



W.P.No.10819 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.09.2022
Pronounced on	17.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

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1.R.Kumari

2.Minor Poonkuzali

3.Minor Maran

Minors 2 & 3 above are rep. by their
natural guardian and mother
Mrs.R.Kumari as next friend

... Petitioners

Vs.

1.The Superintendent of Police,
Thiruvannamalai District.

2.The Deputy Inspector General of Police,
Vellore Range, Vellore.

3.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-600 004.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned orders passed by him in PR 88/2005 dated 23.12.2005 and Na.Ka.No.J2/27199/12 dated 25.10.2012 and the orders of the third respondent in Rc.No.184898/AP.2[2]/2014 dated 19.01.2015 and



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quash the same and direct the respondents to settle all the retirement benefits to the petitioner within a reasonable time as fixed by this Court.

For Petitioners : Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan
For Respondents : Mrs.C.Sangamithirai, SGP

O R D E R

The husband of the first petitioner herein namely, late T.Krishnamoorthy, while holding the post of Constable under the service of the first respondent herein, was served with a charge memo dated 28.07.2005, on two counts. The first charge is of having unauthorisedly absented himself, for more than 21 days from 23.07.2004, which amounted to an act of desertion. The second charge is that, he had rashly driven an unregistered two wheeler and injured a person. Based on the levelled charges, an enquiry was conducted and through an order dated 23.12.2005, the first respondent herein had awarded the punishment of "dismissal from service". Subsequently, on 18.07.2008, the first petitioner's husband expired. When the first petitioner had sought for family pension, the same came to be rejected by the first respondent on 25.10.2012 stating that, since her husband had expired after the punishment of



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dismissal from service, she was not entitled to claim family pension.

The first petitioner herein had thereafter preferred an appeal to the third respondent herein, which was rejected on 19.01.2015. Aggrieved against the order of punishment and the rejection of the appeal dated 19.01.2015, as well as the proceedings of the first respondent dated 25.10.2012 denying the pensionary benefits, the present Writ Petition has been filed.

2. Heard Mr.K.Venkataramani, learned Senior counsel for the petitioners and Mrs.C.Sangamithirai, learned Special Government Pleader appearing on behalf of the respondents.

3. Insofar as the punishment of dismissal, for the charge of desertion is concerned, the Director General of Police had issued instructions through a circular dated 06.12.2007, to the Unit Officers, to refrain from imposing the punishment of removal/dismissal from service or compulsory retirement to the delinquents of the police department for charges of desertion. However, when this circular was overlooked in the cases of desertion and major penalties of dismissal or removal from service or compulsory retirement was imposed by the Disciplinary Authorities, this Court, on several occasions, had set aside



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such punishment in view of DGP's Circular and modified the same into a lesser punishment. In one such case, this Court had dealt with a similar issue in the case of ***R.Sudhakar Vs. The Principal Secretary to Government, Home (Pol-V) Department and others passed in W.P.No.7927 of 2015 dated 21.12.2021***, wherein it has been held as follows:-

"2. The original punishment of dismissal from service as well as the modified punishment by the 2nd respondent herein into one of the Compulsory Retirement cannot be sustained on the sole ground that the Director General of Police had earlier issued Circulars dated 13.10.1990 and 06.12.2007, holding that in cases of desertion, the punishment of removal/dismissal from service or Compulsory Retirement should not be imposed. In a later circular, dated 06.12.2007, it was reiterated that these guidelines should be strictly followed, while dealing with dismissal cases and that any other minor punishment can be imposed. For the sake of clarity, the circular dated 06.12.2007 is hereby extracted,

Rc.No.235355/AP-IV(2)/2007

Office of the

*Director General
of Police,*



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Chennai-600 004.

Dated:06.12.2007

CIRCULAR MEMORANDUM

Sub: Police - Desertion cases - Head constables and Police Constables - Taking delinquents on duty - Major punishment awarded - Instructions issued - Regarding.

*Ref: Circular Memo in
C.No.243881/AP1(1)/1990, dated: 30.10.1990.*

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The attention of the Unit Officers is invited to the Chief Office Circular Memorandum cited.

2) In the above Circular Memorandum, clear instructions were already issued that while taking Head Constables and Police Constables for duty in desertion cases and disposing of P.Rs emanated from the delinquency of desertion, penalty such as removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and this guideline should be kept in view, while dealing with desertion cases.

3) While disposing of review/mercy petitions of the subordinate police personnel, I noticed that scant regard is shown to the earlier Chief Office instructions and the Superintendents of Police are still in the habit of awarding the



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maximum penalty of dismissal or removal from service in desertion cases after taking them for duty. This action is unfair, cannot be justified and consequently cannot be accepted.

4) Hence, it is reiterated that when a Head Constable/Police Constable is struck off as a deserter, notice is to be issued directing the delinquent to appear before the Superintendent of Police within two months. When he appears, 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 P.Rs punishment of removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and these guidelines should be strictly followed while dealing with desertion cases.

5) The above instructions should be scrupulously followed and there should not be any violation. If any deviation is found it will be viewed adversely.

6) The receipt of the Chief Office Memo should be acknowledged forthwith.



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Sd/-

P.Rajendran

Director General of Police

3. The original order of dismissal by the 3rd respondent, as well as the order of the Director General of Police modifying the punishment into one of the Compulsory Retirement, is in clear violation of the Circular issued by the Director General of Police. Likewise, the Director General of Police himself had violated his own proceedings by modifying the original punishment into one of the Compulsory Retirement. These kind of Circulars would be binding on all the authorities of the Government when it is issued from the highest authority of the department. As such, the very original punishment itself cannot be sustained. Consequently, it requires to be held that both the original punishment, as well as the modified punishment, are not only disproportionate to the impugned charges, but also violative of the procedure contemplated for imposing punishments in the aforesaid circulars."

4. Insofar as the second charge against the first petitioner's husband is concerned, the delinquency appears to be minor in nature.



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It is alleged that the first petitioner's husband had driven an unregistered two wheeler and caused injuries to a person. The delinquency by itself, is a motor accident as evidenced by the criminal offences for which he has been charged in connection with the occurrence. If that be so, the punishment of dismissal from service for a motor accident delinquency, could be said to be disproportionate to this charge.

5. On a comprehensive appraisal of both the charges, it can be summed up that since the Disciplinary Authority did not have the authority to impose a punishment of dismissal from service for an act of desertion and a major punishment for a minor delinquency, which is deemed to be disproportionate to the levelled charges.

6. On the issue of disproportionality of a punishment is concerned, the same has been dealt in various decisions of this Court, as well as the Hon'ble Supreme Court, to the effect that the ultimate punishment requires to be in conformity with the gravity of the charges. In one such decision of a learned Single Judge of this Court, in the case of ***R.Jayakumar Vs. The Deputy Commissioner of Police and another*** passed in ***W.P.No.26072 of 2004, dated***



08.08.2008, the High Court had placed reliance on three decisions of the Hon'ble Supreme Court and interfered with the punishment of dismissal for the period of unauthorised absence of 21 days and directed the delinquent therein to be reinstated into services without the benefits of pay for the period of absence. The relevant portion of the order reads as follows:-

"11. Next point to be considered is proportionality of punishment. For the absence of 21 days, Petitioner was awarded punishment of dismissal from service. Placing reliance upon AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma); (1996) 7 SCC 634 (Malkiat Singh v. State of Punjab and others); (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) and (2006) 4 MLJ 1008 (J.Patric v. Government of Tamil Nadu, rep. by its Secretary, Home (Pol.VI) Department, Chennai and others), learned counsel for the Petitioner contended that in cases where the punishment imposed is disproportionate to the charge, court can set aside the same or modify the punishment based on the facts and circumstances of the case. 12. On the other hand, learned Government Advocate would submit that as far as the Petitioner is concerned, it was not an isolated case of desertion for 21



days. But he was in the habit of deserting habitually and therefore, punishment of dismissal from service came to be passed.

13. According to the Petitioner, he was unwell and hospitalised and his family members could not inform the higher officials about his illness and his absence was not deliberate. Charges framed for absence for 21 days.

14. In AIR 1996 SC 484:1995 (6) SCC 634 (B.C.Chaturvedi v. Union of India and others), the Hon'ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various Judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment.

15. In this aspect, Hon'ble Supreme Court has laid down the law as follows:-

"..... A review of the above legal



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position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

16. In AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma), Government Servant over-stayed the leave period subsequent to the order of rejection of application for explanation of leave. Observing



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that there was no wilful intention to flout the order that the punishment of dismissal merely on the ground of over-staying leave period was held to be harsh and disproportionate and the Supreme Court has ordered reinstatement with all monetary and service benefits granted with liberty to visit minor punishment.

17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing of the order by the Court. In the present case, Petitioner was absent for 21 days. It is one of the clear instance where the punishment of dismissal from service is disproportionate to the charge.

18. In the result, the impugned Orders are set aside and this Writ petition is allowed. Petitioner is ordered to be reinstated into service within a period of eight weeks from the date of receipt of copy of this order. Absence period and the period after dismissal are directed to be taken as "leave on loss of pay". However, the



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said period shall be taken into account for continuity of service and other benefits.”

The aforesaid extract is self explanatory. Thus, the punishment of dismissal from service, for the charges levelled against the first petitioner's husband, cannot be sustained.

7. However, the charge of unauthorised absence cannot be left unnoticed, particularly, when it is brought to the notice of this Court that the first petitioner's husband had earlier indulged in instances of unauthorised absence and also the second charge relating to a minor delinquency of his involvement in a motor accident and causing injury to a bystander. In view of the aforesaid charges, by taking into account the ratio laid down in the aforesaid decision, this Court is of the view that if the first petitioner's husband's wages for the period of his absence is withheld, without affecting the continuity of his service till his death, as well as other service benefits, the ends of justice could be secured.

8. In the light of the above observations, the order of dismissal passed by the first respondent dated 23.12.2015 and the order of confirmation of the dismissal passed by the third respondent dated 19.01.2015, are quashed. Likewise, the order dated 25.10.2012 of the



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first respondent herein, denying the Death-cum-Retirement Gratuity (DCRG) benefits, as well as the family pension, also stands quashed.

Consequently, there shall a direction to the respondents herein to pass appropriate orders, treating the first petitioner's husband namely, late T.Krishnamoorthy of having been notionally reinstated back into service, with effect from 23.12.2005 onwards and had subsequently expired on 18.07.2008 and thereby disburse the death and retirement benefits, including family pensionary benefits, to the first petitioner herein. Such orders shall be passed, atleast within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition stands partly allowed. There shall be no order as to costs.

17.10.2022

Internet:Yes
Order :Speaking

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To

- 1.The Superintendent of Police,
Thiruvannamalai District.
- 2.The Deputy Inspector General of Police,
Vellore Range, Vellore.
- 3.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-600 004.



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M.S.RAMESH,J.

DP

**ORDER MADE IN
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