



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.5925 of 2016

and

W.M.P. (MD)No.5257 of 2016

V.Balaraman

... Petitioner

VS

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

2. The Superintendent of Police,
Thanjavur District.
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent in his proceedings in C.No.B2/Appeal.2/2016, dated 06.02.2016 confirming the order of the second respondent in his proceedings in P.R.No.116 of 2015, dated 06.01.2016 and quash the same as illegal and consequently, direct the respondents to reinstate the petitioner with all attendance and monetary benefits.

For Petitioner : Mr.V.P.Rajan

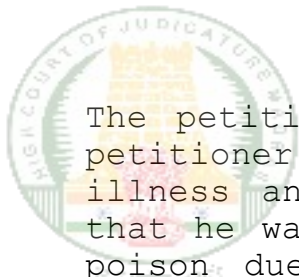
For Respondents : Mr.P.Thambidurai

Government Advocate (Civil side)

O R D E R

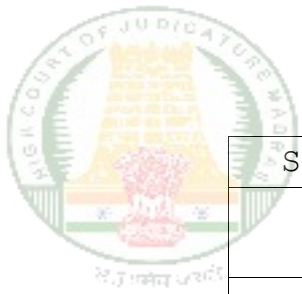
The petitioner has challenged the punishment order, dated 06.02.2016 in P.R.No.116 of 2015.

2. The brief facts of the case are that the petitioner was appointed as Grade-I Constable on 25.10.1984, then promoted as Grade-I Constable. Thereafter, he was promoted as Head Constable.



The petitioner had rendered service for more than 25 years. The petitioner was absent from duty from 24.05.2015 onwards due to his illness and his family circumstances. The petitioner has stated that he was suffering from Chickenpox and also his father consumed poison due to misunderstanding with his brother and he died on 04.07.2015. Due to such situation, the petitioner was not able to attend his duty. In the meanwhile, the second respondent issued deserted order, dated 16.06.2015 and the petitioner was directed to appear within 60 days from the date of the receipt of a copy of the order with explanation for allowing to rejoin the duty. The petitioner did not appear before the second respondent despite the order duly served on him. The second respondent initiated departmental proceedings under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rule against the petitioner by issuing a Charge Memo in P.R.No.116 of 2015, dated 16.09.2015 alleging that the petitioner deserted from service without any intimation and did not join duty despite of deserted order. An Enquiry Officer was appointed and the petitioner explained his situation before the Enquiry Officer for his absence. The Enquiry Officer submitted a report holding that the charges are proved on 26.11.2015. The second respondent has issued a show cause notice, dated 27.11.2015 directing the petitioner to submit further explanation within 15 days and the petitioner submitted his explanation on 09.12.2015 requesting the second respondent to drop the departmental proceedings, since he is having two unmarried daughters. However, the second respondent passed an order imposing the punishment of Compulsory retirement from service, dated 06.01.2016. Aggrieved over the same, the petitioner has preferred an appeal before the first respondent to modify the punishment and the appeal was rejected on 06.02.2016. Aggrieved over the two orders, the present writ petition is filed.

3. The second respondent has filed a counter affidavit stating that the petitioner was absent from duty without prior permission from 24.05.2015 and he was continuously absent for more than 21 days. Hence the order of desertion with effect from 24.05.2015 was passed and an opportunity was granted to the petitioner to explain his absence within 60 days. In spite of the opportunity, the petitioner did not report for the duty. Hence the desertion order was confirmed on 25.07.2015. A Charge Memo was issued and the Enquiry Officer was appointed. After giving sufficient opportunity, the Enquiry Officer had concluded that the charge is proved. Again, the second show cause notice was issued to the petitioner, thereafter, the compulsory retirement order was passed. The petitioner absent from duty on the following days are furnished under:



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S.No	Period of absence
1.	From 14.09.2005 more than 60 days
2.	From 06.05.1997 more than 21 days
3.	From 24.12.2005 more than 21 days
4.	From 10.07.2006 more than 60 days
5.	From 30.07.2011 more than 60 days
6.	From 11.06.2012 more than 21 days
7.	From 16.04.2013 more than 60 days

4. The petitioner has deserted the duty on eight occasion as stated supra in the tabulation totally 303 days. Taking all these facts into consideration and also taking into consideration the family circumstances, the compulsory retirement was imposed on the petitioner. Therefore, the respondent prayed to dismiss the writ petition.

5. Heard Mr.V.P.Rajan, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents.

6. It is an admitted fact that the petitioner has deserted for more than 60 days. For the last desertion, the reason stated by the petitioner is that he suffered from Chicken pox and his father consumed poison. Subsequently, the petitioner's father died due to the fight between his brother. Therefore, the entire family was under distress and he could not concentrate on his work. The petitioner relied on judgment rendered in ***State of Tripura and others vs Naresh Chandra Das reported in (2007) 15 Supreme Court Cases 75***. In the said case also the delinquent has committed various dereliction of duties and the delinquent was awarded punishment for nineteen times and was ultimately dismissed from service. The learned Single Judge in that case has took a lenient view. Since the delinquent was having only two and a half years of service, the Hon'ble Supreme Court has set aside only the backwages. The relevant portion of the order is extracted hereunder:

"4. The Counsel for the appellant contended that previously, for various types of dereliction of duties, the respondent was awarded punishment nineteen times and was ultimately dismissed from service and



therefore punishment was not excessive. The learned Single Judge considered all these aspects and having regard to the fact that it was only a question of absence from duty, took a lenient view. The Counsel for the respondent submits that the respondent has only two years of service left. Having regard to the facts and circumstances of the case, even though there is some force in the arguments advance by the learned Counsel for the appellant, we are not inclined to interfere under Article 136 of the Constitution. However, we make it clear that the respondent was not efficiently discharging his duties. The payment of back wages to such an officer is not in the fitness of things. Therefore, the direction to pay back wages is set aside. The appellant shall reinstate the respondent within a month from today."

The learned Counsel for the petitioner also relied on **Bhagwan Lal Arya vs Commissioner of Police, Delhi and another reported in AIR 2004 Supreme Court 2131.**

7. Considering the entire facts and circumstances of the case, this Court is of the considered view that the petitioner was absented for more than eight occasion for 303 days. But on the last occasion, there are some valid reasons for his absence. Moreover, two and half years is left for his service. This Court is of the considered view that the modification of the punishment is necessary in the light of the judgments stated supra. Therefore, the respondents are directed to modify the punishment as stoppage of increment for two years without cumulative effect and the petitioner is not entitled to any backwages for the period of his absence. The respondents are directed to reinstate the petitioner and the said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

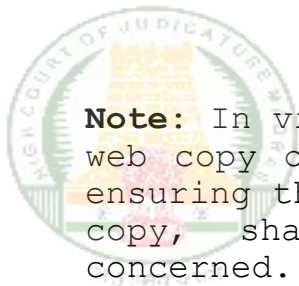
Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

1. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
2. The Superintendent of Police,
Thanjavur District.
Thanjavur.

Order made in
W.P. (MD)No.5925 of 2016
09.03.2022

CK(CO)
GC(04.04.2022) 5P 3C