



W.P.(MD).No.8596 of 2019

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

**DATED : 20.03.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.8596 of 2019**

**and**

**W.M.P.(MD).Nos.6712 of 2019 and 1222 of 2023**

P.Muthukrishnan

... Petitioner

**Vs.**

1.The State of Tamil Nadu,  
Represented by its Chief Secretary to Government,  
Secretariat,  
Chennai – 9.

2.The State of Tamil Nadu,  
Represented by its Principal Secretary,  
Home Department (Police),  
Secretariat,  
Chennai – 9.

3.The Director General of Police,  
No.1, Dr.Radhakrishnan Salai,  
Mylapore, Chennai.

4.The Commandant,  
Tamil Nadu Special Police,  
IXth Battalion,  
Manimuthar,  
Tirunelveli District.

5.The Superintendent of Police,  
Tirunelveli District.

... Respondents



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**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in G.O.(2D).No.233, Home (Pol.IX) Department dated 05.05.2010 and consequential impugned order of the first respondent in Letter No.46449/Pol.IX/2017-1, dated 03.10.2017 and quash the same and directing the respondents to fix the petitioner's salary along with increments.

For Petitioner : Mr.P.P.Alwin Balan

For Respondents : Mr.R.Suresh Kumar,  
Additional Government Pleader.

### **ORDER**

This Writ Petition is filed challenging the impugned order in G.O.(2D)No.233, Home (Pol.IX) Department dated 05.05.2010 and consequential impugned order dated 03.10.2017 and direct the respondents to refix the petitioner's salary along with increments.

2. The petitioner joined the respondent service as Grade II Police Constable on 01.03.1995. While he was in service, he received the message that his father was seriously ill and he was bedridden. Hence, the petitioner without informing the respondents absented himself from duty especially he



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was absented for roll call at night on 15.09.1995. Thereafter, the petitioner's father died on 20.12.1995 i.e. within three months from the date of absence.

The petitioner was mentally disburbed due to sudden demise of his father and hence he could not join duty immediately. Thereafter, the petitioner was declared as deserter with effect from 15.09.1995 and initiated disciplinary proceedings under Section 3(b) of Tamil Nadu Subordinate Services (Discipline and Appeal) Rules, 1955. In the enquiry charges were held as proved and the respondents have imposed the punishment of stoppage of increment for two years with cumulative effect vide order dated 07.07.1996. Aggrieved over the same, the petitioner preferred Appeal to the third respondent and the same was dismissed. Thereafter, Review Petition was submitted on 20.08.2005 and the same was dismissed on 18.02.2006. Thereafter, the petitioner submitted Mercy Petition before the Government and the same was dismissed vide impugned orders dated 05.05.2010 and 03.10.2017. Challenging the same, the present Writ Petition is filed.

3. The respondents have filed a counter stating that since the petitioner has absented himself immediately within 6 months from the date of joining of duty, the respondents have taken action against the petitioner. The petitioner is in uniform service and he ought not to have absented himself without informing



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the respondents. Since the petitioner has absented at the earlier stage of his service, the respondents have taken a lenient view and imposed the punishment of postponement of increment of two years with cumulative effect. Thereafter the petitioner did not prefer any appeal, but preferred mercy petition belatedly and the same was dismissed. Since the petitioner is challenging the punishment which was imposed in the year 1996, the present writ petition is hit by delay and laches and the respondents prays to dismiss the writ petition.

4. Heard Mr.P.P.Alwin Balan, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents.

5. It is seen that the petitioner joined the service on 01.03.1995, within six months of joining had unauthorized absented from 15.09.1995. The contention of the petitioner is that his father was ill, hence in order to assist him he was absented from duty. Thereafter his father died on 20.12.1995 i.e. within three months from the date of absence. Hence, the petitioner was declared as deserter from 15.09.1995 and in the disciplinary proceeding the punishment of stoppage of increment for two years with cumulative effect was imposed on 07.07.1996. The petitioner did not prefer any appeal or review against the said



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order. But has submitted mercy petition on 20.08.2005 and the same was dismissed on 18.02.2006. Again the petitioner preferred a mercy petition and the same was rejected on 05.05.2010 through G.O.(2D)No.233. Again, the petitioner another petition and the same was rejected on 03.10.2017 in Letter No.46449 / Pol.IX/2017-1.

6. The Learned Additional Government Pleader appearing for the respondents submitted that the petitioner did not prefer any appeal or review but repeatedly filing Mercy petitions. Moreover, the punishment was imposed in the year 1996, the mercy petitions were filed belatedly, now the writ petition is also filed belatedly, hence vehemently opposed to entertain this writ petition.

7. After considering the rival submission, this Court is of the considered opinion that the petitioner has absented himself from 15.09.1995 and has taken earnest effort to provide medical attention to his father. In spite of the same, the petitioner's father died on 20.12.1995 and petitioner was disturbed due to sudden demise of his father. Since the petitioner has absented at the beginning of his service, (now the petitioner is aged 54 years) the respondents have sympathetically considered and has imposed lesser punishment, but this Court is of the considered opinion that the respondents ought to have been more



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sympathetic. Even in the Circular in DGP's RcMo.223597/AP-I(1)2005 dated 02.11.2005 it has been stated that "Desertion once may be accepted (though it would not be altogether appropriate). Desertion repeatedly should not be accepted." Since it is for the first time in his service the petitioner has absented, then the respondents ought to have been more sympathetic and hence the punishment is disproportionate.

8. As far as the contention of the filing of Mercy Petitions, the Learned Additional Government Pleader submitted that Mercy Petition is not contemplated in the service rule and only appeal is contemplated in the service rule, but such contention cannot be accepted. Mercy petitions can be filed at any time and it is accepted as one of the last chances for seeking pardon.

9. As far as the contention of filing belated Mercy Petitions, that too without filing regular appeal and review is concerned, the petitioner was mentally disturbed after the demise of his father. Thereafter, he had approached the authorities by way of filing a Mercy Petition. The petitioner has chosen to file Mercy petition, since it can be filed at any time and question of limitation would not arise. When the petitioner had filed Mercy Petition, the respondents ought to have considered rather than dismissing it. More so, the punishment



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would affect his promotion and also his terminal benefits. Therefore, this Court is inclined to grant relief.

10. Infact, the respondents have power and authority to defer the punishment. During that period the delinquent would be under observation and if the delinquent's conduct is satisfactory, then the punishment would be dropped. In the present case, the mercy petition was filed belatedly, the respondents ought to have seen the service records of petitioner and if that was satisfactory, then the respondents have an opportunity to reconsider the punishment. Therefore, this Court is of the considered opinion on this deferred punishment concept, the respondents ought to have considered the mercy petition.

11. The petitioner had filed a mercy petition in February 2017, wherein the petitioner had concluded with the prayer as under:

*“8. Any catachresis, parrhesia, dogberryism and pleonasm in this revision petition may kindly be ignored. If the petitioner has committed any error or bloomer, blooper, neolalia and gaffe in expanding and developing his arguments or flubbed with words, he begs the unqualified apology of the government of Tamil Nadu”*

The prayer with “Tharoorist Words and Phrases” has impressed this Court. This Court is of the considered opinion that the punishment has become



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thorn in his mind and the petitioner deserves to be considered and hence this Court is inclined to quash the impugned orders. Hence, the impugned orders are quashed and consequently the punishment order is quashed. The petitioner is entitled to the consequential service and monetary benefits. The said order shall be implemented within a period of eight (8) weeks from the date of receipt of a copy of this order.

12. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**20.03.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
Nsr



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To

WEB COPY

- 1.The Chief Secretary to Government,  
The State of Tamil Nadu,  
Secretariat,  
Chennai – 9.
- 2.The Principal Secretary,  
The State of Tamil Nadu,  
Home Department (Police),  
Secretariat,  
Chennai – 9.
- 3.The Director General of Police,  
No.1, Dr.Radhakrishnan Salai,  
Mylapore, Chennai.
- 4.The Commandant,  
Tamil Nadu Special Police,  
IXth Battalion,  
Manimuthar,  
Tirunelveli District.
- 5.The Superintendent of Police,  
Tirunelveli District.



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**S.SRIMATHY, J.**

Nsr

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