



W.P.No.582 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.582 of 2020
and MP.No.681 of 2020

S. Sellappan

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by the Additional Chief Secretary
Home (Police) Department
Fort St.George, Chennai 600 009.
2. The Director General of Police
Mylapore,
Chennai 600 004.
3. The Deputy Inspector General of Police
Railways, Egmore,
Chennai 600 003.
4. The Superintendent of Police
Railways, Egmore,
Chennai 600 008.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified Mandamus to call for the records of the 4th respondent made in PR No.35/2014 dated 16.04.2015 as confirmed by the third respondent in Rc.No.A2/2069/2015 dated 12.06.2015 and that of the second



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respondent's order made in Rc.No.120444/AP IV(2)/2015 dated 14.10.2015 and as confirmed by the first respondent vide its order made in G.O.(D)No.724 Home (Police IV) Department dated 04.07.2019 to quash the same and consequently direct the respondents to reinstate the petitioner with all consequential benefits, inclusive of back-wages and service benefits thereto etc., and to pass orders.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.C.Meera Arumugam
Additional Government Pleader

ORDER

This writ petition has been filed to call for the records of the 4th respondent made in PR No.35/2014 dated 16.04.2015 as confirmed by the third respondent in Rc.No.A2/2069/2015 dated 12.06.2015 and that of the second respondent's order made in Rc.No.120444/AP IV(2)/2015 dated 14.10.2015 and as confirmed by the first respondent vide its order made in G.O.(D)No.724 Home (Police IV) Department dated 04.07.2019 to quash the same and consequently direct the respondents to reinstate the petitioner with all consequential benefits, inclusive of back-wages and service benefits thereto etc.

2. The facts of the case in a nutshell:-



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2.1. The petitioner was enlisted as Grade-II Police Constable on 01.11.1997. After being initially imparted training in the Armed Reserve and posted therein, he was transferred to Battalion, thereafter to Chennai City Police and then to the Railway Police, wherein, he was promoted as Grade-I Police Constable in which post he had been discharging duties.

2.2. While working at Egmore Railway Police, he was transferred to Korrukupet and due to ill-health, he was unable to attend office. Therefore, without recourse to any of the Rules and Regulations alleging absenting from duty for 21 days, he was declared as deserter on 13.08.2014, vide proceedings PO No.401/2014 dated 02.09.2014 and thereafter, for no fault of the petitioner in spite of his willingness to report for duty, in and by proceedings dated 17.11.2014, he was declared as a confirmed deserter. This was followed by initiation of disciplinary proceedings under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules in PR.No.35/2014 by issuance of a charge memo dated 19.12.2014 wherein the sole charge was that he had reported for duty at 21:00 hrs on 13.08.2014 and remained absent unauthorisedly for over a period of 21 days and thereby with reference to the said charge, enquiry was initiated and the enquiry officer held the charge as proved



based on which a final order was passed by the 4th respondent in PR.No.35/2014 dated 16.04.2015 imposing a penalty of removal from service. Aggrieved by that, he preferred a statutory appeal dated 24.04.2015 which was rejected by the 3rd respondent confirming the order of the Disciplinary Authority. Thereafter he filed a Mercy Petition which was also rejected by the 1st respondent by order made in G.O.(D).No.724 Home (Police-V) Department dated 04.07.2019. Being aggrieved by the above orders, the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that the only allegation against the petitioner is that of unauthorised absence and that too for a period of 21 days. By treating him as a deserter and thereafter, despite willingness to report for duty within the time stipulated prescribed, the officials did not allow him to join. In regard to passing of impugned orders by various authorities, the learned counsel contended they have miserably failed to note that the punishment as imposed would run shockingly disproportionate to the alleged offence namely unauthorised absence which is common in the Disciplined Force due to various situations persistently prevalent in the place of work and that was the reason why the authorities themselves have chosen to



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issue a circular that these types of delinquencies would not call for imposition of major penalty. Failure to consider the above in its proper perspective has resulted in grave injustice to the petitioner.

4. The learned counsel further submitted that the enquiry came to be held in a manner not known to law though the enquiry findings would state that the petitioner had submitted the reasons for his unauthorised absence being due to the then prevailing family conditions. But there was no opportunity whatsoever to examine and cross examine by establishing through evidence, much less documentary evidence that the said absence was unauthorised because when the respondents had chosen to grant and extend time for reporting for duty by proceedings dated 02.09.2014 to report on or before 11.10.2014 and that the petitioner having appeared himself for reporting duty, the authorities not considering and permitting him to rejoin and the order terminating the petitioner as confirmed and thereafter proceeding with the departmental inquiry, exhibits arbitrariness. The learned counsel for the petitioner placed reliance on the judgment of this Court in W.P.No.7927 of 2015 dated 21.12.2021 in which this Court had placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***B.C.Chaturvedi Vs. Union***



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of India and others reported in AIR 1996 SC 484:1995 (6) SCC 634 and the relevant paragraphs are extracted hereunder:-

“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



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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.”

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”.

Further in support of his contention, he placed reliance on the circular memorandum dated 16.12.2007 issued by the Director General of Police, which will be adverted to later.

5. The learned Additional Government Pleader filed a counter affidavit on behalf of the respondents dated 09.09.2020 and submitted that in



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the order passed by the 2nd respondent dated 14.10.2015, it was specifically mentioned that perusal of the file shows that the delinquent has not given any cogent explanation for his unauthorised absence for duty. From this, it is seen that the delinquent had deserted the force on three more occasions earlier. He was also dealt with on a charge for unauthorised absence from duty in an earlier occasion. All these prove that the delinquent is an indisciplined policeman having no regard to rules and regulations of the force. Subsequently, the petitioner had submitted a petition to the first respondent and that was also considered in detail and rejected by the first respondent in G.O.(D).No.724 Home (Pol.V) Department dated 04.07.2019.

6. The learned Additional Government Pleader further submitted that the petitioner is a confirmed deserter from 13.08.2014 and his service history shows that he had three previous desertions to his credit and one unauthorised absence earlier. As per Police Standing Order 95(1), he was declared as a deserter for long absence without leave, permission or intimation to superiors. Consequently, as per procedure, a charge under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 was framed against him, an enquiry was conducted and the delinquency was found proved



and imposition of major penalty is the result of such a charge.
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7. Heard both side and perused the materials available on record.

8. The only allegation against the petitioner is that he was on unauthorised absence for 21 days while working at Korukkupet Railway Police Station, Chennai district from 13.08.2014 night without any prior intimation, permission and without giving leave letter. Hence, he was declared as a deserter in D.O No.401/2014 dated 03.09.2014 and in that order, instructions were also issued that if he was willing to be taken to duty, he should report before the Superintendent of Police, Railways and explain the circumstances for his absence. As he did not comply with the said instructions within 60 days, his desertion was confirmed as per D.O.519/14 dated 17.11.2014. For the offence of desertion, he was dealt with on a charge u/r 3(b) of the Tamil Nadu Police Sub-ordinate Services (Discipline and Appeal) Rules, 1955 in PR No.35/2014 for desertion and he was declared as a deserter. The appeal to the first respondent was rejected on 12.06.2015 and his Mercy petition to the second respondent was rejected on 14.10.2015 and his Revision petition before the 1st respondent was also rejected on 04.07.2019.



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9. At this juncture, it is pertinent to mention that there is a circular memorandum issued by the office of the Director General of Police, dated 06.12.2007 in Rc.No.235355/AP-IV(2)/2007 by which instructions were issued informing the unit officers 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.

10. The above circular was also mentioned in the order passed by this Court in W.P.No.7927 of 2015 dated 21.12.2021 and the same is extracted for ease of reference.



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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/AP-1(1)/1990, dated 30.10.1990

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,



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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***

11. The aforesaid circular memorandum is self-explanatory. When the circular memorandum of the Director General of Police clearly indicates that the punishment of 'dismissal/removal from service' or 'compulsory retirement' should not be imposed on a delinquent for charges of desertion and the punishment imposed itself is disproportionate to the charge, as held by the Hon'ble Supreme Court and which was relied upon by this Court in the aforesaid decision. 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.



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12. By taking into account the ratio laid down by the Hon'ble Supreme Court of India, by this Court and the Circular Memorandum of the second respondent this Court is of the considered view that the order of dismissal passed by the 4th respondent made in PR No.35/2014 dated 16.04.2015, as confirmed by the third respondent in Rc.No.A2/2069/2015 dated 12.06.2015 and that of the second respondent's order made in Rc.No.120444/AP IV(2)/2015 dated 14.10.2015 and as confirmed by the first respondent vide its order made in G.O.(D)No.724 Home (Police IV) Department dated 04.07.2019 are quashed and consequently this Court directs the respondents to pass appropriate orders to reinstate the petitioner from the date of his original punishment dated 17.11.2014 onwards as if he was never dismissed from service, together with continuity of service and other attendant service benefits, inclusive of back-wages and service benefits thereto, within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner shall not be entitled to back wages during the non employment period.

13. In the result, the writ petition is allowed. No costs. Consequently connected miscellaneous petition is also closed.



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Index : Yes /No

Speaking/Non speaking order

J. SATHYA NARAYANA PRASAD, J.

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