



Writ Petition No.11816 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 07.11.2023

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THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.11816 of 2015

T.Duraimanikkam

..Petitioner

vs.

1.The Director General of Police,
Law & Order,
Chennai-600 040.

2.The Deputy Inspector General of Police,
Tiruchirappalli Range,
I/c. Thanjavur Range,
Tiruchirapalli.

3.The Superintendent of Police,
District Police Office,
Thanjavur.

... 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 first respondent herein in his proceedings Rc.No.084037/AP.I(1)/2012 dated 22.10.2014 and the order passed by the second respondent herein in his proceedings Na.Ka.No.B2/Ma.Mu.2/2012 dated 14.02.2012 and the order passed by the third respondent herein in his proceedings Tha.Pa.No.326/2011 dated



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18.11.2011 and quash the same and direct the respondent herein to reinstate the petitioner into service, together with all consequential service and monetary benefits.

For Petitioner : M/s.G.Bala & Daisy

For Respondents : Mr.R.U.Dinesh Raj Kumar, AGP

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent herein in his proceedings Rc.No.084037/AP.I(1)/2012 dated 22.10.2014 and the order passed by the second respondent herein in his proceedings Na.Ka.No.B2/Ma.Mu.2/2012 dated 14.02.2012 and the order passed by the third respondent herein in his proceedings Tha.Pa.No.326/2011 dated 18.11.2011, quash the same and consequently, direct the respondents herein to reinstate the petitioner into service, together with all consequential service and monetary benefits.

2.The case of the petitioner, in brief as per the affidavit enclosed to this petition, is that the petitioner joined as Junior Assistant in the Department of Police in Thanjavur District on 17.02.1995. While so, on



10.10.2011, the petitioner was served with a charge memo vide P.R No.326/2011 u/r.17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, consisting of charges (two counts), alleging firstly that the petitioner was absented from duty from 11.04.2011 to 22.05.2011 without prior permission for a period of 45 days and secondly, that the petitioner overstayed the medical leave from 20.06.2011 onwards for a period of 4 months.

3.The petitioner had submitted his explanation admitting his delinquency and explained that on account of several family problems and ill-health, he was absented from duty and prayed for pardon. It is also mentioned in the explanation that first count of the charge, cannot sustain as period of absence has been regulated as medical leave. Not satisfied with the explanation an enquiry was initiated and after conducting enquiry, the Enquiry Officer submitted his report, finding that the charges against the petitioner were proved and on the basis of the enquiry report, the disciplinary authority has imposed punishment of compulsory retirement. Aggrieved by the findings of the Enquiry Officer, the petitioner preferred an appeal before the second respondent on 19.11.2011 and the same was



rejected on 14.02.2012 by way of the non-speaking order. Aggrieved by the same, the present Writ Petition is filed.

4.The third respondent has filed a detailed counter affidavit stating that among other things the period of absence in the first count was not treated as medical leave, the punishment of compulsory retirement is not arbitrary, and that the petitioner was shown leniency under similar circumstances on eight earlier occasions and considering the past record, the punishment of compulsory retirement was awarded.

5. Heard both sides and perused the records including the impugned orders.

6. There is no dispute that the petitioner was working as Junior Assistant in the respondent Police Department in the Unit of Thanjavur Police since 1995. The petitioner was served with a charge memo on two counts under Rule 17(b) of the Rules. On receipt of the charge memo, the petitioner has submitted his explanation admitting the delinquency, and requested the respondents to take a lenient view, like imposing a minor



punishment. The Enquiry Officer concluded against him and submitted a report to the disciplinary authority, who in turn, after receiving the explanation from the petitioner, has passed the orders, imposing major punishment of compulsory retirement.

7.The petitioner has admitted both the charges framed against him and requested the disciplinary authority to take a lenient view and impose a minor penalty on the ground that the petitioner was facing family issues and also was not keeping good health. Therefore, the question to be considered is, as to whether the punishment of imposing compulsory retirement under Section 6(4) (a) (i) is disproportionate to the charges which were alleged and proved against the petitioner.

8.Of two charges framed against the petitioner, the first charge is that he had absented himself for a period of 42 days from 11.04.2011 to 22.05.2011 unauthorizedly. However, he has come back to the duty along with medical certificate. It is not the case of the respondents that the petitioner has absented himself without any ailment and submitted a fake medical certificate. The petitioner in normal course, could have applied for a medical leave and he would have reported to duty with fitness certificate.



At times, there is every possibility for a person to suddenly fell ill and he may not be in a position to inform the same to the Department.

9.It is not the case of the respondents that the petitioner is not entitled to medical leave. Absenting himself from duty on medical grounds for 42 days, though misconduct, this Court is of the opinion it should not necessitate the respondent Department to take stringent action of inflicting a major a punishment of compulsory retirement.

10.In respect of second charge is concerned, the petitioner has applied leave for a period of 5 days and extended it by way of giving a telegram. This kind of practice is most common in every establishment. In respect of the first charge, the petitioner was found fault for absenting himself without intimating and in the second charge though the petitioner has intimated in advance that he was going on medical leave, he was found fault for extending it and not reporting duty for 4 months.

11.The petitioner has fairly conceded his delinquency by placing his predicament that he was facing family problems and also suffering from



ailment which constrained him to absent from duty and urged the

Disciplinary Authority to show leniency by imposing lesser punishment.

Therefore, without denying the charges, when the delinquent has fairly admitted the delinquency with a fond hope that a lenient view would be taken by the Disciplinary Authority, the respondent Department could have considered the reason for his absence while imposing punishment.

12. Further, the respondent Department has taken into consideration of previous mis-conduct of the petitioner, that the petitioner absented from duty for several occasions, for imposing the punishment of compulsory retirement. The punishment has to be imposed proportionate to the charges levelled and proved against the delinquent and no punishment should be imposed considering the previous mis-conduct. When punishment was imposed considering the past mis-conduct of the petitioner, the past mis-conduct of the petitioner should have been part of the charge.

13. In the light of the above discussion, this Court is of the considered view that the impugned orders passed by the respondents inflicting major punishment of compulsory retirement, shocks the conscience of this Court



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as the punishment is highly disproportionate to the charges proved against the petitioner and hence, the same is liable to be interfered with.

14. Accordingly, the Writ Petition is allowed, and the impugned orders passed by the third respondent in Tha.Pa.No.326/2011 dated 18.11.2011 is hereby quashed and this matter is remitted back to the disciplinary authority i.e., the third respondent with a direction to consider the matter afresh and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, keeping in view of the fact that the charges were fairly admitted by the petitioner and impose the punishment proportionate to the mis-conduct proved. No costs.

15.It is further directed that in case if the petitioner is reinstated he is entitled for continuity of service, notionally from the date of compulsory retirement until he is reinstated, however, he is not entitled for any monetary benefit.

07.11.2023

Index : Yes/No
Speaking order: Yes/No
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Dr.D. NAGARJUN, J

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