



WEB COPY



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.29546 of 2014

and

M.P.No.1 of 2014

C.Malarselvan

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Salem Range, Salem.

2.The Superintendent of Police,
Dharmapuri District.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the first respondent in proceedings Rc.No.B2/101/2040/2013 Appeal No.27/2013 dated 23.05.2013 confirming the order of the second respondent in proceedings C.No.H1/PR 25/2012 dated 27.01.2013 and quash the same as illegal, incompetent and without jurisdiction.



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

For Petitioner : Ms.R.Poornima
For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

The order of punishment dated 27.01.2013 imposing punishment of postponement of increment for two years without cumulative effect and the appellate order dated 23.05.2013 confirming the punishment order are under challenge in the present writ petition.

2. The petitioner is working as Grade-I Police Constable. On 12.05.2012, when the petitioner visited Harur to collect his uniform, he fell sick on account of food poisoning and had severe stomach pain. Immediately, he approached the Sub-Inspector, Harur and requested for issuance of passport to report before the Medical Officer, Government Hospital, Harur, for taking treatment. The petitioner was not in a position to travel and therefore, he approached the Sub-Inspector of Police, Harur. The Sub-Inspector of Police, Harur, has declined to give passport and instructed the petitioner to approach the Armed Reserve, Dharmapuri. Since the petitioner was suffering from severe pain, he was unable to travel to Dharmapuri and hence, he approached the Medical Officer, Government Hospital, Harur, on 13.05.2012 for treatment. On account of



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

dysentery, he became weak and advised to take rest for 15 days by the Medical Officer. Immediately, the petitioner informed the Sub-Inspector of Police, A.R.II, Platoon, about his ill-health. In addition, the petitioner has also sent an application seeking medical leave enclosing the certificate issued by the Medical Officer, Government Hospital, Harur, to the Inspector of Police, Armed Reserve, Vennampatty, Dharmapuri. The Inspector of Police refused to receive the post on 15.05.2012 and returned the post to the petitioner on the same day and the petitioner received the returned cover on 28.05.2012 as undelivered.

3. Under those circumstances, a charge memorandum was issued to the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, for unauthorised absence. The petitioner was declared as deserter and departmental disciplinary proceedings were initiated. The petitioner participated in the enquiry and defended his case. The petitioner produced documents including the returned postal cover and also examined two witnesses. The Enquiry Officer, based on the documents and evidences, arrived at a conclusion that the charge against the petitioner was held proved. Based on the report of the Enquiry Officer, the punishment of



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

postponement of increment for two years without cumulative effect was imposed and the appeal filed by the petitioner in this regard was rejected.

4. Learned counsel appearing on behalf of the petitioner mainly contended that the petitioner, due to medical reasons and after informing about his sickness to the Sub-Inspector of Police, Harur, left the work place and further, sent an application seeking leave enclosing the certificate issued by the Medical Officer. However, the postal cover was returned with an endorsement "refused to receive". Therefore, the petitioner had not committed any default and he had duly intimated to the officials concerned and therefore, the order of punishment is to be set aside.

5. Learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that the petitioner remained unauthorisedly absent for more than 21 days. Therefore, he was declared as deserter and departmental disciplinary proceedings were initiated and based on the enquiry report, punishment of postponement of increment for two years without cumulative effect was imposed. Thus, the writ petition is liable to be rejected.



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

6. A perusal of the original file submitted by the learned Additional Government Pleader reveals that the enquiry report was submitted on 15.11.2012. While considering the documents and evidences, the Enquiry Officer made a clear finding that the witness, viz., Thiru.Manikandan, Sub-Inspector of Police has deposed that the leave letter sent by the petitioner along with the medical certificate was received by him through speed post addressed to the Inspector of Police, Armed Reserve, Vennampatty, Dharmapuri - 636 705, however, the Inspector of Police refused to receive the same. The document, viz., the returned cover, was admitted by the said witness Thiru.Manikandan. Therefore, it is clear that the Enquiry officer has not properly appreciated the evidence of Thiru.Manikandan, who has clearly deposed that the Inspector of Police refused to receive the postal cover sent by the petitioner seeking medical leave. The said finding is to be considered in favour of the petitioner as he had properly sent the leave letter to the Inspector of Police. The Inspector of Police ought to have received the post and initiated appropriate action. Contrarily, the Inspector of Police, refused to receive the letter sent by the petitioner and returned the same. Such conduct of the Inspector of Police cannot be appreciated and the Enquiry Officer ought to have considered the genuineness involved in the conduct of the petitioner in sending



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

the leave letter properly to the Inspector of Police. That apart, the petitioner has informed his illness to the Sub-Inspector of Police, Harur, while leaving the work place, which was also not considered by the Inspector of Police, who was on duty.

7. Thus, this Court is of the opinion that the Enquiry Officer has not properly appreciated the deposition of the Sub-Inspector of Police nor considered the document, viz., application sent by the petitioner seeking medical leave addressed to the Inspector of Police, which was refused by the Inspector of Police. Evidences and documents are vital to establish the charges. Therefore, the findings, in this regard, are perverse and not in consonance with the documents produced by the delinquent before the Enquiry Officer. The original file placed before this Court reveals that though these documents were scrutinized by the Enquiry Officer, the same were not taken into consideration while arriving at a conclusion. Under these circumstances, the acceptance of the enquiry report by the disciplinary authority is also perverse.

In the result, this Writ Petition is allowed and the order of the first respondent in proceedings Rc.No.B2/101/2040/2013 Appeal No.27/2013 dated



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

23.05.2013 and the order of the second respondent in proceedings C.No.H1/PR
25/2012 dated 27.01.2013, are quashed. No costs. Consequently, connected
miscellaneous petition is closed.

11.07.2022

Index : Yes
Speaking order
gm

To

- 1.The Deputy Inspector General of Police,
Salem Range, Salem.
- 2.The Superintendent of Police,
Dharmapuri District.



WEB COPY



Order dated : 11.07.2022
Writ Petition No.29546 of 2014

S.M.SUBRAMANIAM., J

gm

Writ Petition No.29546 of 2014

11.07.2022