



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 3103 of 2016

and

W.M.P. (MD) No. 2735 of 2016

T.Senthoorpandian

... Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Home (Police VI Department),
Chennai.
2. The Director General of Police,
O/o the Director General of Police,
No. 601, Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.
3. The Inspector General of Police,
O/o. The Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
4. The Superintendent of Police,
O/o the Superintendent of Police,
Tirunelveli District.
5. The Inspector of Police,
Panavadalichathiram Police Station,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of removal from service in P.R. No. 220/2008 u/r 3(b) dated 02.02.2009 on the file of the Fourth Respondent and consequent order of the Second Respondent in Rc. No. 127647/AP 2(1)/2010 dated 11.01.2011 and consequent order of the First Respondent in G.O. (2D) No. 99, Home (Police VI) Department dated 21.04.2015 and quash the same as illegal and consequently direct the First to Fourth Respondents to reinstate the Petitioner with all backwages and other consequential benefits.



For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr. B.Saravanan,
Counsel appearing for the Government

WEB COPY

O R D E R
(through video conference)

Heard Mr. T.Lajapathi Roy, Learned Counsel for the Petitioner and Mr. B.Saravanan, Learned Counsel representing the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Grade-II Police Constable from 01.11.1997 onwards, did not attend to duty from 30.06.2008 and the Fifth Respondent informed to the Fourth Respondent by Memorandum dated 04.07.2008 that the Petitioner has been unauthorizedly absent from then. According to the Petitioner, he had suffered the ailment, viz., Lumber Disc Prolepses on 29.06.2008 and the doctor treating him had given medical certificate advising him to take treatment for atleast 23 days and on account of his unconscious state, he was not in a position to send leave letter in writing to the Fifth Respondent. Thereafter, when the medical officer had given physical fitness certificate to the Petitioner on 20.07.2008, the Petitioner claims to have reported for duty before the Fifth Respondent, but he was not allowed to join duty then. The Fourth Respondent by Order No. ஆர் 2/ம.வி 36349-2008 dated 22.07.2008 declared the Petitioner as 'deserter from police force' as he has been absent from 30.06.2008, but the said order was revoked through wireless by Proceeding No. 181740 on 18.08.2008, and the Petitioner re-joined duty in the Police Station on 21.08.2008 before the Fifth Respondent. The Petitioner was later issued Charge Memo No. 220 of 2008 dated 13.09.2008 for 'desertion from police force' for a period exceeding 21 days from 30.06.2008. After conducting enquiry, the Fourth Respondent by Order No. SO 18/09 dated 02.02.2009 in the exercise of powers conferred by under Rule 3(b) read with Rule 4 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as 'the TNPSS (D&A) Rules' for short) inflicted the Petitioner with the punishment of 'removal from service' and held that the period from 30.06.2008 to 18.08.2008 would be treated as merely desertion. The Petitioner filed appeal under Rule 5 of the TNPSS (D&A) Rules against that order before the Third Respondent, who rejected it by Order C. No. C4/AP 89/2009 dated 12.06.2009 as time-barred. The mercy petition invoking the powers of review under Rule 15(A)(1)(ii) of the TNPSS (D&A) Rules preferred by the Petitioner before the Second Respondent was rejected by Order in Rc. No. 127647/AP 2(1)/2010 dated 11.01.2011 stating as follows:-



" I have gone through the P.R. File and connected records carefully. Although there is the required medical certificate and fitness certificate, the fact remains that he did not follow the proper procedure when applying for leave. Discipline is paramount in a uniformed force and the Petitioner has shown that does not have it. The charge of absence without leave is thus proved. Nothing prevented him from intimating the station that he was ill. I decline to interfere."

The First Respondent by G.O.(2D). No. 99 Home (Police VI) Department dated 21.04.2015 affirmed the earlier orders passed in the Mercy Petition filed by the Petitioner under Section 15(A)(1)(i) of the TNPSS (D&A) Rules in which it has been held as follows:-

"3. The Government have examined the petition of Thiru.T.Sendoorpandian, Ex.Police Constable 2140, Tirunelveli District to cancel the punishment of "Removal from Service" carefully and independently along with relevant records. For the proved serious charge, he was imposed the punishment of "Removal from Service" Desertion from the Police Force is a very serious misconduct. Since discipline is extreme important in Police Force. The Government have decided to reject the petition of the above individual. Accordingly, the Government order that the petition of Thiru.T.Sendoorpandian, Ex.Police Constable 2140, Tirunelveli District to cancel the punishment of "Removal from Service" imposed on him in punishment Roll No.220/2008 be rejected as devoid of merits."

This Writ Petition impeaches the aforesaid orders passed by the Respondents.

3. Learned Counsel for the Petitioner submitted that the impugned orders are flawed inasmuch as they suffer from the vice of non-application of mind to relevant materials borne out of record and that in any event, the ultimate punishment of removal from service is grossly disproportionate to the gravity of charges for which the Petitioner had been proceeded against in departmental action. He has buttressed the said contentions by citing a circular issued relating to the manner in which absence from duty by police constables would have to be treated and also by certain decisions of the Hon'ble Supreme Court and this Court to which reference shall be made later. Learned Counsel for the Respondents justifies the impugned orders as necessary to maintain discipline in the police force.

4. It must straightaway be noticed here that Circular Memorandum Rc. No. 243531/A.PI(1)/90 dated 30.10.1990 has been issued by the Director General Police, Tamil Nadu, as extracted below:-

" While disposing of appeals/reviews from Head Constables to Police Constables, I noticed that the



Superintendents of Police are awarding the maximum penalty of dismissal or removal from service in desertion cases, after taking them for duty. This is unfair and cannot be justified.

2. When a Head Constable/Police Constable is struck off as a deserter, notice is issued directing the delinquent to appear before the Superintendent of Police should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. If Superintendent of Police is not satisfied, the delinquent should not be taken for duty. If on the other hand Superintendent of Police is satisfied, he can be taken for duty. In such cases while disposing of Prs, punishment of removal/dismissal from service or compulsory retirement should not be given. Any other punishment is acceptable. This guideline may be kept in view, while dealing with desertion cases."

The said circular emphasises that when a police constable produces a valid medical certificate for the period of his absence, he should not be removed or dismissed from service and any other lesser punishment could be awarded. It would assume the significance here that the Second Respondent in the Order in Rc. No. 127647/AP 2(1)/2010 dated 11.01.2011 had taken note of the fact that the Petitioner had produced the required medical certificate for his absence from duty and fitness certificate for re-joining, but had declined to interfere with that the punishment of 'removal from service' imposed by the Fourth Respondent by stating that he had not followed the proper procedure while going on leave, which proves the charge against him.

5. In this context, it would be apt to quote from the ruling of the Hon'ble Supreme Court of India in **Krushnakant B. Parmar -vs- Union of India** [(2012) 3 SCC 178] where corresponding provisions of Central Civil Services (Conduct) Rules, 1964, was considered in a similar fact situation arising out of absence from duty by a member of the police force and it was observed as follows:-

"16. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful.

<https://hcservices.ecourts.gov.in/hcservices/> absence from duty without any application or prior



permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case, the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty, but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

20. The question relating to jurisdiction of the Court in judicial review in a departmental proceeding fell for consideration before this Court in **M.V.Bijlani -vs- Union of India** [(2006) 5 SCC 88] wherein this Court held:

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

21. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the Inquiry Officer or the Appellate Authority. "

The dictum laid down in that binding decision coupled with the relevant circular mentioned supra squarely applies to the facts of



this case.

6. None of the authorities in the hierarchy of the Respondents have adverted to these crucial aspects which have material bearing to determine as to whether the absence from duty of the Petitioner was wilful and unexplained so as to award the maximum punishment of 'removal from service'. In particular, the decision making process followed reveals that the explanation of the Petitioner as to the reasons for not giving any prior intimation before he was absent has not even been taken into account. Moreover, the punishment of removal from service imposed on the Petitioner is grossly disproportionate to the charges levelled against him as held by the Division Bench of this Court in **R.Ramesh -vs- Deputy Inspector General of Police** (Order dated 27.01.2021 in W.A. No. 58 of 2011) and **S.Shanmugarajan -vs- State of Tamil Nadu** (Order dated 26.02.2013 in W.A. No. 1608 of 2011) in respect of similarly placed persons. That apart, in **G.Anandan -vs- State of Tamil Nadu** [(2012) 5 MLJ 751], this Court while reiterating that position of law has made observations suggesting the humane manner in which the complaints of desertion against police constables would have to be handled by the concerned authorities without compromising on the discipline that has to be maintained in the police force for better functioning of the administration.

7. In view of the foregoing discussion, as it is not possible to sustain the impugned orders passed by the First to Fourth Respondents, which are vitiated for the error apparent on the face of record, the same are set aside and the matter is remitted to the Fourth Respondent to decide the matter afresh on merits in accordance with law following prescribed procedure taking into account the relevant aspects highlighted in this order for ascertaining as to whether the charge against the Petitioner for absence from duty has been duly proved and if so, what would be the commensurate punishment for the same. It shall be ensured that such exercise is expeditiously completed by the Fourth Respondent by 31.12.2021 and the consequential benefits that the Petitioner may be entitled would obviously depend upon its ultimate outcome.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

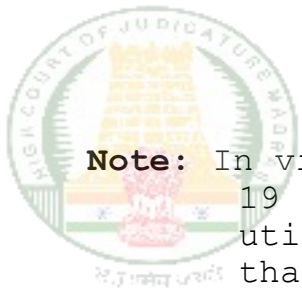
// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns/dm/skr

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



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

WEB COPY

To

1. The Principal Secretary to the Government of Tamil Nadu,
Home (Police VI Department),
Chennai.

2. The Director General of Police,
O/o the Director General of Police,
No. 601, Dr. Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

3. The Inspector General of Police,
O/o. The Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

4. The Superintendent of Police,
O/o the Superintendent of Police,
Tirunelveli District.

5. The Inspector of Police,
Panavadalichathiram Police Station,
Tirunelveli District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-24703[F]
dated 30/07/2021)

+1 CC to M/s.SPL GP (SR-24713[F] dated 30/07/2021)

W.P. (MD) No. 3103 of 2016
29.07.2021

NSM(CO)
TR(24.09.2021) 7P 8C