



WEB COPY



W.A.No.19 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice D.BHARATHA CHAKRAVARTHY

W.A.No.19 of 2020

1.The Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Mylapore,
Chennai – 600 004.

3.The Superintendent of Police,
Dindigul,
Dindigul District.

.. Appellants

VS

A.Krishnamoorthy

.. Respondent

Appeal filed under Clause 15 of Letters Patent against the order
dated 03.01.2019 made in W.P.No.33309 of 2018.

For Appellants : Mr.M.Rajendran
Additional Government Pleader

For Respondent : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates



WEB COPY



W.A.No.19 of 2020

JUDGMENT

(Delivered by D.BHARATHA CHAKRAVARTHY.,J)

1. This writ appeal is directed against the order dated 03.01.2019 in W.P.No.33309 of 2018 in and by which the writ petition filed by the respondent, challenging the order of punishment of removal from service, dated 11.11.2016, was allowed and the matter was remitted back to the appellant authorities to consider the case of the writ petitioner in the light of three deaths in the family during the year 2009 - 2010 and pass appropriate orders having regard to empathy, within a period of four weeks from the date of receipt of a copy of the order.

2. Heard Mr.M.Rajendran, learned Additional Government Pleader for the appellants and Mr.Ajmal Khan, learned Senior Counsel for the respondent.

3. Learned Additional Government Pleader by taking this Court through the orders passed by the appellant authorities would submit that, in this case, the writ petitioner was unauthorisedly absent from 04.04.2010. After the expiry of twenty-one days, a notice

Page 2 of 7



W.A.No.19 of 2020

directing him to report within a period of sixty days was given on 28.04.2010. Since the writ petitioner did not report within a period of sixty days, he was treated as deserter. Thereafter, when the writ petitioner reported to duty, a charge memo dated 07.12.2012 was issued to him and since his action amounted to mis-conduct, the inquiry proceedings were duly conducted and ultimately punishment of removal from service was imposed.

4. The learned Single Judge has interfered with the order of punishment only on the ground that three deaths had happened in the family of the writ petitioner. All the three deaths happened in the year 2009, very much prior to his unauthorized absence. The writ petitioner cannot take advantage of the same. He would further submit that, in any event the same was not the reason stated in his representation dated 05.09.2012. Therefore, the learned Single Judge ought not to have interfered with the order of punishment when it has been appropriately imposed.

5. Per contra, learned Senior Counsel for the respondent would submit that, in this case, the respondent / writ petitioner had put in more than sixteen years of service when the alleged



W.A.No.19 of 2020

unauthorized absence took place. The respondent had reported for duty on 05.09.2012 in which he had stated that he was physically unwell and he was mentally stressed out. It is this mental stress which was further explained by him as there was three deaths in the family. Therefore, considering the extraordinary circumstances and considering the fact that the said unauthorised absence has not been found to be wilful by the disciplinary authority, the learned Single Judge was correct in interfering with the order of punishment.

6. Learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in the case of *Krushnakant B.Parmar vs Union of India and another reported in (2012) 3 SCC 178*, more fully relying upon paragraphs 18 and 19 of the said judgment, in support of the proposition that unless disciplinary authority finds unauthorised absence as wilful, imposition of punishment, that too, removal from service is unduly harsh.

7. We have considered the rival submissions made on either side and perused the material records of the case.



W.A.No.19 of 2020

8. We find that, the writ petitioner was in service for more than sixteen years, that is, from the year 1994 and the unauthorised absence was during April, 2010. There were three deaths in the family in the month of December 2009. Under these circumstances, in the month of April, 2010, he had started absenting from duty unauthorisedly. This apart, when he reported for duty by making a representation dated 05.09.2012, the appellants have also called for a report from the concerned police station and by report dated 19.01.2013, it was found that the writ petitioner had not indulged in any criminal case or any other objectionable conduct during the period of his absence.

9. The learned Single Judge, taking into consideration the said report which was on record and the fact that there was three deaths in the family of the writ petitioner, and that he has stated that the mental stress as a reason, exercised her discretion to interfere with the capital punishment of removal from service on the ground that it was excessive and unduly harsh, since the writ petitioner has put in sixteen long years of service. The Learned Judge had remitted the matter back to the appellant authorities themselves to pass appropriate orders in the matter. As such, there is no error in the

Page 5 of 7



W.A.No.19 of 2020

exercise of such discretion by the learned Single Judge, warranting interference by way of this appeal under Clause 15 of Letters Patent.

10. In view of above, we find no merit in this appeal and the same is dismissed. No costs. Connected C.M.P.No.243 of 2020 is closed.

(P.U., J) (D.B.C., J)
28.10.2022

Index:Yes
ssm/40



WEB COPY



W.A.No.19 of 2020

PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.

ssm

W.A.No.19 of 2020

28.10.2022