



WP.No.10442/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.10442/2017

K.Naveen Kumar

... Petitioner

Versus

1. Director General of Police
Tamil Nadu, Chennai 600 004.

2. The Deputy Inspector General of
Police, Armed Police, Chennai 10.

3. Commandant-II
TSP III Battalion
Veerapuram, Chennai 600 055.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd respondent dated 18.10.2013 in proceeding No.20/2013 under Rule 3[b] confirmed by the 2nd respondent in proceedings No.RC.No.C1/28425/2013 dated 09.01.2014 and the proceedings of the 1st respondent 21.05.2015 in RC.No.123450/AP/IV[2]/2014 and quash the same and direct the respondents to reinstate the petitioner herein with all attended benefits.



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For Petitioner : Mrs.Sudharshana Sundar
For Respondents : Mr.R.Neethi Perumal, GA

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records of the 3rd respondent, Commandant-II, Tamil Nadu Special Police III Battalion, Veerapuram at Chennai dated 18.10.2013 in Proceedings No.20/2013, under Rule 3[b] confirmed by the 2nd respondent, Deputy Inspector General of Police, Armed Force, Chennai, in proceedings No.RC.No.C1/28425/2013 dated 09.01.2014 and the further proceedings of the 1st respondent/Director General of Police, Tamil Nadu, daetd 21.05.2015 in RC.No.123450/AP/IV[2]/2014 and to quash all the aforementioned proceedings/orders passed by the respondents and to reinstate the petitioner herein with all attendant benefits.
- (2) Even before proceeding further, it can be stated that the petitioner cannot claim reinstatement as a matter of right since he was never in regular service under the respondents. He was only undergoing



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training. His services had not been regularised. Therefore, the petitioner's request for reinstatement can never be granted by this Court. But, it can only be examined whether the aforementioned orders passed by the respondents herein withstand the judicial scrutiny.

- (3) The petitioner passed the test conducted by the Tamil Nadu Uniform Service Recruitment Board in the year 2012 for the post of Police Constable. He was called for an interview and for medical test. He was selected by a letter issued on 23.01.2013 and was appointed as Police Constable Grade-II in TSP III Battalion at Veerapuram in Chennai. He had to undergo training for a period of six months. While undergoing training, he claimed that he slipped and fell down and his right knee was hurt. He could not participate any further in the training. On 02.03.2013, he was taken to S.P.Hospital at Ambattur and a scan was taken at Tamil Nadu Medical Corporation Department, Government Vellore Medical College and Hospital on 16.03.2013. He was then diagnosed for maniacal tear and Acc tear.



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He was admittedly unfit to report to duty. He was admitted and sent back on 11.03.2013. He was then advised complete rest and since he could not get back to normal walking, he was admitted to CMC, Vellore. He was advised rest.

- (4) In the affidavit, the petitioner claimed that he had requested his father to inform about his absence. He did not participate in the training any further. Thereafter, he was issued with an order on 21.05.2013 under Section 95[1] of Police Standing Orders declaring him as a deserter. He claimed that he had approached the respondents and explained on 29.05.2013, the reasons. However, charges had been issued under Rule 3[b] of Tamil Nadu Police Subordinate Services [D&A] Rules, 1955 in Proceedings No.20/2013. An enquiry was conducted. The petitioner made his oral and written statements. He also submitted his medical records. It is claimed that the Enquiry Officer did not apply his mind. It was also claimed that the Enquiry Report was not served. He was however asked to give a further representation. He had given a further representation on 09.10.2013. The 2nd respondent passed the



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order of removal from service on 18.10.2013 with effect from 29.04.2013. The petitioner filed an appeal on 22.04.2013. The 1st respondent confirmed the said order. The petitioner did not file any further review, but had filed the present writ petition not immediately but after about 2 years, in the year 2017. The reason as to why he did not file the writ petition earlier, has not been explained in the affidavit. The reason as to why he did not prefer a review before the Government has also not been explained in the affidavit.

- (5) The learned counsel for the petitioner, on the basis of the above facts, asserted that the petitioner was only undergoing training and had suffered an injury which was to the direct knowledge of the respondents and that the respondents themselves had admitted the petitioner initially in hospital. It is claimed that on 29.04.2013, the petitioner was not in a position to join back to duty since, he was at Christian Medical College and Hospital at Vellore. It is also asserted by the learned counsel for the petitioner that the medical records had been forwarded to the respondents, but that they had not taken any



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note of the same. It is also alleged by the learned counsel that the respondents were predetermined to pass an order of removal from service since the order of desertion was issued to the petitioner herein. It is also contended that proper opportunity had not been granted to the petitioner in the enquiry. But, again no explanation is given for the delay in filing the writ petition and for not preferring a review before the Government.

- (6) A counter affidavit had been filed on behalf of respondents, wherein it had been stated that the petitioner was appointed as Grade-II Police Constable on 18.02.2013 and had undergone basic institutional training in Temporary Police Recruit Centre in Veerapuram at Chennai. He had availed 49 days medical leave from 11.03.2013 to 28.04.2013. This statement by the respondents is very significant. Had the petitioner availed leave for 50 days, he would have been called upon to report to the Medical Board. But, however he had been very extremely careful in applying leave for 49 days. This leave period ended on 28.04.2013. He should have reported for duty on



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29.04.2013. He did not report to duty.

- (7) Learned Special Government Pleader appearing on behalf of respondents was very emphatic on the basis of the records available that the petitioner had not given any further medical certificate as alleged. Be that as it may, the petitioner continued to remain absent even for the period of 21 days from 29.04.2013. That touched the limit to be considered as a deserter. Therefore, proceedings were issued on 21.05.2013, categorising the petitioner as a deserter. A charge memo was served on the petitioner on 02.08.2013 and an enquiry was conducted. The charge was held proved. It is claimed that the Enquiry Report was served on the petitioner on 26.09.2013. He was then awarded the punishment of removal from service on 18.10.2013 and it was served on the petitioner on 25.10.2013. An appeal had been filed by the petitioner and that had also been rejected. It had been stated that the 2nd respondent had examined all the relevant records and thereafter, rejected the appeal. The petitioner had not filed a review, but had given a representation before the 1st



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respondent. The 1st respondent also appears to have examined the entire records and had finally taken a decision to reject the mercy petition. In view of these circumstances, it is stated on behalf of the respondents that the petitioner had been removed from service after following due procedure and that the order should be sustained by this Court.

- (8) I had given careful consideration to the arguments advanced and to the records available.
- (9) The petitioner having been appointed to an Uniformed Service, should have taken care to ensure that he follows the Rule of Law in the first place. The Rule of Law for a Uniformed personnel is to act in accordance with the Rules and Regulations which governs such service. The petitioner should be aware of the fact that if he is absent for more than 21 days continuously without any medical certificate or without any reason, the term 'deserter' will automatically be imputed against him. As a matter of fact, during the first spell he had taken care to take medical leave for only 49 days and avoided being



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examined by Medical Board. His leave exceeded 50 days and if the injury is genuine, the Medical Board would have subscribed the said injury and certified to the same. The fact that he did not submit himself before the Medical Board also raises a question about the *bona fide* of the petitioner herein.

- (10) Be that as it may, even in the affidavit filed in support of the writ petition, during the enquiry proceedings, the petitioner had stated that he had given his oral representation and also written representation. He had also given a further representation. There is a specific statement in the counter affidavit that the enquiry report was served on the petitioner on 26.09.2013. The procedure as laid down, has been followed by the respondents. The only consequential order which could be passed since the petitioner was a trainee and not under regular service, was to remove him from service. Since he was only a trainee, and had not even completed his training, the issue of reinstatement would never apply. The writ petition has been filed seeking revisitation of the orders of the respondents 1, 2 and 3. The



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1st respondent, particularly, in his order rejecting the Mercy Petition given by the petitioner herein had stated as follows:-

"I have gone through the mercy petition, PR file and all other relevant records carefully. The delinquent was dealt with on a charge for having deserted the police force for about five and a half months. The delinquent states that because of his ill health, he could not join duty. This contention of the delinquent can't be accepted as he being a trainee Recruit Police should have followed the laid down procedure. Desertion from police force during training itself makes it a serious delinquency. The disciplinary authority has rightly awarded him the punishment of removal from service. His appeal petition was also rightly rejected by the appellate authority. The mercy petition is therefore, rejected as it has no merits."

- (11) It had been very categorically stated that the contention of the delinquent cannot be accepted since, as a trainee Recruit Police Constable, he should have followed the laid down procedure. This is very important. Maintaining discipline is important. The discipline also includes conforming to the Rules. Conforming to the Rules



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includes if he is on leave, to produce necessary certificates in the first date of leave if an extension of it is applied. The petitioner was on leave for a period of 49 days which expired on 29.04.2013. On 29.04.2013, he should have applied for extension of medical leave. It should have been done in a proper manner. The petitioner had stated in his affidavit that he had forwarded a letter through his father. But, there is no such record available with the respondents and it had been very categorically denied on behalf of the respondents. There is also no explanation as to why the petitioner did not file a review before the Government.

- (12) During the course of arguments, it had been suggested by the Court that the petitioner could be granted an opportunity to file a review before the Government. But, having consciously not filed it earlier and had taken an alternate route to file a mercy petition before the 1st respondent, I really wonder as to whether filing of review would be appropriate on the part of the petitioner and whether it would be an efficacious remedy for the grievances of the petitioner. The petitioner



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had already delayed between the years 2015 and 2017 and had then only filed the writ petition. No explanation is given in the affidavit as to why he waited for two years. Now, nearly a decade had gone by. Fitting the petitioner would be to the disadvantage of all those who would now be applying through Tamil Nadu Uniform Services for recruitment. There would be at least one candidate who would be denied the opportunity of serving the Society as an Uniformed personnel if the petitioner were to be directed to be reinstated by this Court. As a matter of fact, being only a trainee, the petitioner should not take umbrage against respondents, since they had only removed him from the service which is not a stigma at all. Even though the enquiry is not contemplated, the respondents had still gone through the process of enquiry.

- (13) Learned counsel for the petitioner had taken up the suggestion of this Court that review could be filed. But I really wonder whether this would give any efficacious remedy to the petitioner herein or would only be giving a false hope to him. Leading the petitioner through



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that particular path is also not proper. Let the matter therefore, rest. Orders already passed by the respondents are not revisited by this Court. Procedure had been followed and the petitioner has to suffer the orders passed.

(14) The writ petition therefore stands **dismissed**. No costs.

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AP

Internet : Yes

To

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Tamil Nadu, Chennai 600 004.
2. The Deputy Inspector General of
Police, Armed Police, Chennai 10.
3. Commandant-II
TSP III Battalion
Veerapuram, Chennai 600 055.

C.V.KARTHIKEYAN, J.,

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