



W.P.No.2736

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.27367 of 2010

J.Joshiva Jayakumar
(HC 1958/CC)
...Petitioner

VS.

1.The State of Tamil Nadu,
Rep. by its Home Secretary,
Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai – 600 004.

3.The Commissioner of Police,
Coimbatore City,
Coimbatore.

4.The Deputy Commissioner of Police,
Crime & Traffic,
Coimbatore City.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in G.O(2D) 235 dated 06.05.2010 on the file of the 1st respondent herein and quash the same and



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recovered from the petitioner as per the Rejection Order of the 1st respondent dated 06.05.2010 made in G.O(2D) No.235 and subsequent Order of the 3rd respondent dated 02.10.2010 made in C.O.No.1568/2010, Na.Ka.No.B3/56214/10.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.S.Ravichandran
Additional Government Pleader

ORDER

The Writ Petition has been filed challenging the order of punishment of postponement of increment for a period of two years with cumulative effect and the consequential order of recovery.

2.Heard Mr.A.Rajaram, learned counsel appearing for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents.

3.The petitioner was appointed to the Police Department in the year 1981 and had been working as a Head Constable at B-1 Crime Police Station, Coimbatore. While he was working, he was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal)

Rules, 1955 for absenting himself from duty on two spells i.e. 21.12.2006 to



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09.01.2007 (20 days) & 25.01.2007 to 12.02.2007 (19 days). The said absence was for a reason that the petitioner has been hospitalized and since the petitioner as well as the family members were undergone trauma had not immediately informed the Superiors and when the Doctor had permitted him to join duty, with the medical certificates he had reported to duty. All these were explained in detail by the petitioner for the charge memo that was served upon him. An Enquiry Officer had also been appointed, but the Enquiry Officer had given a Report holding that the charges framed against the petitioner had been proved. The fourth respondent being the Disciplinary Authority had also agreed with the findings of the Enquiry Officer and had imposed a punishment of postponement of next increment for a period of two years with cumulative effect and the said order of punishment had been received by the petitioner on 09.12.2007. Against which, the petitioner had preferred an appeal to the third respondent that the same was rejected as being out of time. Therefore, the petitioner had further made a representation to the second respondent to consider his case. The second respondent had also rejected the appeal petition holding that the charges have been proved. Thereafter, the petitioner approached the Government seeking to set aside the order of punishment and the same was rejected on 06.05.2010 as being without any merits.



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4.Mr.A.Rajaram, learned counsel appearing for the petitioner would contend that the petitioner for his absence had submitted a Medical Certificate issued by the respective hospital. He would submit that the respondents have not considered the Medical Certificate issued by a Qualified Doctor and had held that the fact of his hospitalization had not been informed immediately and therefore, the charges have been proved. He would submit that it may be true that the petitioner had absented himself without informing. But in the given circumstances of the case, where the petitioner had suffered from medical illness for which, he was hospitalized, the petitioner and his family members had undergone trauma and it is only their negligence on their part to inform the Superiors of his absence, such negligence on their part could not be put against the petitioner.

5.He would submit that the order of postponement of next increment was issued as early as in the year 2007 and a period of punishment also came to be over as early as on 01.07.2010 and his pay was restored and increment was granted to the petitioner on 01.07.2010. A pay restoration order was also issued by the third respondent herein on 23.07.2010, the said order indicates that the petitioner had received a sum of Rs.11,440/- as salary on 01.07.2007. On completion of his period of punishment, the pay was restored & granted an increment that was due on 01.07.2010 at Rs.11,790/-. However, by order dated



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02.10.2010 an order of recovery of sum of Rs.10,500/- was passed on the strength that there was an increment that was granted to the petitioner on 01.07.2008.

6.He would further submit that there was no such increment granted to the petitioner in view of the punishment that had been imposed on him and that the order of recovery that had been passed by the Office of the third respondent is wholly erroneous. Therefore, he would seek indulgence of this Court to set aside the order of punishment and the consequential order of recovery.

7.Countering his arguments, Mr.S.Ravichandran, learned Additional Government Pleader taking support from the counter filed by the first respondent would submit that the petitioner being a Police personnel and having been entrusted with the duty would have to report to the Superiors about his illness and his inability to do the duty, so that a replacement could have been arranged. The petitioner conduct in not informing the Superiors about his absence, there was a vacuum in the post that he was holding which had disturbed the functioning of the Department. Even if the case of the petitioner is accepted due to the admission to the hospital, there was a trauma which made him not to report the incident immediately, being a responsible Police personnel at least he could have informed his condition along with necessary particulars, a



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day or two days after his admission. But in this case, he had not reported anything to the Superiors or to the Control room which cannot be condoned. He would submit that the conduct of the petitioner amounts to desertion of the force, but only considering the reason given in the explanation, the petitioner was not imposed with a higher punishment and had been given a lesser punishment.

8.He would further submit that the petitioner was inflicted with the punishment by the fourth respondent by his proceedings dated 21.07.2007. However, in spite of the order of punishment, the petitioner was wrongly given an increment on 01.07.2008 during the period of punishment and therefore, the same was sought to be rectified by a recovery to the excess amount paid to the petitioner. Hence, he would submit that there is no infirmity either in the order of punishment or in the order of recovery.

9.I have considered the rival submission made by the respective counsel appearing on either side and perused the materials available on record.

10.The petitioner had been charged as having absented himself without any information. The reason assigned by the petitioner is that there was a medical emergency due to which, he had to be hospitalized and due to trauma that had been undergone by the petitioner and his family members, the absence



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had not been intimated immediately. But, when the petitioner was advised to go for work, he had with the Medical Certificate issued by the hospital authority had rejoined the duty that would mean there is an implied admission by the petitioner that he had not informed the Superiors or even to the Control Room of his medical condition. The petitioner being a member of Police service for more than two decades would definitely be aware of a role call of a Police personnel.

11.It is not the case of the petitioner that the trauma that he underwent on the day of his admission had continued till he was discharged. Atleast after a day or two when the petitioner had got better, he would have informed either by himself or through his family members or atleast through the hospital authorities, this is definitely a delinquency on the part of the petitioner in not informing the Superiors about his unavailability. As rightly pointed out by the learned Additional Government Pleader, the conduct of the petitioner would amount to desertion and only for the medical reason attributed to his absence, a lesser punishment had been inflicted upon the petitioner. I also find no infirmity in the disciplinary proceedings that had been conducted. Hence, I do not propose to interfere with the order of punishment imposed upon the petitioner.

12.The order of recovery had been made by the office of the third



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respondent. A reading of the said order impugned would show that pursuant to the punishment impugned, the increment from 01.07.2008 ought not to have been granted and there is an excess payment of Rs.10,500/- to the petitioner. The said order is bereft of material facts such as to whether an increment was wrongly given to the petitioner on 01.07.2008 and as to what was the amount that had been wrongly given as increment to the petitioner.

13.A reading of the counter affidavit to substantiate the recovery would only mention that there was an increment that was given to the petitioner with effect from 01.07.2008, it also does not say that a further increment had been given to the petitioner for the year 2009. There is no details as to what was the amount of increment that was given to the petitioner on 01.07.2008 to arrive at a conclusion that there is an excess payment. All that the order and also the counter suggest is that the last drawn pay was Rs.11,440/- and on completion of his period of punishment, he would be entitled for a pay of Rs.11,790/-.

14.In such circumstances, I am of the opinion that there is no reason that had been attributed in the impugned order in the order of recovery and the reason given by the respondent in the counter cannot be accepted as it is a well established principle of law that an order impugned cannot be sought to be supported by reasons stated in the counter. I need not quote various judgments



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of the Hon'ble Apex Court and this Court in that regard. In such a view of the matter, I am of the view that the order of recovery passed by the respondent is liable to be interfered with as no reasons have been attributed for the recovery.

15.In fine, the Writ Petition is allowed in part and the impugned order of recovery dated 02.10.2010 is alone set aside. There shall be no order as to costs.

16.It is also made clear that no recovery proceedings shall be initiated against the petitioner considering the fact that the petitioner at the time of filing this Writ Petition was aged 51 years and had superannuated in 2017 or 2018, this direction is issued taking into account the judgment of the Hon'ble Apex Court in the case of *State of Punjab and Others vs. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334.

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Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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K.KUMARESH BABU, J.

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