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W.P.No.39047 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.39047 of 2015

E.Elanchezhiyan

... Petitioner

Vs.

1.The Director General of Police,
State of Tamil Nadu,
No.601, Dr. Radhakrishanan Salai,
Mylapore, Madras – 600 004.

2.The Deputy Commissioner of Police,
Armed Reserve, Chennai City,
Chennai – 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 1st respondent in Rc.No.188290/AP.3(2)/2014 dated 28.02.2015 and the proceedings of the 2nd respondent in P.R.No.217/3(1)/2006 dated 08.09.2007 and quash the same as illegal, incompetent and ultravires and consequently, direct the respondents to reinstate the petitioner in the post of Police Constable.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mrs.S.Anitha
[R1 and R2] Special Government Pleader



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ORDER

The order of punishment of removal from service is under challenge in the present writ petition.

2. The petitioner joined as Grade-II Police Constable in Chennai City Armed Reserve in the year 1997. The petitioner remained unauthorizedly absent for more than 21 days and consequently, he was declared as a deserter. While declaring the petitioner as deserter in proceedings dated 15.03.2006, the second respondent/The Deputy Commissioner of Police directed the petitioner to report for duty within a period of 60 days. The petitioner has not responded to the notice and therefore, the authorities competent initiated disciplinary proceedings and by following the procedures as contemplated under the Discipline and Appeal Rules, issued an order of removal in proceedings dated 08.09.2007. The petitioner filed a Review-cum-Mercy Petition only on 22.12.2014. The Review Petition itself was filed, after a lapse of about 7 years from the date of removal from service. The said Review petition-cum-Mercy Petition was rejected by the first respondent on 28.02.2015 and thereafter, the present writ petition is filed.



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3. There was an enormous delay in pursuing the remedy by the writ petitioner. He was removed from service in proceedings dated 08.09.2007 and he has not preferred any appeal before the Appellate Authority as contemplated under the Rules. Contrarily, he filed a Review-cum-Mercy Petition only in the year 2014, after a lapse of 7 years.

4. The learned Special Government Pleader appearing on behalf of the respondents made a submission that the writ petitioner was a habitual absentee and deserted the Police force on several occasions, more specifically, for about 12 occasions. He used to desert the Police force without any leave or prior intimation to the superior authorities. Lastly, he deserted the Police force on 15.01.2006 without any leave and prior intimation. Thus, charge memorandum under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules was issued. After conducting an enquiry, the punishment of removal from service was inflicted on 08.09.2007.

5. The question arises, whether unauthorized absence from duty amounts to failure of devotion to duty. Unbecoming of a Government servant cannot be decided without deciding the question, whether absence is willful or cause of compelling circumstances. In this



regard, if a police personnel absents himself from reporting duty on certain compelling circumstances, then explanation is convinced, may be considered by the competent authority for taking a lenient view. For instance, if the Police Personnel met with an accident or attended certain emergency events, and beyond his control, he could not able to attend duty, then such circumstances may be considered by the authorities for taking a lenient view and the leave applications, if any submitted thereafter, can be accepted. However, if the Police Personnel is a habitual absentee and frequently deserted the Police force, then there is no scope for any lenient view and such indiscipline, at no circumstances, be tolerated. Discipline being a paramount aspect of the uniformed personnel, the frequent absenteeism cannot be condoned and therefore, the Courts are bound to consider, whether the unauthorized absence resulted in lack of devotion to duty or on certain compelling circumstances.

6. In the present case, the petitioner was a habitual absentee and deserted the force for more than 12 occasions. That apart, he was removed from service in the year 2007 and he preferred a Review Petition only after a lapse of 7 years in the year 2014.



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7. This being the factum, this Court do not find any infirmity or perversity in respect of the inflictment of punishment of removal from service and thus, the writ petition stands devoid of merits and stands dismissed.

08.07.2022

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Index : Yes

Speaking order : Yes

To

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S.M. SUBRAMANIAM, J.

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