



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	28.01.2022
PRONOUNCED ON	02 .02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.NO.700 OF 2014
AND M.P.NO.1 OF 2014

A.Arivazhagan

...Appellant/
Petitioner

Versus

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Home (Police 9) Department,
Secretariat,
Chennai - 9.
2. The Director General of Police,
Kamarajar Road,
Chennai - 4.
3. The Inspector General of Police,
Armed Police,
Trichy.
4. The Deputy Inspector General of Police,
Armed Police,
Kilpauk,
Chennai - 10.
5. The Commandant,
Tamil Nadu Special Police Battalion,
Ulundurpet.

...Respondents/
Respondents



Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by the learned Judge in W.P.No.13520 of 2014 dated 08.05.2014.

Prayer in W.P.No.13520 of 2014:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records on the file of the respondents 1 to 5 in connection with the orders passed by them in G.O.(2D) No.148 Home (Pol.IX) Dept. dated 22.3.2010 G.O.(2D) No.373 Home (Pol.9) Dept. dated 24.6.2008 Na.Ka.No. E2/5406/2007 dated NIL 07.2007 D.Dis No.267473/AP.3 (1)/2005 dated 18.3.2006 Rc.No.C2/20929/Review/05 dated 25.8.2005 RC No.C2/ Appeal.26/2005 dated Nil 07.2005 and Punishment Roll No. 19/2005 Rule3(b) and C.No.A1/PR19/2005 B.O.No.214/2005 dated 20.5.2005 respectively and quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Appellant	:	Mr.R.Singaravelan, Senior Counsel for Mr.M.Srividhya
For Respondents	:	Mr.R.U.Dinesh Rajkumar, Additional Government Pleader

J U D G E M E N T

J.SATHYA NARAYANA PRASAD, J.

The present Writ Appeal is directed against the order passed by the learned Single Judge in W.P.No.13520 of 2014 dated 08.05.2014, dismissing the said writ petition.

2. Heard Mr.R.Singaravelan, learned Senior Counsel for the appellant and Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the respondents.

3. The brief facts of the case are as follows:

The appellant was recruited as a Police Constable, since he left the service without taking leave, he was declared as a 'deserter' by the fifth respondent vide order dated 28.08.2003. Thereafter, the fifth respondent vide order dated 23.01.2004 imposing a punishment of pay reduction for one year without cumulative effect and the same was accepted by the appellant.



But, again the appellant committed the very same misconduct by absenting from duty for the period from 14.01.2004 to 17.01.2004 and therefore, he was once again declared as a 'deserter' by the fifth respondent vide order dated 12.02.2004.

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3.1. The appellant was given 60 days time to rejoin the duty however, he failed to rejoin the duty. Therefore, an enquiry was conducted, as a result of which, punishment of postponement of increment for two years without cumulative effect was imposed on him vide order dated 09.07.2004. He repeatedly made the same misconduct by absenting from duty. Hence, the fifth respondent (Head of Office) initiated proceedings against the appellant and removed him from service vide order dated 20.05.2005, as against the said order, the appellant preferred an appeal to the fourth respondent, however, the same was rejected vide proceedings in C.No.C2/Appeal 26/2005 dated 19.07.2005. Thereafter, he filed a Review Petition to the third respondent. But, his Review Petition was also rejected by the third respondent vide proceedings in RC.No.C2/20929/review/2005 dated 25.08.2005. Hence, the order of punishment of removal from service has become final.

3.2. Then, he filed a Mercy Petition to the Chief Minister's Cell and subsequently, to the Government. However, his Mercy Petition was also rejected by the Government vide G.O. (2D) No.373 Home (Pol.IX) Department, dated 24.06.2008. Thereafter, he filed a Review Petition to the Government and it was also rejected by the Government vide G.O. (2D) No.148 Home (Pol.IX) Department, dated 22.03.2010. After the rejection of the aforesaid Mercy Petition and Review Petition, he once again preferred another petition to the Government, but, the same was also rejected vide G.O. (2D) No.364 Home (Pol.IX) Department, dated 13.10.2011. Finally, left with no other option, challenging the aforesaid order of removal from service dated 20.05.2005 and subsequent orders passed by the Appellate and Revisional Authority, the appellant knocked the doors of this Court by filing the present writ petition in W.P.No.13520 of 2014, which is the subject matter of this writ appeal.

4. From a perusal of the materials available on record, it is seen that the appellant is a habitual deserter and the Police Department took the matter leniently at least on two occasions and it was only after declaring him as a 'deserter' vide order dated 08.12.2004, the disciplinary proceedings were initiated against the appellant resulting in passing the order of removing him from service. In view of the dismissal of statutory Review Petition and the proceedings issued by the third respondent in RC.No.C2/20929/review/2005 dated 25.08.2005, the order of punishment of removal from service has become final. The filing of subsequent Review Petitions and Mercy Petitions are all non-



statutory nature and such representations will not extend the period of limitation. Even, if the order passed by the third respondent is taken as a last order confirming the order of removal from service, there is a delay of 9 years in filing the subject matter writ petition and the appellant has not explained the reasons for the inordinate delay.

5. While dealing with a case of State Of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. reported in 2014 (5) Scale 335, the Honourable Supreme Court held as follows:

"13. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

6. The learned Single Judge had taken into consideration of the above facts of the case and also relying on the judgement passed by the Honourable Apex Court in the case of State Of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. reported in 2014 (5) Scale 335, has rightly dismissed the writ petition.

7. In view of the aforesaid decision of the Honourable Apex Court, we do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeal is devoid of merits and the same is liable to be dismissed.



8. Accordingly, the Writ Appeal is dismissed and the order passed by the learned Single Judge in W.P.No.13520 of 2014 dated 08.05.2014 is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

mrr
(02.02.2022)

After the pronouncement of the Judgment, Mr.R.Singaravelan, learned Senior Counsel submitted that liberty may be given to the appellant to approach the second respondent, D.G.P. seeking for appropriate relief.

In view of the submissions made by the learned Senior Counsel appearing for the appellant, it is open to the appellant to approach the second respondent seeking for appropriate relief

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home (Police 9) Department,
Secretariat,
Chennai - 9.
2. The Director General of Police,
Kamarajar Road,
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3. The Inspector General of Police,
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4. The Deputy Inspector General of Police,
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Chennai - 10.

5. The Commandant,
Tamil Nadu Special Police Battalion,
Ulundurpet.

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+1cc to the Government Pleader, S.R.No.6469

W.A.No.700 of 2014

(CO)
PM/16/02/2022