

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.19131 of 2022

D.Saravana Kumar

... Petitioner

Vs.

1.The Director General of Police,
O/o. Director General of Police,
Mylapore,
Chennai – 600 004.

2.The Inspector General of Police,
Armed Police,
Trichy,
I/C Deputy Inspector General of Police,
Armed Police,
Trichy District.

3.The Commandant,
O/o. Commandant,
Tamil Nadu Special Police,
VI Battalion,
Madurai – 14.

4.The Assistant Commandant,
O/o.Assistant Commandant,
Tamil Nadu Special Police,
VI Battalion,
Madurai – 14.

...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 records pertaining to the impugned order of removal from service in PR.No.03/2018 dated 22.05.2018 on the file of the respondent No.3 and consequential impugned order in Na.Ka.No.E4/12771/2018 dated 15.03.2019 on the file of the respondent No.3 and consequential impugned order in R.C.No.16931/AP.3 (1) 2019 dated 22.03.2020 on the file of the respondent No.1 and quash the same as illegal and consequently directing the respondents to reinstate the petitioner (PC.No.1971) in the post of Police Constable in Tamil Nadu Special Police VI Battalion, Madurai, with all consequential monetary benefits.

For Petitioner : Mr.M.S.Parthiban
For Respondents : Mr.G.Suriyananth,
Additional Government Pleader.

ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal.

2. Based on the proven charges of unauthorized absence, the petitioner was imposed with a punishment of removal from service by the Commandant / the third respondent herein, through an order dated 22.05.2018. The petitioner

herein claims to have filed an appeal against the order of the third respondent before the second respondent, i.e., the Inspector General of Police, Trichy on 29.11.2018. It is claimed that the third respondent herein, namely, the Commandant, had once again rejected the appeal on 15.03.2019. The further mercy petition filed by the petitioner before the first respondent on 01.10.2019 was also rejected on 22.03.2020 by the first respondent. The original order of punishment, as well as the confirmation orders, are put under challenge in the present Writ Petition.

3. The impugned orders passed by the appellate authority confirming the original order of punishment of removal from service cannot be sustained on two primary grounds.

(i) Firstly, as against the original order of the punishment of the Commandant, dated 22.05.2018, the petitioner had filed an appeal before the Inspector General of Police on 29.11.2018, which came to be rejected by the Commandant himself on 15.03.2019. In fact, the original order of punishment, as well as the order in appeal, was passed by the same authority, which is impermissible in law. Thus, the consequential rejection of the mercy petition also cannot be sustained on this ground.

(ii) Secondly, the original punishment of removal from service cannot be sustained on the ground that 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,

“Rc.No.235355/AP-IV(2)/2007

*Office of the
Director General
of Police,
Chennai-600 004.
Dated:06.12.2007*

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.243881/AP1(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.Rs emanated from the delinquency 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/mercy 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”

4. A perusal of the aforesaid Circular clearly indicates that in all cases of charges pertaining to unauthorized absence, the disciplinary authority are not empowered to impose the punishment of removal / dismissal from service or compulsory retirement and that a lesser punishment should be imposed. It is not in dispute that the charges against the petitioner are of unauthorized absence. By applying the Circular of the Director General of Police, dated 06.12.2007, the punishment of removal from service cannot be sustained and on this ground also, the petitioner would be entitled to succeed.

5. In the light of the above findings, the order passed by the third respondent herein (on the appeal filed by the petitioner on 29.11.2018), dated 15.03.2019, as well as the order passed by the first respondent, dated 22.03.2020, are set aside and the matter is remitted back to the second respondent herein to re-consider the appeal petition filed by the petitioner on 29.11.2018. The second respondent herein shall pass final orders, in the light of the findings rendered by this Court, as well as the Circular of the Director General of Police in Rc.No.235355/AP-IV(2)/2007, dated 06.12.2007, after giving due opportunity to the petitioner, within a period of three (3) months from the date of receipt of a copy of this order.

6. This Writ Petition stands disposed of accordingly. There shall be no order as to costs.

23.08.2022

Index : Yes / No
Internet : Yes/ No
Lm/Rmk

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M.S.RAMESH, J.

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