



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2021

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) Nos. 19633 and 2502 of 2016

WEB COPY

W.P.(MD) No. 19633 of 2016

C. Ravi

... Petitioner

-Vs-

1.The Director General of Police,
Mylapore, Chennai.

2.The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

3.The Deputy Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

... Respondents

Prayer in W.P(MD).No.19633 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the 1st respondent in his proceedings in Rc.No.126723/AP.1(2)/2013, dated 15.11.2014 confirming the order of the 2nd respondent in his proceeding in C.No.F3/PR.No.30/2012 / D.O.No.921/2012 dated 06.10.2012 and quash the same and consequently, direct the 1st respondent to give suitable promotion to the petitioner with all attendant benefits.

W.P.(MD) No. 2502 of 2016

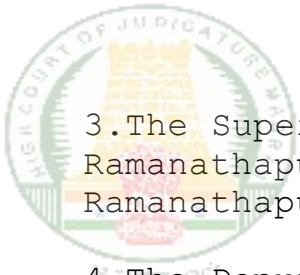
C. Ravi

... Petitioner

-Vs-

1. The Principal Secretary to Government,
Home (Police VI) Department,
Fort. St. George,
Chennai - 9.

2. The Director General of Police,
Mylapore, Chennai.



3.The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

4.The Deputy Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

... Respondents

Prayer in W.P(MD).No.2502 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the 1st respondent in his proceedings in G.O(2D). No.135 dated 09.04.2015 confirming the order of the 2nd respondent in his proceeding in Rc.No.164836/AP.1(2)/2008, dated 17.09.2008, by modifying the punishment order of the 3rd respondent in his proceedings in PR.No.119 of 2003 dated 24.04.2004 and quash the same and consequently, direct the 2nd respondent to give suitable promotion to the petitioner with all attendant benefits.

For Petitioner
in both W.Ps. : M/s. L. Victoria Gowri

For Respondents : Mr. M. Lingadurai
in both WPs Government Advocate

COMMON ORDER

The Writ Petition in W.P(MD).No. 19633 of 2016 is filed to call for the records of the impugned proceedings of the 1st respondent in his proceedings in Rc.No.126723/AP.1(2)/2013, dated 15.11.2014 confirming the order of the 2nd respondent in his proceeding in C.No.F3/PR.No.30/2012 /D.O.No.921/2012, dated 06.10.2012 and to quash the same and consequently, to direct the 1st respondent to give suitable promotion to the petitioner with all attendant benefits.

2.The Writ Petition in W.P(MD).No. 2502 of 2016 is filed to call for the records of the impugned proceedings of the 1st respondent in his proceedings in G.O(2D).No.135, dated 09.04.2015 confirming the order of the 2nd respondent in his proceeding in Rc.No.164836/AP.1(2)/2008, dated 17.09.2008, by modifying the punishment order of the 3rd respondent in his proceedings in PR.No.119 of 2003 dated 24.04.2004 and to quash the same and consequently, to direct the 2nd respondent to give suitable promotion to the petitioner with all attendant benefits.



3. Heard Ms. L. Victoria Gowri, learned counsel appearing for the petitioner and Mr. M. Linga Durai, learned Government Advocate appearing for the respondents.

4. The petitioner joined in the respondent Department on 16.12.1998 as a Grade-II Police Constable in the Ramanathapuram Special Reserve Police. While he was on duty in the Ramanathapuram Reserve Police, a Charge memo was issued to the petitioner on 27.11.2003 alleging that without getting permission from the higher officials and without getting sick passport, he left the office on 02.06.2003 and submitted a leave after getting a medical certificate. It is admitted that the petitioner submitted a medical certificate and medical leave was granted by the authorities. But the period of leave was to be treated as one on loss of pay. The charge memo issued on 27.11.2003 was proceeded further. Though the petitioner states that an explanation was submitted on 09.01.2004, the petitioner's explanation is cryptic. No explanation was offered by petitioner before the Enquiry Officer.

5. The fourth respondent was appointed as an Enquiry Officer and an exparte enquiry was conducted. Before the Enquiry Officer 17 documents were filed and two witnesses were examined to prove the charges. The Enquiry Officer found that the petitioner without prior permission left the office without sick passport and hence, the charge is proved. On the basis of Enquiry Report, further explanation was sought for from the petitioner. Thereafter, the third respondent imposed the punishment of stoppage of increment for a period of two years to be spent on duty and the period of postponement shall not affect his future increment. The order of third respondent, dated 29.04.2004 was challenged by the petitioner by filing a mercy petition to the second respondent. The second respondent modified the punishment imposed by the third respondent considering his length of service with unblemished record into "postponement of increment for one year which shall not postpone his future increment". Again, the petitioner preferred a mercy petition to the first respondent on 24.12.2013 and the same was rejected by the first respondent vide order dated 09.04.2015. Challenging the order of first respondent confirming the order of the second respondent, the Writ Petition in W.P(MD).No.2502 of 2016 has been filed.

6. In the second case in W.P(MD).No. 19633 of 2016, the petitioner has challenged the order or punishment in continuation of a subsequent charge memo dated 18.04.2012 alleging similar misconduct, which was said to have been committed by the petitioner earlier in June 2003. The petitioner was asked to



relation to Mandaikadu Baghavathi Amman Koil Temple festival. This time also he left the place of duty without any intimation but submitted a medical certificate for 15 days to the Department. The petitioner left the place of duty without giving sick passport or permission. Hence, a similar charge was framed which resulted in the postponement of increment for three years with cumulative effect. It was found that the petitioner is guilty of charges as he failed to report duty from 06.03.2012, but submitted medical leave for 15 days without following the procedure. The mercy petition filed by the petitioner was also rejected. Challenging the order passed by the first respondent dated 15.11.2014 confirming the order of punishment, the petitioner filed second Writ Petition in W.P(MD).No.19633 of 2016.

7. The learned counsel appearing for the petitioner submitted that the petitioner had valid reason for leaving the place of duty without obtaining prior permission as he was suffering from peptic ulcer and that he submitted a medical certificate to his superior justifying his unauthorised absence. It was further submitted that the petitioner was taking treatment as inpatient for a few days and that therefore, it is a proof that the petitioner suffered from illness. Since the petitioner did not expect his sudden illness, counsel further submitted that the respondents ought to have considered the case more sympathetically, especially, when the leave application submitted by the petitioner was granted without any condition. Learned counsel submitted that the petitioner filed sufficient materials to prove his innocence and that the punishment imposed is not commensurate to the charges framed against the petitioner. Since the petitioner suffered from unbearable stomach pain as well as stomach disorder, the respondents ought not to have awarded punishment which would affect the petitioner's future promotion. The learned counsel for the petitioner also submitted that the petitioner was not granted salary for the period of leave and that therefore, the punishment now imposed is unwarranted and it is legally unsustainable.

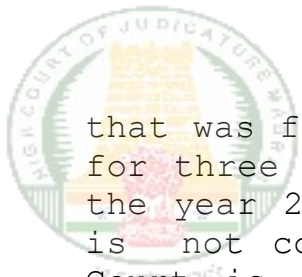
8. The contention of the learned counsel for the petitioner shows that even now, the petitioner is under the impression that he did not commit any offence or misconduct. Since his absence from duty was due to health issues and the respondents have passed the impugned orders, affecting his service condition as well as monetary benefits in an unjust and arbitrary manner. The learned counsel also relied on an unreported Judgment of this Court dated 23.08.2021 made in **W.P.No.1645 of 2007 (P. Murugesan Vs. State of Tamil Nadu)**.



9. A Counter affidavit is filed on behalf of the respondents in both the cases. The facts are almost identical, except the dates, the nature of misconduct as found in the charge memo are identical and the respondents have noticed that the petitioner has started repeating the same mis-conduct. During the second time, the petitioner submitted a medical certificate for his unauthorised absence for a period over 15 days. It is admitted that disciplinary proceedings against the petitioner was initiated under Section 3(1) of the Tamil Nadu Police Subordinate Rules (Discipline and Appeal), 1955, for the second time when he was assigned the same duty to give Bandobust during Mandaikadu Baghavathi Amman Kovil Temple Festival on 06.03.2012. The petitioner did not attend duty, without getting prior permission or without submitting any sick passport. The only explanation offered by the petitioner in both the occasion is that the petitioner was suffering from peptic ulcer or some other illness. The conduct of petitioner in submitting the leave application along with the medical certificate for 15 days reveals that attitude of petitioner. When the findings of the Enquiry Officer and disciplinary authority showing that the charge against the petitioner were held proved based on facts and evidence produced during enquiry, this Court may not interfere unless the enquiry and order of disciplinary authority are perverse.

10. The only issue that was argued much before this Court by the learned counsel for the petitioner is that the petitioner's punishment is not commensurate with the charge alleged against the petitioner. From the conduct of the petitioner in the year 2003 and 2012, it is seen that the petitioner had withdrawn himself from duty under the pretext of physical ailments. On the first occasion, stomach pain and Peptic Ulcer was stated. On the second occasion it is stated that due to severe illness the petitioner could not report duty. The allegation against the petitioner is specific that after reporting for duty on the previous day, the petitioner was found absent in the morning at 8.00 am while checking the attendance of the police officials. The petitioner was one among the 40 male Police men and 30 female constables, who are assigned Bandobust duty in relation to the Mandaikadu Bagavathi Amman Koil Temple Festival. The mis-conduct alleged is not denied. However, it is the case of the petitioner that he had valid explanation on both occasions. The petitioner avoided taking permission or getting sick passport on both occasions. This is not properly explained.

11. The petitioner did not even participate in the enquiry to cross examine the witnesses, who are examined by the enquiry officer. The punishment imposed on the petitioner is only



that was framed in the year 2003 and the postponement of increment for three years for the misconduct committed by the petitioner in the year 2012. Though the main contention is that the punishment is not commensurate to the charges against the petitioner, this Court is unable to find any irregularity or illegality in the punishment imposed especially when the petitioner has done the same mistake for the second time.

12. In the Judgment relied upon by the petitioner, it is seen that the writ petition was filed against the punishment of compulsory retirement. It was therefore, the unauthorised absence alleged against the writ petitioner therein was considered so as to remit the matter to reconsider the punishment. The Court finds in this case that the punishment is proportionate to the proved misconduct. This Court has no reason to remit the matter to reduce the punishment or modify the punishment. When this Court is of the view that the proved charge against the petitioner is more serious, this Court cannot interfere with impugned order passed by the respondents. The petitioner did not participate in the enquiry on both the occasions and no attempt was made by the petitioner to produce any material to justify his unauthorised absence on medical grounds without getting sick passport or an intimation atleast.

13. In the absence of any explanation the attitude of the petitioner cannot be condoned, particularly, when the petitioner is attached to the uniform service when discipline is more important. This court is of the view that the petitioner has not made out any special circumstances to modify the punishment. The petitioner counsel states that the petitioner has rendered a meritorious service and it should be considered sympathetically. For the reasons stated above, this Court cannot interfere with the punishment imposed by the respondents.

14. Considering the facts and circumstances of the case, this court has no valid ground or reason to interfere with the impugned orders challenged in both Writ Petitions. Accordingly, these Writ Petitions are dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar (CS)

Trp

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Principal Secretary to Government,
Home (Police VI) Department,
Fort. St. George,
Chennai - 9.

2. The Director General of Police,
Mylapore, Chennai.

3. The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

4. The Deputy Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

+2 CC to M/s.L.VICTORIA GOWRI, Advocate (SR-29893,29894[F] dated
22/09/2021)

+1CC to Special Government Pleader SR.No.30013 dated 23/09/2021

W.P.(MD) Nos. 19633 and 2502 of 2016
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