kanchipuram district was reinstated into service and imposed the punishment of postponement of next increment for two years which shall operate to postpone his future increments. He had joined duty on 28.04.2011 FN."

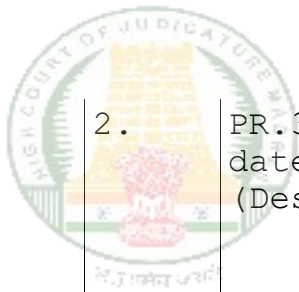
10. From the perusal of the order of the learned Single Judge, it could be seen that the Authorities, in pursuance to the order made in the above Writ Appeal



No.58/2011 dated 27.01.2011, have modified the punishment of the appellant therein by reinstating him into service however, by imposing the punishment of postponement of next increment for two years. Thus, from the above decisions by the Hon'ble Division Bench as well as the order of the learned Single Judge of this Court, it could be seen that the order of punishment imposed on the petitioner viz., dismissal from service, cannot be sustained. In fact, a perusal of the order passed by the Appellate Authority as well as the Revisional Authority also would show that there was no independent application of mind of the authorities on the facts and circumstances of the case. At any event, as the very punishment itself is found to be disproportionate by the Hon'ble Division Bench of this Court in an identical case, by following the said decision, I am inclined to allow the writ petition and set aside the impugned order and to remit the matter back to the fifth respondent viz., the Disciplinary Authority to reconsider the decision with regard to the quantum of punishment imposed on the petitioner. While passing such order, the disciplinary authority shall keep in mind of the similar orders passed in W.A.No.58/2011 and W.P.No.16415 of 2009 as referred supra."

5.The learned Government Advocate on the other hand, submitted that the petitioner had committed similar delinquency earlier and the punishment of compulsory retirement was ultimately given. The petitioner had suffered punishment of stoppage of increment or reduction in time scale of pay on four earlier occasions for the similar misconduct viz., desertion from duty. Following details of the Punishment Rolls against the petitioner for similar misconduct is tabled in the counter affidavit.

Sl.No	PR.No.	Punishment Awarded
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1	PR.01/H1/91, u/r 3(b) dated 12.09.1991 (Desertion from duty)	Punishment of 'Reduction by one stage for one year in Te time scale of pay from Rs.870/- to Rs.855/- to be spent on duty without cumulative effec.' awarded by the Superintendent of Police Dindigul District, on 12.09.1991.



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2.	PR.33/1993 u/r 3(b), dated 11.11.1993 (Desertion from Duty)	Punishment of 'Compulsory Retirement' awarded by the Superintendent of Police, Dindigul District, on 11.11.1993. 'On his appeal petition Te said punishment was modified into that of 'Reduction in time scale of pay by two stage for two years without cumulative effect' by the Deputy Inspector General of Police, Madurai on 04.02.1994.
3.	PR.52/1993 u/r 3(b), dated 07.04.1994 (Desertion from duty)	Punishment of 'Reduction in time scale of pay by one stage for one year without cumulative effect' by the Superintendent of Police, Dindigul District on 07.04.1994.
4.	PR.65/2007 u/r 3(b), dated 28.02.2008 (Desertion from Duty)	Punishment of 'Black Mark' by the Superintendent of Police, Dindigul District, 28.02.2008.

6.From the facts narrated in the counter affidavit, this Court is able to see that the petitioner has deserted from duty on four earlier occasions and suffered punishment of reduction in time scale of pay for two years without cumulative effect in two cases and reduction in time scale for one year on the third time. The punishment on the fourth time was black mark. On earlier occasions, the petitioner had deserted from duty either on medical or other grounds consistently and on every occasion, the charges against the petitioner were held proved by the enquiry officer. In this case also, the charges against the petitioner was held proved by the enquiry officer and the petitioner himself admitted the charges, as it was stated in the counter affidavit. The petitioner was absent from duty without getting prior permission or leave application and deserted the force for more than 21 days on the 5th occasion. There was no legitimate explanation for his absence. However, it is stated in the affidavit filed in support of this petition that the petitioner could not report duty, as the petitioner's wife had deserted him. It is stated that the petitioner deserted from duty, due to domestic problem in his family. The petitioner has not only deserted from duty, but also did not have a valid explanation why he did not seek permission before taking leave.

7.The learned Government Advocate relied upon the judgment of the Hon'ble Supreme Court in the case of **THE GOVT. OF A.P. AND ORS -VS- MOHD.TAHER ALI**, reported in **AIR 2008 SC375**. Relevant portions of the judgment are extracted hereunder:

"4.It is an admitted position that the respondent was appointed on election duty by he absented himself from election duty. It seems that the



respondent did not consider the election duty to be an important business which is very important for the whole nation. The respondent was appointed on election duty and was deputed to take security arrangement by absented himself from duty. This is a very serious lapse on the part of the respondent. The police force is a disciplined force and the respondent was detailed for such an important duty of election. He absented himself from election duty. Such kind of serious lapse cannot be treated lightly. It is a very important function and if the incumbent avoided the duty of election, he cannot escape from the liability of the penalty of compulsory retirement. We fail to understand the reason for the Administrative Tribunal or for the High Court to have remitted the matter back to the disciplinary authority for reconsideration of the punishment of compulsory retirement imposed on the respondent.

5.Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges leveled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled State of Mysore Versus V.K.Manche Gowda reported in MANU/SC/0267/1963 but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. In our opinion there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the charge sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement.

6.Looking to the facts and circumstances of the



case, we are of the view that the view taken by the High Court as well as the Administrative Tribunal cannot be sustained. Hence, we allow this appeal, set aside the order of the High Court as well as of the Administrative Tribunal and confirm the order of compulsory retirement for the serious lapse on the part of the respondent. This appeal is accordingly, allowed. No order as to costs."

8. In view of the judgment of the Hon'ble Supreme Court in a similar case, this Court is unable to show any lenience or sympathy in the petitioner's case. As a result, this Writ Petition is dismissed as devoid of merits. Accordingly, dismissed. No costs.

9. The learned counsel appearing for the petitioner submitted that the petitioner's retirement benefits have not been settled. It is open to the petitioner to approach the respondents for disbursement of the retirement benefits along with a representation and on receipt of such representation, the same should be considered and the retirement benefits to which the petitioner is entitled to shall be disbursed by the respondents, within a period of twelve weeks from the date of receipt of such representation.

Sd/-

Assistant Registrar (CS III)

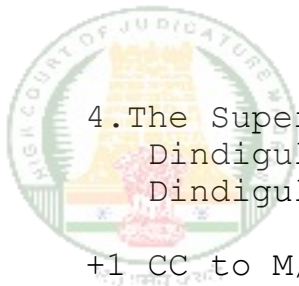
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Sub Assistant Registrar (CS)

To

1. The State of Tamil Nadu,
Represented by the Secretary to Government
Home Department,
Fort St. George, Secretariat,
Chennai-9.
2. The Director General of Police,
O/o. The Director General of Police,
Beach Road,
Chennai-4.
3. The Deputy Inspector General of Police,
Dindigul Range,
Dindigul District.



4.The Superintendent of Police,
Dindigul District,
Dindigul.

+1 CC to M/s.V.R.VENKATESAN, Advocate (SR-31265[F] dated 05/10/2021)

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+1 CC to M/s.SPL.GP (SR-31159[F] dated 05/10/2021)

W.P.(MD).No.10862 of 2015

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