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W.P.No.17366 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.17366 of 2018

M.Manibalan,
S/o.Murugesan

...Petitioner

Vs.

1. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore, Cuddalore District.

2. The Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Kailasapuram,
Mylapore, Chennai – 600 005.

... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertains to the impugned order of the removal from service of the petitioner passed by the 1st respondent vide order bearing D.O.No.412/2015 C.No.D1/PR 1/2015 dated 04.05.2015, which is confirmed by the 2nd respondent in mercy petition vide order bearing Rc.No.040265/API(2)/2015 dated 23.04.2018 and quash the same as illegal, consequently direct the respondents to reinstate the petitioner in his service with full back wages, continuity of service and all other attendant benefits.



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For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus, to quash the order of removal from service of the petitioner passed by the 1st respondent vide order bearing D.O.No.412/2015 C.No.D1/PR 1/2015 dated 04.05.2015, which is confirmed by the 2nd respondent in mercy petition vide order bearing Rc.No.040265/API(2)/2015 dated 23.04.2018 and consequently direct the respondents to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits.

2. The petitioner was appointed as Grade-II Police Constable in the Police Department on 01.03.2009. While he was in service, on 17.02.2015 there was a charge memo filed against the petitioner on two counts. In the first count that, he was absented for more than 21 days from 19.11.2014, so he was declared to be deserted from service. The second charge was that, during the period, when the petitioner was



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declared as deserted from service, on 28.12.2014, he was involved in a criminal case in connection with the Crime No.312 of 2014 on the file of the Parangipettai Police Station for the alleged offence under Section 447, 324, 506(ii) of IPC r/w Section 4 of the Tamil Nadu Prevention of Women Harassment Act.

3. Therefore, on these two charges, disciplinary proceedings were conducted and ultimately on these proven charges, the respondents/employer has inflicted the punishment of removal of service against the petitioner by order dated 04.05.2015, as against which, the petitioner filed a mercy petition to the second respondent, which was also rejected on 23.04.2018. Therefore, the petitioner is before this Court challenging those orders in this writ petition.

4. Heard Mr.P.R.Neelakandan, learned counsel appearing for the petitioner, who would submit that, on that date of alleged desertion i.e., on 19.11.2014, the petitioner met with an accident and immediately on that date he was admitted in the hospital, where after taking scan since the petitioner sustained some head injury, he had been given treatment, with the result, he could not immediately apply even for medical leave.



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Therefore, there was absence for some days during that relevant point of time.

5. Insofar as the second charge that he involved in a criminal case on 28.12.2014 is concerned, in that case according to the learned counsel appearing for the petitioner, he had been falsely implicated as from the said case, after trial, the petitioner had been acquitted by judgment dated 05.10.2016 by Judicial Magistrate, Parangipettai. Therefore, the learned counsel would canvass the point that, both the charges even though was stated to be proved as per the Enquiry Officer's report since they had not given proper opportunity to the petitioner and this aspect since have not been properly considered by the Enquiry Officer, the said report cannot be relied upon by the respondents/disciplinary authority and thereby a maximum punishment of removal of service inflicted against the petitioner is bad in law, he contended.

6. That apart, learned counsel appearing for the petitioner would also canvass the point that, assuming without admitting the first charge had been proved that the petitioner had been in unauthorized absence for 21 days, for which, whether the maximum punishment of removal of



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service is proportionate to the said proven charge is a question and in this regard, learned counsel appearing for the petitioner has relied upon some judgments of the law courts and one such judgment is of a Division Bench of this Court. He relied upon the order passed by a Division Bench of this Court in W.A.No.58 of 2011 in the matter of ***R.Ramesh Vs.The Deputy Inspector General of Police and anr.***

7. By relying upon the said judgment referred to above, learned counsel would canvass the point that, as per theory of proportionality of punishment, the punishment can be directed to be reduced and the petitioner can be directed to be reinstated with all attendant service benefits.

8. *Per contra*, Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader appearing for the respondents would contend that, the petitioner being member of the disciplined force is expected to perform his duty with full integrity and honesty. When that being so, he cannot be absented for 21 days and more without any authorization letter or medical leave etc.,. Therefore, as per the extant service rule governing the service of the petitioner, charges were framed against the petitioner.



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9. He would also submit that, during the period, where he was declared to be a deserter, he also involved in a criminal case on 28.12.2014, pursuant to which, a criminal case was pending and that was also conducted before the trial court and therefore, for the two charges framed, opportunity was given to the petitioner and after conducting the enquiry, the Enquiry Officer had come to a conclusion that the charges framed against the petitioner were proved especially the first charge i.e., desertion.

10. Insofar as the desertion is concerned, since it is a proven one, for which, as there is no defence on the part of the petitioner, he is liable to be inflicted with the punishment.

11. The Learned Additional Government Pleader would also contend that, since the said charge framed against the petitioner is a proven charge, the petitioner is liable to be punished with major penalty under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules. Therefore, any one of the major punishment alone can be imposed against the petitioner, wherein, the petitioner had entered into service only five years prior to the incident. Therefore, the reduction of rank



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being one of the major punishment cannot be imposed against him and also the removal of service cannot be modified into compulsory retirement one as in some other cases that kind of modified punishment would be possible. That is also not possible in this case of the petitioner because even the petitioner is not entitled to seek for any compulsory retirement because of short time he worked for the Department. Therefore, the learned Additional Government Pleader would contend that, the only available major punishment, which is to be inflicted against the petitioner is removal of service and therefore, that was inflicted against the petitioner for the proven charge of desertion. Therefore, there is no need to interfering the said order.

12. In this context, learned Additional Government Pleader would also rely upon a Division Bench judgment of this Court dated 02.02.2022 in W.A.No.700 of 2014 in the matter of *A.Arivazhagan Vs. State of Tamil Nadu and Ors.*

13. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.



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14. Even though it was a stand taken by the learned counsel appearing for the petitioner that, due to medical reasons as he claimed, that he met with an accident on 09.11.2014, he could not attend the duty for some period as a reason for unauthorized absence, this Court after having gone through the report submitted by the Enquiry Officer, is of the view that those aspects need not be gone into because of the procedure followed by the respondent in conducting the enquiry.

15. Moreover, as rightly pointed out by the learned counsel appearing for the respondents, the petitioner is part of the disciplined force, therefore utmost integrity and honesty is expected from any member of such force including the petitioner.

16. When that being so, assuming that he met with an accident and because of which, he could not immediately attend the duty for 21 days and more, the petitioner himself should not have absented from the duty without any proper letter or requisition.

17. In this context, though a plea was raised by the petitioner's side that some request had been made to the respondents, that has been



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disputed by the respondents Department during the enquiry and the same also having been considered by the Enquiry Officer, he had given his reasons that the claim made by the petitioner cannot be accepted.

18. Be that as it may. Now the question is, whether, even for the said proven charge of unauthorized absence for 21 days, the petitioner can be inflicted with the maximum punishment of removal of service or not.

19. In this context even though the charges framed, were, concluded as 3(b) charge for the major penalty under the relevant rule, for which, only three types of punishments viz., reduction of rank, removal of service and compulsory retirement alone are available under the Rule and any one of the punishment if at all to be given, only the removal of service punishment can be given because of the reasons cited supra as the petitioner service is very short period, the other two punishments cannot be imposed against the petitioner.

20. Even in that case, this Court feels that, though the charge for unauthorized absence of 21 days is proven, the major penalty of removal



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of service is disproportionate to the proven charge.

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21. In this context I can take the Division Bench judgment referred to above in **R.Ramesh case** (cited supra), where the similar situation was confronted by the Division Bench. After having considered those aspects, the Division Bench has passed the following Order:

“3.After hearing the learned Senior Counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single judge and remit back the matter to the disciplinary authority viz. the second respondent herein to re-consider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not made any claim with regard to the wages for the period he has not performed his duty, but he continuity in service will not be affected. There shall be no order as to costs. Consequently, M.P.No.1 of 2020 is closed.”

22. This judgment in fact has been followed by a learned Single



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Judge of this Court in W.P.No.37313 of 2004 in the matter of

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K.Selvamani Vs. The State of Tamil Nadu and Ors., where also a learned single Judge of this Court after having taken note of the view taken by the Division Bench in **R.Ramesh** case (cited supra) has come to a conclusion that, major penalty of removal of service for the proven of charge of desertion or unauthorized absence would be disproportionate and on that ground, the punishment after having been set aside and it was remitted the matter back to the authority i.e., employer to reconsideration for inflicting any alternative/lesser punishment.

23. Though yet another Division Bench judgment was relied by the learned Additional Government Pleader appearing for the respondents in **A.Arivazhagan's** case (cited supra), after having gone through the facts of that case, it is to be noted that the petitioner in that case i.e., employee had been a habitual deserter as two time prior to that, the employee deserted the service and because of which, other punishments were not imposed against him. Since this was the third time, he become deserter, therefore the maximum punishment was given, as against which, appeal was filed unsuccessfully and review as well as the applications or appeal to the Government also were filed unsuccessfully. Thereafter, after 9



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years delay, he approached this Court, therefore on that ground following the judgment of the Hon'ble Supreme Court, a learned Judge, who dealt with the case in *A.Arivazhagan's* case (cited supra) dismissed the writ petition and that view was confirmed by the Division Bench on 02.02.2022. Therefore, the facts of the case cannot be applied to the facts of the present case, which is considerably different than the said *A.Arivazhagan's* case (cited supra). Therefore, the Division Bench judgment dated 02.02.2022 relied on by the learned Additional Government Pleader would be of no help for him to advance his case to justify the punishment of removal of service imposed against the petitioner.

24. Whereas, the Division Bench judgment in *R.Ramesh* case (cited supra) as referred to above would be apt for the case in view of the similar facts available in both the cases, therefore, I am of the view that the view expressed by the Division Bench in *R.Ramesh* case, as has been quoted herein above can very well be applied in the present case also.

25. In that view of the matter, this Court is inclined to dispose of



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this writ petition with the following order:

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- ◆ That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration.
- ◆ During the reconsideration process, the respondents shall consider the fact that the petitioner for the first time violated the code of conduct being an unauthorized absentee for 21 days and more and is liable to be punished of-course, but not with major penalty of removal of service but only with any other alternative punishment and in this regard, it is open to the respondents to inflict any other alternative punishment.
- ◆ Accordingly after inflicting the said punishment, the petitioner shall be reinstated. However on such reinstatement, the petitioner shall not claim any backwages, seniority or any other benefits except the continuity of the said service only for the purpose of continuity of service.
- ◆ The needful as aforesaid shall be undertaken by the respondents within a period of two months from the date of receipt of a copy of this order.

R. SURESH KUMAR, J.



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With these observations and directions this writ petition is ordered

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accordingly. No costs.

14.06.2022

Index : Yes/No
Internet : Yes/No
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To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Cuddalore, Cuddalore District.
2. The Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Kailasapuram,
Mylapore, Chennai – 600 005.

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