



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 02.12.2021

Pronounced on: 09.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.12270 of 2017

and

W.M.P.(MD)No.9429 of 2017

E.Azarutheen

... Petitioner

vs.

1.The Director General of Police,  
Mylapore, Chennai - 4.

2.The Deputy Inspector General of Police,  
Ramanathapuram Range,  
Ramanathapuram District.

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

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned dismissal order passed by the third respondent in his proceedings in P.R.No.18/2014, dated 26.12.2014 and the consequential confirmation order passed by the second respondent in his proceedings in C.No.B1/Appeal 11/2015, dated 24.08.2015 and the consequential rejection order passed by the first respondent in his proceedings in Rc.No.066914/231/AP.I(2)/2016, dated 13.06.2016 and quash the same as illegal.

For Petitioner : Mr.Niranjana S.Kumar

For Respondents : Mr.R.Ragavendran

Government Advocate (Civil Side)

### **O R D E R**

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned dismissal order dated 26.12.2014 and the consequential confirmation order dated 24.08.2015 and the consequential rejection order dated 13.06.2016.

2.The petitioner was appointed as Police Constable Grade-II on 01.03.2009 and was sent for training at 14<sup>th</sup> Battalion, Palani, Dindigul District. After completion of training, the petitioner joined as Police Constable Grade-II at 8<sup>th</sup> Battalion, New Delhi on 11.09.2009. Then, the petitioner was transferred to Armed Reserve Police, Tiruppur District in December 2011. Then, in December 2013, the petitioner was transferred to Madhagupatti Police Station,



Sivagangai, at the request of the petitioner.

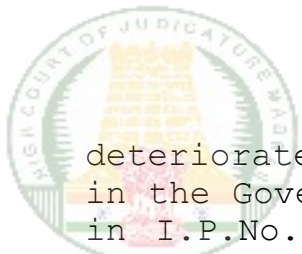
3. The case of the petitioner is that on 04.01.2014, the petitioner received a message that his father was seriously ill and therefore the petitioner absented himself from duty. Since the petitioner absented for more than 21 days, he was declared as deserted, vide order, dated 07.03.2014. Thereafter, a charge memo was issued in P.R.No.18/2014, dated 12.06.2014, alleging that the petitioner has absented for more than 60 days. An Enquiry Officer was appointed on 23.09.2014 and the petitioner submitted his explanation on 22.10.2014, enquiry was conducted and in the enquiry report dated 24.10.2014, the charges were held to be proved.

4. The third respondent issued a memo, dated 31.10.2014, calling for further explanation and the petitioner submitted his explanation on 17.12.2014. Thereafter, vide proceedings, dated 26.12.2014, the petitioner was dismissed from service. Aggrieved over the dismissal order, the petitioner preferred an appeal to the second respondent and the same was rejected by the second respondent on 24.08.2015. Aggrieved over the order of rejection passed by the second respondent, the petitioner filed a Mercy Petition before the first respondent on 06.04.2016 and the same was rejected, vide order, dated 13.06.2016. Aggrieved over the present writ petition is filed praying to set aside the three impugned orders.

5. Heard Mr. Niranjana S.Kumar, learned Counsel appearing for the petitioner and Mr.R.Ragavendran, learned Government Advocate appearing for the respondents.

6. The learned counsel for petitioner submitted that the petitioner's father fell ill from December 2013 and therefore, he could not concentrate in his work and hence, he deserted the duty. This reason was stoutly denied by the respondents by filing a counter affidavit, wherein it was stated that the petitioner has not submitted any material evidence to substantiate that his father was ill. Even if it is agreed that the petitioner's father was not well, the petitioner ought to have applied leave as per law and without application, the petitioner cannot absent himself from duty. A proper enquiry was conducted and after giving opportunity to the petitioner, the enquiry was concluded. In the enquiry it was held that the charge is proved.

7. The respondents have stated that the charge of unauthorized absence for eleven months is very serious in nature that too for the disciplined service and exhibits gross indiscipline of the delinquent official. However, the petitioner has submitted that the Appellate authority has deviated from the charge. In the charge, it has been stated that the petitioner has absented himself for 21 days from 04.01.2014 for which the petitioner has submitted his aged father was not well and his condition



deteriorated when his father started vomiting blood. He was treated in the Government Medical College Hospital, Sivagangai as in-patient in I.P.No.21670 and was under intensive treatment in the hospital and later discharged on 04.11.2013. Even after discharge, his father was suffering. Since his mother was aged and he has a younger brother, left with no other option, the petitioner had to take care of his father. The contention of the petitioner is that the Appellate authority has deviated from the charge by referring to the criminal proceedings. The earlier count of charge is only for the unauthorized absence but the Appellate Authority by stating that a criminal proceedings have been initiated and for that only the delinquent was punished, which is illegal. The learned Counsel for the respondents submitted that the second respondent, vide order dated 24.08.2015, has held that the petitioner was involved in a criminal case in Crime No.3 of 2014, under Sections-387, 468, 417, 419, 170 read with 120(b) of IPC, dated 01.01.2014, on the file of Thiruppathur Rural Police Station, wherein the petitioner was averred as Accused No.3 and in order to evade arrest the petitioner has absented from duty.

8. On perusal of the order of the Appellate authority, it is seen that the Appellate authority has not stated that the petitioner was punished because of the criminal charges. It is just stated that the unauthorized absence of the petitioner is due to the involvement in the criminal case and in order to avoid arrest in the criminal case, the petitioner has deliberately absented himself from duty. The relevant portion is culled out hereunder:

*"4. I have carefully gone through the minute, order of the punishing authority, appeal petition submitted by the appellant and all connected records in PR.No.18/2014 u/r. 3(b) of TNPSS (D & A) Rules 1955. Appellant has stated in his appeal petition dated 19.01.2015 that he was accompanying his sickly father in the hospital for the period from 31.10.2013 to 04.11.2013, due to which he got mental strain following which he deserted the force from 04.01.2014. But in a petition sent by the Appellant on 02.06.2014 to the Inspector General of Police, South Zone, Madurai, Deputy Inspector General of Police, Ramanathapuram Range and Superintendent of Police, Sivagangai requesting for his reinstatement, he has mentioned that the came to know that he was implicated in Thiruppur Rural P.S. Cr.No.3/2014 as accused and therefore he was on continuous desertion. A detailed report was called for in this regard from Superintendent of Police, Sivagangai District. He has informed in H1/PR 18/2014, dated 03.07.2015 that the appellant involved in the Thiruppur Rural PS, Cr. No. 3/2014, U/s. 387, 468, 417, 419, 170 r/w. 120*



(b) I.P.C., dated 01.01.2014 and he was not arrested as he got Anticipatory bail from the Hon'ble High Court, Madras on 30.01.2014. The case was charge sheeted in the Court of JM.No.II, Thiruppur on 01.07.2014 and he has not yet been taken on file. As seen from his petition, dated 01.07.2015 and Superintendent of Police, Sivagangai District in C.No.H1/PR18/2014, dated 03.07.2014 it is evident that the appellant; along with other accused Kannan (A1) and Baskaran (A2) has involved in a criminal case and to evade arrest by the Police he has deserted force willfully.

5. The punishment of "Dismissal from service" is a valid one as per the provisions envisaged in PSO Volume No.I order N.80 and order 95(1). Hence, the punishment of "Dismissal from Service" is not excessive. I agree with the punishing authority I am not inclined to interfere with the order of the punishing authority. Thus the appeal is considered and rejected."

9. On perusing the papers it is seen that the petitioner's father was ill and discharged from hospital on 04.11.2013 and the petitioner was involved in the criminal case in FIR dated 01.01.2014, obtained anticipatory bail on 30.01.2014 and was acquitted from criminal case on 29.12.2015. Therefore, the observation in the appellate order that in order to avoid arrest in the criminal case the petitioner absented from duty from 04.01.2014 and not because of his father's illness is correct since the petitioner's father was discharged long back i.e. on 04.11.2013.

10. The petitioner submitted that the appellate authority has not passed any speaking order and the same is vitiated and against Rule 6(1) of the Tamil Nadu Police Subordinate Service Rules. The manner in which the appellate authority shall dispose of the appeal is mentioned under Rule 6(1), which reads as follows:

"6(1) In the case of an appeal against an order imposing any penalty specified in rule 2, the appellate authority shall consider-

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate;



and after such consideration, shall pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case, to the authority which imposed the penalty or to any other authority with such direction, as it may deem fit, in the circumstances of the case.

....."

Therefore this Court is of the opinion that the contention of the learned counsel for the petitioner that the appellate authority has not passed speaking order by following the above said rule is acceptable.

11. As far as the punishment of dismissal from service is concerned, it is seen that the petitioner was aged about 28 years at the time of filing the petition, as on date he is 32 years and he has aged parents and a younger brother who is studying and the petitioner is the only bread winner of the family. If the petitioner is dismissed from service, the petitioner may not get any job and would indulge in anti-social activities. It is also seen that the petitioner was acquitted subsequently from the said criminal case on 29.12.2015 in C.C.No.830/2015, on the file of Thiruppathur, Judicial Magistrate. Taking all these factors into consideration and following this Court order dated 05.12.2002 rendered in W.P. 18759 of 1998 filed by N. Rajan Vs Deputy Commandant CISF Unit this court is intended to modifying the punishment. The relevant portion of the said order is culled out as under:

"11. A perusal of the aforesaid three decisions indicates a common thread of principle to the effect that even in a disciplined service the question of unauthorised absence is to be considered with a humane approach. A person when given the option of attending to his ailing wife or to stick to a duty at a distance place really faces a Hobinson's choice and if a person absents duty temporarily for the sake of attending to his ailing wife, even though guilty of misconduct should not be dismissed from service effectively depriving him of his right to livelihood which is considered to be a fundamental right under Article 21 of the Constitution. Punishment of dismissal in such circumstances would be too harsh and disproportionate. This is not to suggest an employee has the choice to remain absent as and when he likes. Where however, the absence is due to extenuating circumstances, extreme



*punishment or removal from service would not be meet and proper."*

In the present case the petitioner ought to take care of his ailing father, followed by a criminal case wherein he was acquitted later on, fearing arrest, suspension, disciplinary proceedings, the petitioner has absented himself. Hence this court is of the opinion an opportunity shall be granted to the petitioner by reinstating him in service. Therefore this Court is inclined to set aside the punishment of dismissal from service and direct the respondents to consider to impose a punishment of stoppage of increment for five years with cumulative effect within a period of four weeks from the date of receipt of a copy of this order.

12. With the above observation the writ petition is disposed of and the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tmg

**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.

To

1. The Director General of Police,  
Mylapore, Chennai - 4.
2. The Deputy Inspector General of Police,  
Ramanathapuram Range,  
Ramanathapuram District.
3. The Superintendent of Police,  
Sivagangai, Sivagangai District.
4. The Additional Public prosecutor,  
Madurai Bench of Madras High Court, Madurai



+1 CC to M/s.NIRANJAN S KUMAR, Advocate ( SR-37877[F] dated  
09/12/2021 )

+1 CC to M/s.SPL GP ( SR-38110[F] dated 10/12/2021 )

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