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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.27103 OF 2017

R.Narayanan

... Petitioner

.Vs.

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

2. The Superintendent of Police,
District Police Office,
Thiruvannamalai.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent herein in his proceedings D.O.No.255/2016, Na.Ka.No.H.2/P.R.59/2015 dated 09.05.2016 and confirmed by the first respondent herein in his proceedings C.No.B1/AP.24/ 007030/2016 dated 04.07.2016 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service, together with all consequential service and monetary benefits, within a time frame.

For Petitioner : Mr.G.Bala and Daisy

For Respondents : Mr.C.Selvaraj
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, while serving as a Police Constable, has been served with a charge memo dated 17.08.2015, wherein he was deserted from the service for absenting himself from duty for more than 21 days from 15.04.2015 onwards. The charges were held to be proved and through an order dated



09.05.2016, the second respondent/Superintendent of Police had dismissed the petitioner from the services. This order of dismissal came to be confirmed by the first respondent/Deputy Inspector General of Police in an appeal order dated 04.07.2016. These orders are put under challenge in the present writ petition.

3. The punishment of dismissal from service cannot be sustained on the sole ground that the Director General of Police had earlier issued a Circular dated 30.10.1990, holding that in cases of desertion, the punishment of removal/dismissal from service or Compulsory Retirement should not be imposed. For the sake of clarity, the circular dated 30.10.1990 is hereby extracted:-

"CIRCULAR MEMORANDUM

Rc.No.243881/AP.I(1)/90

Director General of Police,
P.B.No.601, Madras-4.

Dated: 30.10.1990

Sub: P.R.s in Desertion cases after taking delinquents for duty - Certain Instructions - Issued.

While disposing of appeals/reviews from Head Constables to Police Constables, I noticed that the Superintendents of Police are awarding the maximum penalty of dismissal or removal from service in desertion cases, after taking them for duty. This is unfair and cannot be justified.

2. When a Head Constable/Police Constable is struck off as a deserter, notice is issued directing the delinquent to appear before the Superintendent of Police within two months. When he appears, Superintendent of Police should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. If Superintendent of Police is not satisfied, the delinquent should not be taken for duty. If on the other hand, Superintendent of Police is satisfied, he can be taken for duty. In such cases while disposing of P.Rs, punishment of removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment is acceptable. This guideline may be kept in view, while dealing with desertion cases.



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3. Please acknowledge in the proforma enclosed.

Sd/- Inspector General of Police
(Law and Order)
30.10.90"

4. The order of dismissal passed by the second respondent, as well as the appeal order of the first respondent, is in clear violation of the Circular issued by the Director General of Police. These kind of Circulars would be binding on all the authorities of the Government when it is issued from the highest authority of the Department. As such, the very original punishment itself cannot be sustained. Consequently, it requires to be held that the punishment of dismissal from service is not only disproportionate to the impugned charges, but also violative of the procedure contemplated for imposing punishments in the aforesaid circular.

5. On the issue of disproportionality of a punishment is concerned, the same has been dealt in various decisions of this Court, as well as the Hon'ble Supreme Court, to the effect that the ultimate punishment requires to be in conformity with the gravity of the charges. In one such decision of a learned Single Judge of this Court in the case of R.Jayakumar Vs. The Deputy Commissioner of Police and another passed in W.P.No.26072 of 2004, dated 08.08.2008, the High Court had placed reliance on three decisions of the Hon'ble Supreme Court and interfered with the punishment of dismissal for the period of unauthorised absence of 21 days and directed the delinquent therein to be reinstated into services without the benefits of pay for the period of absence. The relevant portion of the order reads as follows:-

"11. Next point to be considered is proportionality of punishment. For the absence of 21 days, Petitioner was awarded punishment of dismissal from service. Placing reliance upon AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma); (1996) 7 SCC 634 (Malkiat Singh v. State of Punjab and others); (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) and (2006) 4 MLJ 1008 (J.Patric v. Government of Tamil Nadu, rep. by its Secretary, Home (Pol.VI) Department, Chennai and others), learned counsel for the Petitioner contended that in cases where the punishment imposed is disproportionate to the charge, court can set aside the same or modify the punishment based on the facts and circumstances of the case.



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12. On the other hand, learned Government Advocate would submit that as far as the Petitioner is concerned, it was not an isolated case of desertion for 21 days. But he was in the habit of deserting habitually and therefore, punishment of dismissal from service came to be passed.

13. According to the Petitioner, he was unwell and hospitalised and his family members could not inform the higher officials about his ill-ness and his absence was not deliberate. Charges framed for absence for 21 days.

14. In AIR 1996 SC 484:1995 (6) SCC 634 (B.C.Chaturvedi v. Union of India and others), the Hon'ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various Judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment.

15. In this aspect, Hon'ble Supreme Court has laid down the law as follows:-

"..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either directing the



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disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

16. In AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma), Government Servant over-stayed the leave period subsequent to the order of rejection of application for explanation of leave. Observing that there was no wilful intention to flout the order that the punishment of dismissal merely on the ground of over-staying leave period was held to be harsh and disproportionate and the Supreme Court has ordered reinstatement with all monetary and service benefits granted with liberty to visit minor punishment.

17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing of the order by the Court. In the present case, Petitioner was absent for 21 days. It is one of the clear instance where the punishment of dismissal from service is disproportionate to the charge.

18. In the result, the impugned Orders are set aside and this Writ petition is allowed. Petitioner is ordered to be reinstated into service within a period of eight weeks from the date of receipt of copy of this order. Absence period and the period after dismissal are directed to be taken as "leave on loss of pay". However, the said period shall be taken into account for continuity of service and other benefits."

6. The aforesaid extract is self-explanatory. When the circular of the Director General of Police clearly indicates that the punishment of 'dismissal from services' should not be imposed on a delinquent for charges of desertion, the punishment imposed itself is deemed to be disproportionate to the charges, as held by the Hon'ble Supreme Court and which was relied upon by this Court in the aforesaid decision.



7. However, the charge of unauthorised absence cannot be left unnoticed, particularly, when it is brought to the notice of this Court that the petitioner had earlier indulged in instances of unauthorised absence. By taking into account the ratio laid down in the aforesaid decision, this Court is of the view that if the petitioner's wages for the period of his absence is withheld, without affecting the continuity of his service, as well as other service benefits, the ends of justice could be secured.

8. In the light of the above observations, the impugned order of dismissal passed by the second respondent dated 09.05.2016, as well as the appellate order passed by the first respondent dated 04.07.2016, are quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, reinstating the petitioner back into service from 09.05.2016 onwards, as if the petitioner was never dismissed from his services, together with continuity of service and other service benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the petitioner shall not be entitled for the back wages during his period of non-employment.

9. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Deputy Inspector General of Police,
Vellore Range, Vellore.
2. The Superintendent of Police,
District Police Office,
Thiruvannamalai.

+1cc to Mr.G.Bala and Daisy, Advocate, S.R.No.3286
+1cc to the Government Pleader, S.R.No.4006

W.P.NO.27103 OF 2017

MT(CO)
PBS/08/02/2022