



W.P.No.2791 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

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THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.2791 of 2020

M.Gowthaman

...Petitioner

Vs.

1.The Principal Secretary to Government,
Home (Pol.V A) Department,
Secretariat, Chennai – 600009.

2.The Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore, Chennai, Tamil Nadu – 600 004.

3.The Commissioner of Police,
132, Commissioner Office Building,
EVK Sampath Road, Vepery, Periyamet,
Chennai, Tamil Nadu – 600 007.

4.The Deputy Commissioner of Police,
Armed Reserved, Pudupet, Komaleeswaranpet,
Egmore, Chennai, Tamil Nadu – 600 002.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in its Rc.No.136410/AP.3(2)/2014 dated 22.08.2019 and quash the same and consequently direct the respondents to reinstate the



W.P.No.2791 of 2020

petitioner with all consequential and attendant benefits.

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For Petitioner : Mr.V.Vijayashankar

For Respondents : Mr.D.Gopal,
Government Advocate

ORDER

This Writ petition has been filed seeking to call for the records of the second respondent in its Rc.No.136410/AP.3(2)/2014 dated 22.08.2019 and quash the same and consequently direct the respondents to reinstate the petitioner with all consequential and attendant benefits.

2. The case of the petitioner is that the petitioner has joined as Police Constable in the Armed Services on 24.05.1999. On 05.04.2010, while he was deputed to the Asan Matriculation School, he was informed that a telegram had been received that his mother was serious and wanted him to start immediately. Hence, after informing his superior, he left immediately to his native place to see his ailing mother. However, within 4 days, his mother died on 09.04.2010. Being the only son, the petitioner had to take care of all necessary formalities after his mother's death and organize other rituals and ceremonies. At that time, a notice dated 30.04.2010 was sent



W.P.No.2791 of 2020

declaring the petitioner as a deserter. Though, he could not report immediately, after finishing the ceremonies, he came back to attend the duty.

2.2. This being so, the fourth respondent issued a charge memo dated 16.08.2010 against the petitioner for desertion and unauthorized absence. Thus, the petitioner has submitted his explanation on 18.08.2010, however, without considering the same, the disciplinary authority appointed an inquiry officer. The inquiry officer conducted an enquiry in a very hasty manner in just one day i.e., 22.09.2010 and without affording reasonable opportunity to the petitioner, concluded the enquiry on the same day itself and submitted a report to the disciplinary authority. Pursuant to the order dated 04.11.2010, the fourth respondent imposed the penalty of dismissal from service. Moreover, his future appeals and revisions was also rejected. Hence, he filed a writ petition in W.P.No.21947 of 2014, before this Court.

2.3. This Court vide order dated 05.03.2019, allowed the writ petition by setting aside the orders of penalty and directed the second respondent to reconsider the case of the petitioner with reference to the explanation



W.P.No.2791 of 2020

submitted by him. However, the second respondent has issued a order dated 22.08.2019 by modifying the penalty into one of compulsory retirement.

Aggrieved over the said order dated 22.08.2019, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that the though the original order is modified, there is no much use to the petitioner as his total service is hardly 11 years. If only the second respondent had heard the petitioner and considered the issue with an open mind, a lesser penalty which would have enabled the petitioner to rejoin duty.

4. Learned counsel for the petitioner has relied on the orders passed by this Court and the same is reads as follows:

(i) W.P.No.7927 of 2015 dated 21.12.2021

(ii) W.P.No.7968 of 2018 dated 02.03.2020

5. Learned Government Advocate appearing for the respondents has filed a counter affidavit dated 18.03.2022 and submitted that the petitioner on earlier occasions has committed the same delinquency, for which,



W.P.No.2791 of 2020

punishments were imposed on the petitioner. He has committed the delinquency of desertion on 21 occasions.

6. Learned Government Advocate appearing for the respondents further submitted that the petitioner had filed W.P.No.21947 of 2014, before this Court to set aside the punishment of “Removal from Service”. This Court, while quashing the impugned order, directed the second respondent i.e., the Director General of Police, Tamil Nadu to consider the matter afresh in the light of Rule 6(1) of the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955 as expeditiously as possible after providing opportunity to him. The second respondent in his proceedings Rc.No.136410/AP.3(2)/2014 dated 22.08.2019, modified the punishment of “Removal from Service” into that of “Compulsory Retirement from the date of original order” and accordingly modified the order as to that of Compulsory Retirement and accordingly, orders were issued.

7. Heard the learned counsel on either side and perused the materials available on record.



W.P.No.2791 of 2020

8. In the case on hand, the petitioner has committed desertion of 21 times and he was awarded punishment by the respondents. The period for which he was desertor is from 07.04.2010 and was continuously on unauthorised absence for more than 21 days and he was declared desertor and the desertion order was issued on 30.04.2010 and the same was confirmed on 05.06.2010 i.e., after 60 days from the date of absent from service i.e., 07.04.2010.

9. According to the affidavit filed by the petitioner, he went to attend his ailing mother, who was in his native place, after receiving a telegram on 05.04.2010. However, within four days, his mother died on 09.04.2010. He is the only son to do all the work and organizing other rituals and ceremonies. This reason given by the petitioner is appears to be genuine. But, the petitioner has committed the same delinquency for 21 times, for which, he deserves no leniency.

10. 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



W.P.No.2791 of 2020

issued informing the unit officers that when a Head Constable/Police Constable is struck off as a deserter, notice has 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.

11. 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.

Rc.No.235355/AP-IV(2)/2007 Office of the
Director General of
Police,
Chennai 600 004.



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W.P.No.2791 of 2020

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

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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.



W.P.No.2791 of 2020

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

Sd/-P.Rajendran

Director General of Police

12. The aforesaid circular memorandum is self-explanatory. When the circular memorandum of the Director General of Police clearly indicates that neither 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 deemed to be disproportionate to the charges, 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 21 instances of unauthorised absence.**

13. In view of the above factual matrix of the case and the ratio laid down by this Court in W.P.No.7927 of 2015 and by taking into account the Circular Memorandum of the second respondent, this Court is of the



W.P.No.2791 of 2020

considered view that **the punishment imposed on the petitioner this occasion is for unauthorised absence of 21 days for which he was declared as desertor and imposed the punishment of compulsory retirement is disproportionate to the delinquency committed by the petitioner.**

14. Hence, the impugned order passed by the second respondent in Rc.No.136410/AP.3(2)/2014 dated 22.08.2019 is quashed and consequently this Court directs the respondents to reinstate the petitioner with all consequential and attendant benefits, within a period of eight 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 backwages during the non employment period.**

15. In the result, this writ petition stands allowed with the aforesaid observation and direction. No costs.

27.09.2023

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11/13



W.P.No.2791 of 2020

NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

J.SATHYA NARAYANA PRASAD., J.

vm

To:

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Home (Pol.V A) Department,
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- 2.The Director General of Police,
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12/13



W.P.No.2791 of 2020

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W.P.No.2791 of 2020

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