



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.23251 of 2019

K.Kannan

... Petitioner

Vs

1. The Additional Chief Secretary to Government,
Home (Police V) Department,
Secretariat,
Chennai - 9
2. The Director General of Police,
Santhome High Road,
Mylapore,
Chennai - 4.
3. The Commissioner of Police,
Salem City.
4. The Deputy Commissioner of Police,
Crime and Traffic,
i/c Law and Order,
Salem City.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the fourth respondent vide P.R.No.36/H1/2014 dated 25.09.2014 and consequently the orders of the third, second and first respondents vide Tha.Pa.No.36/H.1/2014 dated 12.11.2014, R.C.No.346143/AP.1(2)/2015 dated 22.07.2016 and G.O.(D) No.1237 Home (Police5) Department dated 29.10.2018 respectively and to quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.S.Vijayakumar

For Respondents: Mr.G.Nanmaran,
Special Government Pleader



O R D E R

WEB COPY This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the fourth respondent vide P.R.No.36/H1/2014 dated 25.09.2014 and consequently the orders of the third, second and first respondents vide Tha.Pa.No.36/H.1/2014 dated 12.11.2014, R.C.No.346143/AP.1(2)/ 2015 dated 22.07.2016 and G.O.(D) No.1237 Home (Police5) Department dated 29.10.2018 respectively and to quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

2. The petitioner joined as Junior Assistant in March 2013, selected through Tamil Nadu Public Service Commission and allotted to Police Department, Salem City. On 22.05.2014, according to the petitioner, he applied for casual leave to attend a function of his family after obtaining prior sanction from the superiors. On the same day, he received a charge memorandum from the 4th respondent under Rule 17(a) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules. The charge against the petitioner was that he had taken leave without proper permission on 22.05.2014 and left the work spot on his own without informing any of his superiors. He was also alleged to have left the office on his own volition and thereafter, he had casually informed about his absence in the subsequent days without taking permission or sanction of leave from the superior authorities. The petitioner was also placed under suspension.

3. According to the petitioner, when he came to the office on 26.05.2014, he was refused permission to join duty and sign in the attendance register and he was informed about the disciplinary action initiated against him. When the petitioner attempted to rejoin duty, he was issued with another charge memo under 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules on 02.06.2014 alleging unauthorised absence on 23.05.2014. According to the petitioner, on 23.05.2014, he did sign the attendance register and left the work spot because of the declaration of 10th result of his daughter. After ascertaining the result of the daughter, he immediately returned to the office after 45 minutes but was served with the charge memorandum. According to him, for the said allegation, by no stretch of legal standards major penalty proceedings could said to have attracted the terms in Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules.



4. In response to the charge memorandum, the petitioner submitted his representation, setting out the facts forcing him to leave the work spot for a brief period on the relevant days. However, enquiry was conducted into the charge and on its conclusion, a report was submitted on 10.09.2014 holding the charge proved. Finally, notwithstanding the explanation of the petitioner against his absence on that particular days, the 4th respondent passed an order on 25.09.2014 removing the petitioner from service. Being aggrieved by the order of removal from service, the petitioner filed an appeal to the 3rd respondent on 22.10.2014.

5. The Appellate Authority, the 3rd respondent herein confirmed the findings of the Disciplinary Authority in the appeal vide proceedings dated 12.11.2014. The petitioner has also filed a mercy petition to the 2nd respondent on 05.12.2014 and the same was also rejected on 22.07.2016. Subsequently, the review petition has been filed before the 1st respondent on 16.11.2016 and the same also came to be rejected by the Department on 29.10.2018. Challenging the orders of rejection and the punishment order of removal from service, the petitioner is before this Court.

6. Mr.S.Vijayakumar, the learned counsel for the petitioner would submit that the issuance of 17(b) charges in respect of a day's absence by the petitioner amounted to malafide exercise of power and cannot be countenanced both in law and on facts. On the face of it, the punishment imposed, assuming the charge was proved, was shockingly disproportionate which cannot be countenanced in law at all. The learned counsel in support of his legal contention as to the proportionality of the punishment has cited the following decisions.

1. 2010(2) SCC 497 (G.Vallikumari Vs. Andhra Education Society and others)
2. 2010 7 MLJ 48 (P.Anthony Rajamani vs. Commissioner of Police, Coimbatore City, Coimbatore-18)
3. Law Finder Doc Id # 820070 Allahabad bank vs. Krishna Narayana Tewari in C.A.No.7600/2014 dated 02.01.2017
4. Order in W.P.No.32814/2018 dated 17.12.2019 passed by the learned single Judge of this Court.
5. Judgment in C.A.No.11395/2018 (Hanuman Sahai vs. State of Rajasthan) dated 27.11.2018 passed by the Hon'ble Supreme Court of India.
6. Judgment in C.A.No.5633/2019 (Rathin ghosh vs. west bengal state Electricity Distribution Com.Ltd.) dated 29.07.2019 passed by the Hon'ble Supreme Court of India.



7. Order in W.P.(MD).No.17662/2017 (R.Raja vs. Commissioner, HR & CE and another) dated 26.11.2019 passed the learned Single Judge of this Court (Madurai Bench).

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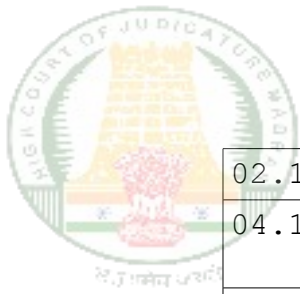
7. From the above decisions, it could be seen that the Courts have applied the legal principle of proportionality doctrine in interfering with the quantum of punishment imposed on the delinquent Government servant, whenever the Court found such punishment as excessive, harsh, not commensurate with the gravity of the misconduct alleged to have been proved.

8. The learned counsel would therefore submit that this is a fit case where this Court's intervention could be justified in relation to the penalty imposed, as the removal from service in the facts and circumstances of the case, is excessive and harsh. Unfortunately, all the authorities rejected the representations of the petitioner without due appreciation atleast on the quantum of the penalty imposed on the petitioner in consideration of the charges framed against the petitioner. According to the learned counsel, the issuance of charge memo under Rule 17(b) was tainted with malafides and the same cannot be countenanced at all.

9. On behalf of the respondents, Mr.G.Nanmaran, the learned Special Government Pleader appeared and a detailed counter affidavit has been filed by the 3rd respondent.

10. In the counter affidavit, it has been stated in paragraph No.8 that the petitioner had been a chronic absentee and the details of his absence from duty abandoning the office by the petitioner were stated in the tabular column furnished in the counter affidavit, which is extracted hereunder.

23.05.2013 & 24.05.2013	: 2 days Casual Leave
17.06.2013 & 18.06.2013	: 2 days Casual Leave
05.07.2013	: Permission for one hour but not returned to office
08.08.2013	: 1 day Casual Leave
07.10.2013	: 1 day Casual Leave
09.10.2013 & 10.10.2013	: Other duty
11.10.2013	: Permission
19.10.2013 to 23.10.2013	: 3 days Casual leave and 2 days Holiday permission



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02.12.2013 & 03.12.2013	: Other duty
04.12.2013 to 10.12.2013	: 7 days - Absent for duties
30.12.2013	: Other duty
02.01.2014 to 06.01.2014	: 5 days Absent for duties
03.03.2014 to 09.03.2014	: 7 days - Absent for duties
13.03.2014	: 1 day - Casual leave
21.03.2014	: Other duty
25.03.2014 & 26.03.2014	: Other duty
02.04.2014	Other duty
03.04.2014	: Not turned up to office. Considered as other duty
30.04.2014	: Other duty
06.05.2014 to 12.05.2014	: 7 days absent for duty

11. According to the counter affidavit, frequent absence of the petitioner affecting the administrative work, forced the authorities to take a stern view against the petitioner. According to the counter affidavit, the petitioner was already given a chance by issuing a charge memo under 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 to correct himself when he was a probationer. But despite the same, on 23.05.2014, he came to the office, signed the staff attendance register and left the office without taking permission and never turned up for duty till 27.05.2014. When he was contacted over the phone, he had casually replied that he was on casual leave. In the said circumstances, the authorities were left without any option except to initiate disciplinary action against the petitioner.

12. According to the counter statement, the petitioner deserved to be imposed with a penalty of removal from service due to his lethargic conduct and attitude to his work, lacking devotion to duty. Unless such drastic action is taken, the petitioner would keep repeating his acts of misconduct affecting the administration, resulting in dislocation of the normal day-to-day routine work.



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13. This Court heard the submission of the learned counsel for the petitioner as well as the learned Special Government Pleader for the respondents. Perused the materials and the pleadings placed on record.

14. This Court finds that the petitioner conduct was not to the satisfaction of the superior authorities as he had been on and off taking casual leave showing lack of devotion to duty. Frequent absence of the petitioner must have caused dislocation in the administration resulting in grave provocation for the superior authorities to take severe action against the petitioner. But while reacting to the act of misconduct, the superior authorities cannot lose sight of the fact that their response to the so called lapse committed on the part of the petitioner, cannot be met with the disproportionate reaction, as in the present case.

15. No doubt, the petitioner was required to be proceeded against departmentally for his casual approach to his day-to-day duties, failing in his duty as a responsible member of the Force. But at the same time, removing him from service can never be a punishment which can said to be commensurate with the gravity of the misconduct committed by the petitioner. There are so many other punishments which could have been inflicted on the petitioner without terminating the service of the petitioner.

16. From the citations as relied on by the learned counsel, it could be seen that the punishment of removal from service in the circumstances of the case, is shockingly disproportionate, which cannot be countenanced, both on facts and in law.

17. The reasons set forth in the counter affidavit and the arguments advanced on behalf of the respondents in inflicting extreme punishment of removal from service is legally unsustainable. The punishment of removal from service cannot be resorted to by the respondents for a simple absence of the petitioner for a period of few days. Even assuming that the absence was not properly explained by the petitioner, the reaction of the respondents as could be inferred from the tenor of the counter affidavit was more out of anger against the conduct of the petitioner and not on the basis of dispassionate consideration of the lapses committed by the petitioner.

18. When an employee commits an act of misconduct, it is incumbent upon the superior officer to deal with the lapse with composure, unruffled by provocation, particularly when extreme



punishment of removal from service was being resorted to. The punishment imposed on the employee in such circumstances should not only caution him to be careful in his duties in future, but at the same time, it should equally reflect that the authority acted with equanimity. The doctrine of proportionality in awarding punishment is a well recognised legal principle and the Courts have, in deserving cases, invoked the doctrine, whenever it found there was transgression. In this case, in the opinion of this Court, infliction of removal from service is an abuse of the power vested in the authorities which cannot be countenanced in law at all.

19. It is unfortunate that the superior authorities, presumably harboured needless malignity against the petitioner in affirming the punishment imposed on the petitioner, mechanically. On the whole, this Court is of the view that uniformly, all the authorities have shown lack of sensitivity and appreciation in dealing with the lapses of inferior officer and this Court has no hesitation to hold that the punishment of removal from service is shockingly disproportionate to the gravity of the misconduct committed by the petitioner.

20. While holding that the removal from service cannot be countenanced in law, this Court is of the view that the same has to be replaced and modified with a minor penalty. The petitioner herein having been kept out of employment and lost his livelihood for several years now, loss of employment for over seven years itself is a very serious and harsh consequence befallen the petitioner.

21. The petitioner being removed from service on 25.09.2014 and suffered non-employment for more than 7 years, denying him salary for the long period of non-employment is a suitable punishment to be imposed on him for his repeated acts of misconduct and exhibiting lack of devotion to duty.

22. However, it is clarified that the petitioner is entitled to all other benefits like notional fixation of pay, continuity of service and other consequential service benefits as if he had been continued in service without any break.

23. For the above said reasons, the impugned order in P.R.No.36/H1/2014 dated 25.09.2014 passed by the 4th respondent and the consequential orders of 3rd, 2nd and 1st respondents vide Tha.Pa.No.36/H.1/2014 dated 12.11.2014, R.C.No.346143/AP.1(2)/ 2015 dated 22.07.2016 and G.O.(D) No.1237 Home (Police5) Department dated 29.10.2018 respectively are



hereby set aside and the respondents are directed to reinstate the petitioner forthwith. The respondents are directed to pass appropriate orders by regularising the period of non-employment from the date of dismissal till the date of reinstatement and the petitioner is not entitled to the salary and allowances payable for the entire period of non-employment which would be treated as a punishment.

24. The authorities concerned are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

25. Accordingly, the Writ Petition is allowed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

vsi

To

1. The Additional Chief Secretary to Government,
Home (Police V) Department,
Secretariat, Chennai - 9
2. The Director General of Police,
Santhome High Road,
Mylapore, Chennai - 4.
3. The Commissioner of Police,
Salem City.
4. The Deputy Commissioner of Police,
Crime and Traffic,
i/c Law and Order,
Salem City.

+2cc to M/s.S.Vijaya Kumar, Advocate Sr.64974, 7157

W.P.No.23251 of 2019

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