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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2022

PRONOUNCED ON : .02.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.42449 of 2016
and W.M.P.No.36339 of 2016

M.Murthy

...Petitioner

Vs

1. The Secretary to Government
Home (police VI) Department,
Fort St.George,
Chennai-09.
2. The Director General of police,
Dr.Radhakrishnan salai,
Mylapore,
Chennai-04.
3. The Superintendent of police,
Thiruvannamalai District,
Thiruvannamalai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus or appropriate writ or order or direction in the nature of writ to call for the records in connection with the impugned order passed by the 3rd respondent in P.R.No.01/2007 U/r 3(b) dated 23.03.2007 and confirmed by the 2nd respondent in Rc.No.198266/AP.2(2)/2009 dated 18.02.2010 and quash the same and further direct the respondent to reinstate the petitioner into service and grant all consequential service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.C.Selvaraj
Additional Government Pleader



O R D E R

The only charge against the petitioner, through a charge memo dated 12.01.2007 was that he, while serving as a Head Constable, had been absent for more that 21 days from 24.06.2006 onwards and thereby deserted himself from the service. The charges were held to be proved and through an order dated 23.03.2007, the Superintendent of Police had dismissed the petitioner from the services. This order of dismissal came to be confirmed by the Director General of Police in an appellate order dated 18.02.2010.

2. The original punishment of dismissal from service as well as the appellate order 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,
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/AP-1(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



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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 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.

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 is in clear violation of the Circular issued by the Director General of Police. 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. 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 R.Jayakumar Vs. The Deputy Commissioner of Police and another 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 benefit of pay for the period of absence.

5. 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.Patrick 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 otherhand, 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



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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 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 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.



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

6. The aforesaid extract is self-explanatory. When the circular of the Director General of Police clearly indicates that neither the punishment of 'dismissal from services' nor 'Compulsory Retirement' should be imposed on a delinquent for charges of desertion, the punishment imposed itself is deemed to be disproportionate to the charges, as held by the Hon'ble Supreme Court and which was relied on by this Court in the aforesaid decision.

7. However, the charge of unauthorised absence cannot be left unnoticed. By taking into account, the ratio laid down in the aforesaid decision, this Court is of the view that if the petitioner's wages for the period of his absence is withheld, without affecting the continuity of his service, as well as other service benefits, the ends of the justice would be secured.

8. In the result, the impugned order passed by the 3rd respondent herein in P.R.No.01/2007 U/r 3(b) dated 23.03.2007 and confirmed by the 2nd respondent in Rc.No.198266/AP.2(2)/2009 dated 18.02.2010 are quashed. Consequently, there shall be a direction to the 2nd respondent herein to pass appropriate orders, reinstating the petitioner into services from 22.2.2011 onwards, together with continuity of service and other service and monetary benefits, within a period of 2 weeks from the date of receipt of a copy of this order, as if the petitioner was never dismissed from his services. However, the petitioner shall



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not be entitled for the backwages during his period of Non-employment. This Writ Petition is allowed, accordingly. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Home (police VI) Department,
Fort St.George,
Chennai-09.
2. The Director General of police,
Dr.Radhakrishnan salai,
Mylapore,
Chennai-04.
3. The Superintendent of police,
Thiruvannamalai District,
Thiruvannamalai.

+1cc to Mr.S.Sivakumar, Advocate SR.No.9071

+1cc to Government Pleader SR.No.8979

W.P.No.42449 of 2016
and
Connected Miscellaneous Petitions

MT (CO)
GMY (07/03/2022)