



W.P.(MD).No.5662 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.5662 of 2019

and

W.M.P.(MD).Nos.4473 and 4474 of 2019

M.Mariya Jeen

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Department of Home (POL.9),
Fort St.George,
Chennai – 600 009.

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

3.The Commandant,
TSP IX BN,
Manimutharu,
Tirunelveli District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the third respondent of removing the petitioner from the post of Woman Constable in Tamil Nadu Special Police, IX Battalion at Manimutharu, Tirunelveli District and subsequently as confirmed by the second



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respondent by means of an order dated 01.04.2016 made in RC No.116418/AP 3(1)/2015 and later as reaffirmed by the first respondent in the Government Order dated 13.06.2018 made in G.O.(D) No.653 and quash the same as devoid of merits and consequently direct the third respondent to reinstate the petitioner into service forthwith all benefits and continuity of service in the said post and thus render justice.

For Petitioner : Mr.F.Deepak
For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

The only charge against the petitioner, through a charge memo dated 10.02.2012, was that she, while serving as a Constable, had been absent for 116 days from 25.06.2011 to 18.10.2011 and thereby deserted herself from the service. The charges were held to be proved and through an order dated 22.05.2012, the third respondent herein had removed the petitioner from the services. This order of punishment came to be confirmed by the second respondent in an appellate order dated 01.04.2016 and later re-affirmed by the first respondent in G.O.(D)No.653, dated 13.06.2018.

2. The original punishment of removal from service, which is confirmed by the first and second respondents, cannot be sustained on the sole ground that



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the Director General of Police had earlier issued Circulars dated 13.10.1990 and 06.12.2007, holding that in cases of desertion, the punishment of removal/dismissal from service or Compulsory Retirement should not be imposed. In a later circular, dated 06.12.2007, it was reiterated that these guidelines should be strictly followed, while dealing with dismissal cases and that any other minor punishment can be imposed. For the sake of clarity, the circular, dated 06.12.2007, is hereby extracted:

*“No. 235355/AP.P(2)/2007 Office of the
Director General of
Police,
Chennai-600 004.
Dated 06.12.2007*

CHIEF OFFICE CIRCULAR MEMORANDUM

Sub: Police - Desertion cases - Head constables and Police Constables - Taking delinquents on duty — Major punishment awarded - Instructions issued — Regarding.

Ref: Circular Memo in C.No.243584/AP.1(1)/1990, dated: 30.10.1990.

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The attention of the Unit Officers is invited to the Chief Office Circular Memorandum cited.

2) In the above Circular Memorandum, clear instructions were already issued that while taking Head Constables and Police Constables for duty in desertion cases and disposing of P.Ps emanated from the delinquency



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of desertion, penalty such as removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and this guideline should be kept in view, while dealing with desertion cases.

3) While disposing of review/memo petitions of the subordinate police personnel, I noticed that scant regard is shown to the earlier Chief Office instructions and the Superintendents of Police are still in the habit of awarding the maximum penalty of dismissal or removal from service in desertion cases after taking them for duty. This action is unfair, cannot be justified and consequently cannot be accepted.

4) Hence, it is reiterated that when a Head Constable/Police Constable is struck off as a deserter, notice is to be 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 can be imposed and these guidelines should be strictly followed while dealing with desertion cases.

5) The above instructions should be scrupulously followed and there should not be any violation. If any deviation is found it will be viewed adversely.

6) The receipt of the Chief Office Memo should be acknowledged forthwith.

Sd/- P. Rajendran

Director General of Police "

3 The original order of punishment of removal from service by the third respondent, as well as the order of the Director General of Police confirming the punishment, is in clear violation of the Circular issued by the Director General of Police. Likewise, the Director General of Police himself had violated his own proceedings by confirming the punishment. 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



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punishment itself cannot be sustained. Consequently, it requires to be held that the original punishment is not only disproportionate to the impugned charges, but also violative of the procedure contemplated for imposing punishments in the aforesaid circulars.

4. 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 ***R.Jayakumar Vs. The Deputy Commissioner of Police and another*** 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 benefit of pay for the period of absence.

5. 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.

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 illness and his absence was not deliberate. Charges framed for absence for 21 days.

14. In AIR 1996 SC 454:1995 (6) SC 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 impose 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



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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 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. Gurooj 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 overstaying 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 SC 56 (*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 neither the punishment of 'removal/dismissal from services' nor 'Compulsory Retirement' should be imposed on a delinquent for charges of desertion, the punishment imposed



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itself is deemed to be disproportionate to the charges, as held by the Hon'ble Supreme Court and which was relied on 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 her absence is withheld, without affecting the continuity of her service, as well as other service benefits, the ends of the justice would be secured.

8. In the result, the impugned orders of punishment made in PR.No.09/2012, dated 22.05.2012, on the file of the third respondent, Rc.No.116418/AP 3(1)/2015, dated 01.04.2016, on the file of the second respondent and G.O.(D.) No.653 Home (POL.9) Department, dated 13.06.2018, on the file of the first respondent are quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, reinstating the petitioner into services from 22.05.2012 onwards, together with continuity



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of service and other service benefits, within a period of four (4) weeks, as if the petitioner was never removed from her services. However, the petitioner shall not be entitled for the backwages during her period of non-employment.

9. This Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.07.2022

Index : Yes / No
Internet : Yes/ No
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To

- 1.The Additional Chief Secretary to Government,
The Government of Tamil Nadu,
Department of Home (POL.9),
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police,
Tamil Nadu, Chennai – 600 004.
- 3.The Commandant,
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M.S.RAMESH, J.

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