



WEB COPY



W.P.No.3077 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3077 of 2017

R.Panchavarnam

...Petitioner

Vs.

1.The Director General of Police,
Law & Order,
Chennai – 600 004.

2.The Commandant,
Tamilnadu Special Police-IV Bn.,
Kovaipudur,
Coimbatore.

..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 impugned order passed by the first respondent herein in his proceedings R.C.No.37739/AP.3(1)/ 2016 dated 23.07.2016 and the order passed by the second respondent herein in his proceedings C.NO.E-3/P R 15/2013, BO.496/ 2013 dated 18.06.2013 and quash the same and consequently direct the respondents to reinstate the petitioner into service together with all consequential service and monetary benefits.



WEB COPY



W.P.No.3077 of 2017

For Petitioner : Mr.G.Bala
For M/s.G.Bala and Daisy
For R1 and R2 : Mr.S.Rajesh
Government Advocate

ORDER

The punishment of dismissal from service as confirmed by the Appellate Authority are under challenge in the present writ petition.

2. The petitioner states that she joined as Grade II Police Constable in the Police Department in the year 2009. The petitioner was allotted to Tamilnadu Special Police IV Battalion, Kovipuddur, Coimbatore in the year 2010. She got married to one Mr.R.G.Sivakumar, who is a differently abled person in the year 2010. The petitioner became pregnant and she availed Medical Leave from 09.09.2011 to 05.12.2011. Since the leave had exceeded 60 days, the petitioner was directed to appear before the Medical Board on 30.12.2011. The petitioner had appeared before the Medical Board on 30.12.2011, but she was informed to appear before the Board on 27.01.2012. Due to her advanced stage of pregnancy, she was unable to appear before the Medical Board on 27.01.2012. The petitioner gave birth to a male child on 29.02.2012. The delivery was not only by caesarean, but the



W.P.No.3077 of 2017

baby also was declared abnormal / deformity. Thus, the mother and the baby were referred to intensive care and treatment. The child was also admitted to Child Jesus Hospital, Cantonment, Trichy for treatment. The treatment continued till April 2014.

3. The petitioner states that she was declared as deserter as she was unable to appear before the Medical Board on 27.01.2012 and failed to submit proper leave applications before the competent authorities. Therefore, for the allegation of unauthorized absence, a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was issued in P.R.No.15/2013 dated 05.04.2013.

4. An Enquiry officer was appointed. The petitioner prepared an explanation and sent it to the enquiry officer through a woman constable and explained her health condition and the health condition of her child. However, the authorities without considering any of the family circumstances and the explanation submitted in that regard, held that the charges are proved. The 2nd respondent / Disciplinary authority accepted the findings of the enquiry officer and imposed the penalty of dismissal from



W.P.No.3077 of 2017

service. The petitioner preferred an appeal before the first respondent on 27.02.2016, explaining the health condition and family condition along with the Medical records and the said appeal was rejected by the Appellate Authority in order dated 23.07.2016. Thus, the petitioner is constrained to move the present writ petition.

5. The learned counsel for the petitioner contended that the petitioner remained unauthorizedly absent based on her medical conditions. Therefore, the reason for unauthorized absent was genuine and the explanation submitted by the petitioner in this regard was not considered by the Disciplinary Authority and the Appellate Authority. No doubt, the period of unauthorized absent was enormous. However, the petitioner submitted all the relevant records, so as to establish that she remained unauthorizedly absent due to medical reasons.

6. The learned counsel for the petitioner states that the case of the petitioner is to be treated leniently as the reasons stated for unauthorized absent was genuine and due to medical conditions.



W.P.No.3077 of 2017

7. The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the petitioner continued her Medical Leave without submitting any proper application to the authority concerned. Since the leave period exceeded 60 days, the petitioner was asked to appear before the Medical Board, but she failed to appear before the Medical Board also on 27.01.2012. Thereafter, the petitioner remained unauthorizedly absent. The charge memo was issued under Rule 3(b) of the Discipline and Appeal Rules and the enquiry officer was appointed, who in turn, conducted an enquiry by affording opportunity to the writ petitioner. Four witnesses were enquired and 14 exhibits were marked on behalf of the prosecution side. The minutes of the enquiry officer was communicated to the writ petitioner, enabling her to submit her objections. She had submitted her explanations on 27.08.2012, stating that she has not able to look after her child as her husband's health condition was also not good. Further, her husband is a differently abled person. Since the petitioner remained unauthorizedly absent, initially the departmental disciplinary proceedings were initiated against the writ petitioner in P.R.No.14/2012 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. In respect of the said charge memo,



W.P.No.3077 of 2017

the punishment of postponement of next increment for three years with cumulative effect was imposed. The petitioner was taken back for duty with immediate effect by the second respondent viz., the Commandant, TSP IV Bn., Kovaipudur on 31.08.2012. The said punishment order was served to the petitioner and she had acknowledged the same on 02.09.2012. Despite the fact that the petitioner was reinstated in service and asked to report for duty, the petitioner again remained unauthorizedly absent for about 8 months and despite the reminders on several occasions sent by the respondents, the petitioner had not reported for duty. Thus, she did not obey the orders and she had not submitted any representation nor reported for duty. Thus, the authorities have again framed the charge memo in P.R.No.15/2013 dated 05.04.2013.

8. In respect of the said charge memo, the enquiry officer was appointed and opportunity was afforded to the writ petitioner and thereafter, accepting the findings of the enquiry officer, the punishment of dismissal from service was imposed on 09.06.2013.



W.P.No.3077 of 2017

9. The petitioner has not submitted any appeal against the punishment imposed on her within the stipulated time of 30 days and the punishment was reviewed in suo-motu and accepted by the Appellate Authority viz., the Deputy Inspector General of Police, Armed Police, Trichy vide memo dated 14.08.2013. After a lapse of three years, the petitioner has submitted a petition to the first respondent viz., the Director General of Police, Tamil Nadu, Chennai on 27.02.2016, requesting cancellation of punishment. The petition was treated as Mercy petition and orders are passed under Rule 15(A)(1)(ii) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 as follows:

“The petitioner was dealt with on a charge for having deserted the police force for more than eight months. The explanation of the petitioner that she could not attend the duty due to adverse family circumstances and ill-health, is not acceptable and appears to be an afterthought. The explanation of the petitioner has no substance. The charge is very serious in nature, and she was already been dealt with on a charge twice more earlier. The delinquency committed by the petitioner is very serious in nature. The mercy petition has no merits and is therefore, rejected vide proceedings in R.C.No.37739/AP.3(1)/2016 dated 23.07.2016.”



W.P.No.3077 of 2017

10. The petitioner was previously deserted from the force on 27.01.2012 and she was directed to appear before the 2nd respondent within 60 days from the date of desertion along with her explanation. But, she failed to report for duty as directed. Hence the departmental action was initiated against her in P.R.14/2012 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, which intended with an order of punishment of postponement of next increment for three years with cumulative effect. The petitioner was taken back for duty with immediate effect by the second respondent viz., the Commandant, TSP IV Bn., Kovaipudur on 31.08.2012 and the order was served to the petitioner. After a lapse of eight months and as well as several reminders were issued to the petitioner and in spite of opportunities to join duty, she did not obey the orders and not reported for duty. Hence, the punishment of dismissal from service was imposed in P.R.No.15/2013.

11. Regarding the allegations of unauthorized absence, the mitigating circumstances and the relevant facts are to be considered by the Courts. If a member of the force remained unauthorizedly absent and declared as deserter, an opportunity is provided by the authorities to report for duty. 60



days time is granted. Thus, the deserter gets an opportunity to rejoin duty and thereafter, they remained absent and a charge memo was issued, then the member of the force gets an opportunity to defend the case. If at all the reasons / explanations submitted by the charged member of the force is genuine and acceptable, then a lenient view may be taken by the Disciplinary Authority. The intention of the employee to remain unauthorizedly absent is also a criteria to be considered, while forming an opinion for the purpose of imposing penalty. However, if the member of the force is not inclined to rejoin duty, then there is no reason whatsoever to impose minor penalties or otherwise. Integrity and devotion to duty in Uniformed Services are of paramount importance. Only in the event of establishing the genuinity for remaining absent, the authorities would not be in a position to take a lenient view. Therefore, the factors established plays a pivotal role in forming an opinion regarding the nature of penalty imposed.

12. In the present case, no doubt, the petitioner explained certain medical grounds and the family circumstances. It is established that she remained unauthorizedly absent even beyond the time limit granted by the competent authorities. She had submitted the Medical records to the



W.P.No.3077 of 2017

authorities concerned. Thus, at the first instance, the authorities took a lenient view and imposed the punishment of stoppage of increment for three years with cumulative effect and directed the petitioner to report for duty immediately. Thus, an opportunity was granted to the petitioner to report for duty. Even thereafter, the petitioner had not reported for duty and pertinently, she had submitted a letter to the Commandant on 14.06.2013 that she is unable to report for duty on account of her health ground. When the member of the force voluntarily submitting a letter to the competent authority that she is unable to report for duty on account of health grounds, then there is no reason to order for reinstatement, which would not serve any purpose in respect of the public services.

13. Therefore, in the present case, the petitioner in clear terms, expressed her intention and inability, not to report for duty. The opportunity given by the respondents to report for duty was also not availed off by the petitioner. Even thereafter, she remained unauthorizedly absent and thus, the authorities have no other option, but to impose the penalty of dismissal from service.



W.P.No.3077 of 2017

14. The respondents have stated that the penalty of dismissal from service was imposed on 18.06.2013, the petitioner submitted her appeal petition after a lapse of three years in the year 2016. Thus, the petitioner had not even pursued the remedy against the punishment of dismissal during the relevant point of time. Thereafter, the petitioner had not intended to report for duty and remained unauthorizedly absent, despite the opportunity provided by the authorities competent. Even after imposing the punishment, she had not taken any immediate steps to file an appeal or pursue the remedy, which would establish that the petitioner was not intended to report for duty. Further, the letter given by the petitioner on 14.06.2013 also reveals that she has expressed her inability to join for duty on account of health ground. That being the factum, this Court do not find any infirmity in respect of the penalty of dismissal from service imposed on the petitioner.

15. Importantly, the petitioner had hardly served about 2 years in the Department. She had completed the training period and posted in Tamil Nadu Special Police IV Battalion in the year 2010 and she had availed Leave from 09.09.2011 and thereafter, she remained unauthorizedly absent. Thus, the petitioner had hardly served about 2 years. This being the factum,



W.P.No.3077 of 2017

there is no reason whatsoever to interfere with the punishment of dismissal from service imposed on the petitioner.

16. For the reasons stated in the aforementioned paragraph, the petitioner has not established any acceptable ground for the purpose of interfering with the impugned order.

17. Accordingly, the writ petition is devoid of merits and stands dismissed. No costs.

28.10.2022

Index : Yes
Speaking order: Yes
kak

To

1. The Director General of Police,
Law & Order,
Chennai – 600 004.

2. The Commandant,
Tamilnadu Special Police-IV Bn.,
Kovaipudur,
Coimbatore.



WEB COPY



W.P.No.3077 of 2017

S.M.SUBRAMANIAM, J.

kak

W.P.No.3077 of 2017

28.10.2022