



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE MR. JUSTICE V.BHAVANI SUBBAROYAN

W.P No.3460 of 2017

P.Sundaraj

Petitioner

vs.

- 1.The Special Secretary to Government,
Home Department, Secretariat,
Chennai - 600 009.
- 2.The Inspector General of Police,
Armed Police,
Trichy.
- 3.The Deputy Inspector General of Police,
Armed Police,
Chennai - 600 010.
- 4.The Commandant,
IX Battalion,
Tamil Nadu Special Police,
Manimuthar.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to the G.O.(2D) No.432 Home (Pol.X) Department, dated 23.10.2009 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential

benefits.



For Petitioner : Mr.A.Kalaiselvan

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

This writ petition has been filed to quash the orders of the 1st respondent in G.O.(2D) No.432, Home (Pol.IX) Department, dated 23.10.2009 and further direct the respondents to reinstate the petitioner into service with all consequential benefits.

2.The case of the petitioner is that he was appointed as Police Constable on 04.11.1997 in Tamil Nadu Special Police, Battalion IX, Company-C, Manimuthar and he was working there till his removal from service. The departmental proceedings were initiated against the petitioner by issuing the charge memo dated 17.12.2003 for the allegation as under :

“Highly irreprehensible conduct in availing leave often and extending leave without reporting for duty in time and not respecting the higher officials.”

3.During the course of an oral enquiry many documents were produced



in which Ex.3 shows details of the medical leave which was obtained by the petitioner and document Ex.6 shows report of the petitioner to duty. Ex.7 is the report of the Inspector dated 21.11.2003 and Ex.9 is the report of the Inspector dated 01.12.2003, requesting the Commandant to take action against the petitioner for taking leave often. As a result of the oral enquiry, charges were held to be proved and the petitioner was imposed with the punishment of removal from service by an order dated 26.04.2004 by the Commandant, Manimuthar.

4.The learned counsel for the petitioner had preferred an appeal against the said order but the same was rejected by the Deputy Inspector General of Police vide his order dated 20.07.2004. Therefore, the petitioner preferred a review to the Inspector General of Police, which was dismissed by an order dated 30.09.2004 and thereafter, petitioner filed mercy petition before the Director General of Police, which was also rejected by an order dated 03.01.2005. Finally, the petitioner submitted the representation to the 1st respondent herein on 25.02.2005 in person followed by several reminders, finally on 17.07.2009. However, no orders were passed.

5.Since no orders were passed, the petitioner filed a writ petition in

W.P.No.14629 of 2009. This Court by an order dated 29.07.2009 directed the



1st respondent to consider the petitioner's representation dated 22.0.2005 and also the reminder dated 17.07.2009 and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of the order. As such, the impugned order in G.O.(2D) No.432, Home (Pol.IX) Department, dated 23.10.2009, rejecting the representation of the petitioner, which was communicated to the petitioner by the Inspector General of Police vide letter dated 19.03.2015.

6.Since petitioner's representations were not considered, he filed mercy petition dated 20.08.2015 to the 1st respondent followed by reminders dated 15.02.2016 and 04.01.2017. Since no order has been passed, the petitioner has filed this writ petition by raising various grounds.

7.The learned counsel for the petitioner contended that, in spite of the petitioner's representation dated 15.02.2004 to furnish the copies of the documents cited in the charge memo, no document was furnished to the petitioner and as such, the entire proceedings is vitiated, as it is against Article 311 of the Constitution of India. The findings of the Enquiry Officer are based on extraneous consideration and based on no evidence. The learned counsel further contended that the 2nd Show Cause Notice is not given based on the Enquiry Officer's report and the same is a violation of



principle of natural justice and the same is liable to be quashed. The learned counsel submitted that the Disciplinary Authority, the Commandant, TSP, IX Battalion, Manimuthar, without proper application of mind, mechanically has imposed the punishment of removal from service. The Appellate authority, the Deputy Inspector General of Armed Police/3rd respondent, has passed an order without following the procedure prescribed under Section 6 of TNPSS (D & A) Rules, 1955. The Reviewing Authority/2nd respondent has mechanically rejected the petitioner's claim. Hence, the learned counsel prayed that all these orders are to be set aside and appropriate orders are to be passed to reinstate the petitioner in service.

8.Mr.K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents, made a submission that the petitioner was in the habit of neglecting his duties and absconding from duty without any permission from his superiors and submitting Medical Certificates requesting medical leave. Subsequently, lastly on 20.10.2003, he absented from duty without getting any leave or any permission from his superiors and left from his Company Headquarters on his own accord. Subsequently, he obtained Medical Certificate for his absence from 20.10.2003 from the Medical Officer, Government Hospital, Aruppukottai recommending 12 days medical leave from 20.10.2003 to 31.10.2003 and sent it to his Company Officer



Commanding, which was received in the office of the Commandant, TSP IX Battalion only on 27.10.2003. In the disciplined Police Force, there are Rules and Regulations laid down for availing medical leave, if at all, he was ailing from any illness, he has to report before his superior officer and report sick. After satisfying the health condition, superior officer will issue a sick passport permitting and directing him to approach the Medical Officer for treatment, if any, and also recommending medical leave depending upon the condition of his ill-health. The individual has to submit back the Medical Certificates recommending medical leave to him by the Medical Officer and on this strength, the medical leave passport will be issued to him for availing the medical leave and to report back for duty on the due date. Then only, he can move on to avail the medical leave and that too, within the Company Headquarters or Battalion Headquarters and not elsewhere.

9. The learned Government Advocate further submitted that the petitioner did not follow any of the prescribed procedures and absented himself from 20.10.2003. Again on 01.11.2003, he did not report back for duty with Medical Fitness Certificate, but obtained another Medical Certificate recommending 20 days medical leave from the Medical Officer and submitted it. It was received in the office of the Commandant, TSP IX Battalion only on 18.11.2003. Again this Medical Certificate was also not



submitted on 01.11.2003 (ie.,) the date on which he was due to report for duty. He abstained from duty on his own accord. At last, he reported for duty on 22.11.2003 FN with Medical Fitness Certificate. Thus, the petitioner has neglected his duty and failed to adhere to the procedure laid down for availing the medical leave.

10.The learned Government Advocate further submitted that, previously, the petitioner had neglected his duty on post on fifteen occasions, absented on his own accord and submitted medical certificates belatedly. For the delinquency, he was dealt with on a charge U/r.3(b) of Tamil Nadu Police Sub-ordinate Service (Discipline & Appeal) Rules, 1955 in Punishment Roll No.01/2004 and the Assistant Commandant-II, TSP IX Battalion, Manimuthar conducted oral enquiry. He filed ten (10) prosecution documents and held the charges as proved. The petitioner did not file any documents in his defence. On receipt of the minutes (findings) from the Enquiry Officer on 29.03.2004, the petitioner was called on to submit his further representation, if any, on 30.03.2004 by supplying him a copy of the minutes and he also submitted his further representation on 06.04.2004. It was duly considered by the punishing authority and the Commandant, TP IX Battalion, Manimuthar inflicted the punishment of “Removal from Service” on 26.04.2004.



WEB COPY

11.The learned Government Advocate further submitted that the appeal petition filed by the petitioner before the Deputy Inspector General of Police, Armed Police, Chennai was rejected in Proceedings in C.No.A2/Appeal-31/04, dated 20.07.2004. After rejection of the appeal petition, the petitioner filed an Review petition to the Inspector General of Police, Armed Police, Trichy, which was also rejected in proceedings in C.No.C2/17843/2004, dated 30.09.2004.

12.The learned Government Advocate further submitted that the petitioner's Mercy Petition to the Director General of Police, Chennai/2nd respondent herein on 20.09.2004 was also rejected in proceedings in C.No.AP3(1)/268326/2004, dated 03.01.2005. Further, the petitioner's wife Tmt.Susheela had submitted a Mercy Petition to the 1st respondent which was also rejected as per the memo in K.DisNo.42883/AP.3(1)/05, dated 05.09.2006. The petitioner himself submitted one more Mercy Petition dated 17.07.2009 to the 1st respondent requesting to consider his representation dated 25.02.2005 or reinstatement into service and to cancel the punishment inflicted on him by the punishing authority.

<https://www.mhc.tn.gov.in/judis> 13.The learned Government Advocate further submitted that the



petitioner had filed a writ petition in W.P.No.14629 of 2009 with a prayer to consider his representations dated 25.02.2005 and 17.07.2009. This Court, by an order dated 29.07.2009, had directed the first respondent viz., the Secretary, Home Department to consider the representation of the petitioner dated 25.02.2005 and reminder dated 17.07.2009 and pass orders on merits and in accordance with law within a period of twelve weeks. In this connection, the Government examined the petitions of the petitioner carefully and independently along with all the relevant records and observed that the contentions put forth by the petitioner are not valid for considering modification of the punishment already imposed. Following the directions of this Court, the representation of the petitioner was rejected by the impugned order in G.O.(2D) No.432, Home (Pol.IX) Department, dated 23.10.2009. Hence, the petitioner filed this writ petition before this Court with a prayer to quash the G.O.(2D) No.432, Home (Pol.IX) Department, dated 23.10.2009 and to direct the respondents to reinstate him service with all consequential and attendant benefits.

14. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondents.

<https://www.mhc.tn.gov.in/judis> 15. The petitioner is a member in the disciplinary Police Force and it is



his primary duty to stick on to his duty post and should not absent himself from duty without any leave or permission from his superiors, since the Police Department is meant to tackle law and order situation and other outburst of sudden clash and disharmony. If the members of the disciplinary Police Force are allowed to absent themselves from duty on their own accord just like the petitioner, then the mobilization of Police Force at the needed time will not be possible. Though the petitioner has contended that he has produced the Medical Certificates for the medical leave, they are not according to the laid down procedures.

16.It is also relevant to note that the petitioner had been awarded punishment on various earlier occurrences as listed below:

- 1 PR.42/1999 under Rule Awarded a punishment of black mark by the Deputy Commandant, TSP IX BN, MMR, dated 07.09.1999
- 2 PR.14/2001 under Rule Awarded a punishment of reduction in pay by two stages for two years with cumulative effect by the CMT, TSP IX BN, MMR, dated 16.07.2001
- 3 PR.19/2001 under Rule Awarded a punishment of postponement of increment for three years with cumulative effect by the CMT, TSP IX BN,



WEB COPY



MMR, dt 27.08.2001

4 PR.01/2002 under Rule 3(a) Awarded a punishment of black mark by the Assistant CMT-III, TSP IX BN, MMR, dated 28.02.2002.

17.This Court is of the view that the petitioner belongs to the Uniformed Service, where discipline is to be maintained. When leave is not granted by the authorities in a disciplined force, the personnel is expected not to absent from his post. In this case, there has been unauthorized absence from duty on many occasions. The petitioner, therefore, has committed serious act of indiscipline and therefore, does not deserve any indulgence of this Court.

18.This Court does not find any merit in this writ petition and this petition is liable to be dismissed and therefore, stands dismissed. No costs.

11.10.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr



V.BHAVANI SUBBAROYAN.,J

SSR

To

- 1.The Special Secretary to Government,
Home Department, Secretariat,
Chennai - 600 009.
- 2.The Inspector General of Police,
Armed Police,
Trichy.
- 3.The Deputy Inspector General of Police,
Armed Police,
Chennai - 600 010.
- 4.The Commandant,
IX Battalion,
Tamil Nadu Special Police,
Manimuthar.

W.P No.3460 of 2017

11.10.2023