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W.P.No.7398 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 14.08.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

**W.P.No.7398 of 2023**

G.Devaprakasam

... Petitioner

Vs.

1.The Director General of Police/  
Commissioner of Police,  
Greater Chennai, Vepery, Chennai – 7.

2.The Deputy Commissioner of Police,  
Armed Reserve-I,  
Greater Chennai Police,  
Vepery, Chennai – 7.

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of Respondents in connection with the impugned order passed by the 1st Respondent in PR No.527 / IV (2) / 2008 dated 01.03.2022 and also consequent order passed by the 2nd Respondent in PR No.527 / IV (2) / 2008 CPO No.1956 /2022 dated 14.7.2022 and quash the same in so far as imposing the Punishment of postponement of increment for 2 years without cumulative effect and consequential order of respondent treating the period of out of employment from 14.08.2010 to 03.10.2022 as leave without pay and further direct the Respondent to treat the period of out of employment with attendant benefits namely notional fixation of pay and



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notional promotion etc. and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani  
Senior Counsel  
for Mr.M.Muthappan

For Respondents : Mr.V.Jeevagiridharan  
Additional Government Pleader

### **ORDER**

This writ petition has been filed challenging the order passed by the Director General of Police, dated 01.03.2022, imposing a punishment of postponement of increment for two years without cumulative effect.

2.It is the case of the petitioner that he is working as Grade-II Police Constable and he was served with a charge-memo, for absenting himself for more than 21 days from 02.08.2008, by treating him as a deserter. Enquiry was contemplated against him and based on the Enquiry Report, the Disciplinary Authority originally imposed a punishment of reduction in time scale of pay by two stages for two years without cumulative effect, by order dated 08.01.2010. Thereafter, it appears that the 2<sup>nd</sup> respondent/Commissioner of Police exercised powers of *suo motu* review and by an order dated 13.08.2010, imposed the higher punishment



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of dismissal from service. The above order of dismissal from service was

put to challenge by the petitioner before this Court in W.P.No.28236 of 2014 and this Court, by order dated 28.07.2021, set aside the punishment of removal from service passed by the Commissioner of Police, however, made it clear that the writ petitioner will not be entitled to any monetary benefits for the period between his removal and reinstatement, however, he would be entitled to attendant benefits notionally, and thereby, directed the Commissioner of Police to pass appropriate orders within a period of three months from the date of receipt of a copy of the order. Pursuant to the above order, now the impugned order has been passed by the 1<sup>st</sup> respondent, dated 01.03.2022, imposing a lesser punishment of postponement of increment for two years without cumulative effect, while reinstating the petitioner into service. Consequently, the out of employment period has been settled as “leave without pay” by order dated 14.07.2022. The above orders have been put to challenge in the present writ petition.

3.Despite several opportunities being given, no counter affidavit has been filed.



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4.It is the contention of the learned Senior Counsel appearing for the petitioner that, once the major punishment of removal from service has been already set aside by this Court with a direction to the respondents to extend the attendant benefits alone to the petitioner, once again, the respondents cannot pass an order imposing lesser punishment of stoppage of increment for two years without cumulative effect.

5.*Per contra*, Mr.V.Jeevagiridharan, learned Additional Government Pleader, appearing for the respondents, submitted that the petitioner has not challenged the punishment originally imposed by the Disciplinary Authority, i.e., reduction in time scale of pay by two stages for two years without cumulative effect, and according to him, only the *suo motu* order passed by the Commissioner alone was set aside by this Court. Hence, it is his contention that the impugned order does not call for any interference.

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



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7.The petitioner has been proceeded with departmental enquiry based on only one charge, i.e., unauthorised absence. Though the Disciplinary Authority, based on the Enquiry Report, had originally imposed a punishment of reduction in time scale of pay by two stages for two years without cumulative effect by order dated 08.01.2010, the said order has been reviewed by the Commissioner of Police by exercising his powers of *suo motu* review and a punishment of dismissal from service has been passed on 13.08.2010. Once the Reviewing Authority had reviewed the order of the Disciplinary Authority and passed an order imposing a major punishment, the order of the Disciplinary Authority has got merged with the order of the Reviewing Authority. The said order of the Reviewing Authority has been put to challenge in W.P.No.28236 of 2014, wherein, this Court has set aside the entire order of dismissal from service and in categorical terms, has held that the petitioner is entitled for reinstatement with all attendant benefits notionally, however, without backwages. Such being the position, when the entire punishment has been said aside by this Court with a direction to reinstate the petitioner with all attendant benefits notionally, once again, there cannot be a different punishment of stoppage of increment, while reinstating the petitioner.



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Therefore, I am of the view that the imposition of punishment once again cannot be sustained in the eye of law.

8. Accordingly, as regards impugned order dated 01.03.2022, the punishment of postponement of increment for two years without cumulative effect, is alone set aside and the order of reinstatement of the petitioner w.e.f. 08.02.2022, is confirmed. The consequential impugned order, dated 14.07.2022, is set aside in *toto*. It is once again made clear that the petitioner is not entitled to any backwages and he is entitled only to attendant benefits notionally with continuity of service.

9. Accordingly, this writ petition is allowed. No costs.

**14.08.2023**

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Internet : Yes  
Index : Yes / No  
Neutral citation : Yes  
Speaking order / Nonspeaking order



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**N. SATHISH KUMAR, J.**  
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