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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5245 of 2014

M.Kannan

...Petitioner

Vs.

1. The Secretary to Government,
Home (Police IX) Department,
Fort St.George, Chennai - 09.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 04.
3. The Inspector General of Police,
Armed Police, Chennai - 10.
4. The Deputy Inspector General of Police,
Armed Police (M & W) Trichy - 12.
5. The Commandant,
Tamilnadu Special Police 6th Battalion,
Madurai.

..Respondents

Prayer :

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed by the 5th respondent in PR No.02/2000(1)/03 dated 14.6.2000 and by the 4th respondent Na.Ka.No.A2/AP.45/2000 dated 01.9.2000 and by the 3rd respondent in RC.No.Estt.I(2)/15034/IG/2000 dated 21.11.2000 and by the 2nd respondent in C.No.158392/ AP.1(3)/2001 dated 18.1.2002 and by the 1st respondent in G.O.(2D) No.153 dated 06.5.2005 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mrs.S.Anitha
Special Government Pleader
[For R1 to R5]



ORDER

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

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2. The petitioner was recruited as Grade-II Police Constable on 15.04.1997. The petitioner states that he was serving as Police Constable in Madurai 6th Battalion, "B" company (Armed Police) and deputed to attend the Sports coach at Avadi 2nd Battalion. The petitioner availed 10 days Casual Leave from 05.12.1999 to 14.12.1999 in order to take care of his aged mother. Due to family circumstances as his mother was suffering from ill-health, the petitioner was not in a position to report for duty in time, the respondents issued an order to report for duty and the said order was served on 22.12.1999. The petitioner was unable to report for duty as his mother was suffering from mental depression and her health got worse and he had taken her mother for further treatment to the hospital. Due to the said circumstances, the petitioner could not able to inform the reason and report for duty. However, the petitioner was declared as a Deserter from 22.12.1999 onwards. The 5th respondent issued a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The petitioner submitted his explanation and not satisfied with the said explanation, the Department appointed an Enquiry Officer to conduct an enquiry. The Enquiry Officer held that the charges are proved. Based on the report of the Enquiry Officer, the petitioner was imposed with the punishment of removal from service for the unauthorized absence. The petitioner preferred a Review Petition before the third respondent and the said petition as also rejected on 21.11.2000. The petitioner further preferred a petition to the 2nd respondent on 12.06.2001, which was also rejected on 18.1.2002. Finally, the petitioner approached the Government by way of a Mercy Petition and the petitioner could not able to get any remedy and thus, the present writ petition is filed.

3. The learned counsel for the writ petitioner mainly contended that the major penalty of removal from service is disproportionate with the gravity of the allegations. There was no proper application of mind on the part of the disciplinary authority, while imposing the major penalty of removal from service. The order of punishment is non-speaking in nature and therefore, it is to be set aside. The petitioner raised several grounds and the reasons for not reporting for duty during the relevant point of time and those explanations were not considered by the competent authority, while passing the impugned order of removal from service.

4. It is an admitted fact that the petitioner could not



report for duty immediately on receipt of the order from the 5th respondent due to his mother's health condition. However, the petitioner has explained the reasons for his absence and without considering any of the facts and circumstances, the petitioner was declared as Deserter and even in the impugned order of removal from service, the merits raised in this regard has not been considered by the authorities.

5. The learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench in W.A.No.15 of 2011, wherein a 7 times Deserter has been reinstated pursuant to the orders of the Court. The punishment of removal was modified as stoppage of increment for one year. Therefore, the benefit of the said judgment is to be granted to the writ petitioner.

6. The learned Special Government Pleader appearing on behalf of the respondents objected the contentions raised by the petitioner by stating that the procedures as contemplated in the Discipline and Appeal Rules were scrupulously followed by the authorities competent, while conducting the enquiry proceedings. The petitioner was provided with an opportunity to report for duty and an order was served to that effect. However, the petitioner had not report for duty and remained unauthorizedly absent. The reason that the mother of the writ petitioner was sick, was not convincing as the writ petitioner ought to have reported for duty and thereafter, availed leave, if necessary. Contrarily, he remained unauthorizedly absence and even after declaring the petitioner as Deserter, he failed to report for duty. Thus, the intentional misconduct of the petitioner was dealt with by the authorities in accordance with the Discipline and Appeal Rules and there is no infirmity as such.

7. The Departmental Enquiry was conducted after affording opportunity to the writ petitioner. Except the reason that his mother was suffering from ill-health, the petitioner could not able to establish anything. The respondents considering the nature of the allegations of unauthorized absence and further, considering the fact that the petitioner even on earlier occasion, imposed with the punishment for unauthorized absence and formed an opinion that the petitioner had not changed his conduct and accordingly, imposed the punishment of removal from service.

8. On an earlier occasion, the petitioner was awarded with the punishment of reduction in present time scale of pay by two stages for two years with cumulative effect by the Commandant, TSP VI Battalion, Madurai in proceedings dated 19.09.1999 for the delinquency of desertion continuously and a lenient view was taken and the petitioner was taken back for duty on 23.09.1999 and served the B.O to the petitioner on 22.12.1999.



The petitioner was awarded with an another punishment of removal from service by the Commandant in proceedings dated 20.06.2000 and served on 07.07.2001 to the petitioner and the petitioner has failed to report duty and disobeyed the orders of the superior authority and deserted continuously without any leave or permission.

9. The respondents have stated that the petitioner has neglected the duty by absenting himself with effect from 15.12.1998 and disobeyed the orders of the superior authority and deserted the services continuously without any permission or leave. Therefore, the overall conduct and the seriousness of the allegations were considered by the authorities and accordingly, the punishment of removal from service was issued.

10. This Court is of the considered opinion that the petitioner was earlier dealt with a charge under Rule 3 (b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, in P.R.No.26/1999, the 5th respondent awarded the punishment of reduction in the present scale of pay by two stages for two years with cumulative effect on 19.09.1999. Thereafter, the writ petitioner was taken back for duty and orders were issued on 23.09.1999. Even after the reinstatement, the writ petitioner had not reported for duty before the competent authority even after a lapse of 21 days without any leave or permission from the competent authority. Thus, the petitioner was treated as Deserter with effect from 22.12.1999. After declaring the writ petitioner as Deserter, he was directed to report for duty before the competent authority within 60 days. The said opportunity was also not availed by the writ petitioner and he failed to report for duty and thus, the desertion was confirmed by the 5th respondent in vide Battalion Order No:194/2000 dated 14.03.2000. Thereafter, the charge memo under Rule 3 (b) was issued and enquiry was conducted and based on the enquiry report, the punishment of removal from service was issued.

11. No doubt, the Courts have to consider the proportionality of the punishment imposed with reference to the charges proved. In other words, the punishment imposed must be in commensuration with the gravity of the charges proved against the delinquent officials.

12. Thus, there cannot be any straitjacket formula regarding the imposition of punishment. The competent disciplinary authority is empowered to decide the quantum of punishment to be imposed. But, if the punishment imposed is shockingly disproportionate or not in commensuration with the gravity of the proved charges, then the Courts would be interfering with the quantum of punishment, but not otherwise.



13. The power of judicial review under Article 226 of the Constitution of India is to scrutinize the processes, through which, a decision is taken by the competent authorities in consonance with the Statutes and Rules in force, but not the decision itself. Therefore, the case relied on by the petitioner may not have any straight application with reference to the facts and circumstances. In disciplinary matters, the facts are to be considered independently to form an opinion, whether the punishment imposed is grossly disproportionate with the gravity of the allegations proved against the delinquent officials.

14. The Courts have broadly considered such disciplinary matters that:

(1) Fair and Transparent procedure in enquiry has been adopted

(2) The principles of natural justice are followed

(3) The intention of the Delinquent with reference to the charges established.

(4) The punishment is out of proportion to the misconduct committed.

(5) The nature of services and the position held by the delinquent employee.

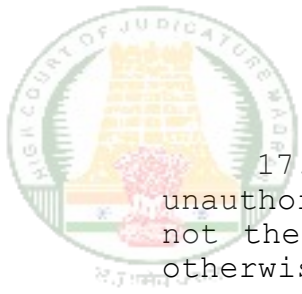
(6) The period of absence cause / explanations for absence.

(7) Is the employee guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

(8) The disciplinary authority is required to prove the absence is willful.

15. No doubt, certain personal circumstances of an employee that he himself is suffering from any ill-health, accident or hospitalization. In such circumstances, the authorities are bound to take lenient view in respect of the unauthorized absence. However, in all such cases, the intention of the employee must also be ascertained by the competent authority, while inflicting punishment.

16. The question arises, whether the continued misconduct indicate incorrigibility and complete unfitness for police service in the present case. The admitted facts are that the petitioner remained unauthorizedly absent for the similar misconduct. He was imposed with the punishment of reduction in time scale of pay by two stages for two years with cumulative effect. Thereafter, the petitioner was reinstated in service. However, again he remained unauthorizedly absent and not reported for duty. Further, notice was issued to report for duty and thereafter, he was declared as Deserter and even after such declaration, 60 days time was granted to the writ petitioner to report for duty. However, the petitioner had not availed any such opportunity and was continuously remained unauthorizedly absent.



17. The reason relied on by the writ petitioner for his unauthorized absence was that his mother was ill-health. It is not the case, where the employee himself suffered ill-health or otherwise. The Courts have held that if at all the employee concerned was suffering from serious ill-health or met with an accident or hospitalized, then such unauthorized absence due to unforeseen circumstances are to be considered and a lenient view is to be taken. However, in the present case, the petitioner defended the allegation of unauthorized absence by stating that his mother was not well. Even in such circumstances, the employee has to establish the emergency circumstances and the continuous unauthorized absence cannot be countenanced in such circumstances. The respondents in the present case during the earlier occasion had taken a lenient view and provided an opportunity to the writ petitioner and the said opportunity was not utilized by the writ petitioner for reporting duty.

18. They imposed the punishment of reduction in pay and reinstated him in service and issued an order to report for duty. Even thereafter, the petitioner failed to report for duty and remained unauthorizedly absent. The continuous misconduct of the writ petitioner indicates incorrigibility and complete unfitness for police services. Therefore, the order relied on by the petitioner is of no avail and in respect of the ground regarding disproportionality of the punishment, the Courts are bound to consider the facts and circumstances independently as the facts and circumstances in the present case reveals that the petitioner was continuously remained absent and even after imposing the punishment of reduction of scale of pay and he has not reported for duty and thereafter, he was declared as Deserter and after declaring him as a Deserter, he also failed to report duty for more than 60 days. Thus, the disciplinary proceedings were initiated and based on the proved charges, he was removed from service.

19. Considering the factum established and the principles enunciated by the Courts, this Court is of an opinion that the petitioner is not entitled for any relief and accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Police IX) Department,
Fort St.George,
Chennai - 09.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 04.
3. The Inspector General of Police,
Armed Police,
Chennai - 10.
4. The Deputy Inspector General of Police,
Armed Police (M & W)
Trichy - 12.
5. The Commandant,
Tamilnadu Special Police 6th Battalion,
Madurai.

+lcc to Mr.S.Sivakumar, Advocate, S.R.No.35186
+lcc to Government Pleader, S.R.No.36910 (23/06/2022)

W.P.No.5245 of 2014

JPL(CO)
CT/22/06/2022