



W.P(MD)Nos.14753 to 14764 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.14753 to 14764 of 2022

and

W.M.P(MD)Nos.10544 to 10533, 10555 & 10558 of 2022

W.P(MD)No.14753 of 2022:

R.Srimurugan

... Petitioner

Vs.

The Additional Chief Secretary to Government,
Home (Police VI) Department,
Secretariat,
Fort St.George,
Chennai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned Government Order vide G.O.(2D).No. 89 dated 18.03.2022 passed by the respondent herein and quash the same and consequently direct the respondent herein to pass a fresh Government Order by imposing Lesser Punishment Cumulatively as directed by the Honble Division Bench in Common Order in W.A(MD)No.620 of 2020 dated 24.03.2021.



W.P(MD)Nos.14753 to 14764 of 2022

For Petitioner : Mr.Niranjan S.Kumar

For Respondent : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.G.Suriyananth
Additional Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondent.

2.The petitioner joined the Police Department as Grade II Police Constable in the year 2003. He had unauthorizedly absented himself repeatedly. In this regard, number of charge memos were issued. After conducting enquiry, it was concluded that the charges levelled against the petitioner were proved. Punishments were also imposed. Challenging the same, the petitioner filed writ petitions before this Court. They were disposed of by the Hon'ble Division Bench vide common order dated 24.03.2021 in W.A. (MD)No.620 of 2020 in the following terms:

“Since all these cases involve the appellant, who is also the writ petitioner, and having similar facts, they are taken up together and disposed of by this common judgment.



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2.The charge against the appellant is un-authorised absence from 2011 to 2014. Accordingly, different punishments have been imposed. Challenging the aforesaid punishments imposed, after exhausting all the remedies available, these Writ Appeal and Writ Petitions have been filed.

3.Learned counsel appearing for the appellant submitted that there is no dereliction of duty per se, in which, the appellant is involved. It is well known that he is a person, who is doing an excellent job in preparation of the documents pertaining to Goondas Act. He has sustained 52 such orders by way of his preparation, though the detaining authority is different. Admittedly, he was suffering from illness. He suffered head injury. In fact, he was given medical leave, but the charges have been framed on the premise that he continued thereafter without getting appropriate permission. There are similarly placed persons, who have given lesser punishment. If all these punishments are imposed, he would be getting paltry sum, which cannot be enough to take care of himself, his family and getting treatment. It is only in the year 2037, he will get the regular salary. From the year 2015, he has been continuously doing his job without facing any difficulty. Thus, considering the above, these cases have to be looked into.



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4.Learned Special Government Pleader appearing for the respondents produced the details of the punishments and submitted that considering the nature of the job, the punishments have been imposed. The procedures have been followed. There is no substantial delay as alleged by the appellant. The letter relied upon is only made to use the guidelines. It is not a single case, but a series of such cases of un-authorised absence of the appellant. Therefore, there is no need to interfere with the order passed.

5.As submitted by the learned counsel appearing for the appellant, the issue is one of un-authorised absence. The fact that the appellant suffered an accident, leading to head injury, is not disputed. It is no-body's case that he was un-authorised absent prior to the accident. There is no other charge than the un-authorised absence against him. From the year, 2015, he has been performing his duty without facing any charge. Therefore, we are of the view that these aspects are to be taken into consideration by respondent No.1. Though we are not in agreement with the submissions made by the appellant on merit, we do feel that, considering the facts as narrated, it is a fit case for re-consideration for imposing a lesser punishment cumulatively.

6.In the light of the discussion made above, the Writ Appeal and the Writ Petitions are allowed, setting aside the order of the learned Single Judge dated 14.11.2018, made in



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W.P(MD)Nos.14753 to 14764 of 2022

W.P.(MD)No.22740 of 2018 and quashing the impugned orders passed by respondent No.1 and remitting the same to respondent No.1 to consider imposition of lesser punishment to the petitioner. Appropriate Orders will have to be passed by respondent No.1 within a period of eight weeks from the date of receipt of a copy of this order. No costs.”

Since the direction given by the Hon'ble Division Bench was not complied with, the petitioner filed Cont.P(MD)Nos.1731 to 1743 of 2021. When the contempt petitions were taken up, the impugned Government Orders dated 18.03.2022 and 23.03.2022 were produced. Challenging the same, the present writ petitions have been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned Government Orders and grant relief as prayed for.

4.The respondent has filed detailed counter affidavit and the learned Additional Advocate General took me through its contents.

5.The stand of the respondent is that the petitioner has been habitually absent. He pointed out that between the years 2008 to 2015, the petitioner had



W.P(MD)Nos.14753 to 14764 of 2022

been visited with as many as 17 punishments. The respondent had issued the impugned order bearing in mind the direction issued by the Hon'ble Division Bench in W.A(MD)No.620 of 2020 etc batch. The Hon'ble Division Bench had called upon the Government to consider imposing lesser punishment on the petitioner. The original punishment imposed on the petitioner was postponement of next increment for a period of one year with cumulative effect. Now it has been modified and postponement would be without cumulative effect.

6.The stand of the learned Additional Advocate General is that the petitioner is a member of Uniformed Force and therefore habitual unauthorized absence cannot be casually taken. He also points out that it is not open to the writ Court to interfere in the matter of punishment. He relied on the decision of the Hon'ble Supreme Court reported in **2022 LiveLaw (SC) 998 (Union of India & Others Vs Subrata Nath)**. He pressed for dismissal of the writ petitions.

7.I carefully considered the rival contentions and went through the materials on record.



W.P(MD)Nos.14753 to 14764 of 2022

8.The question is not whether the petitioner is innocent or guilty. That had already been decided. The Hon'ble Division Bench had also made it clear that they are not in agreement with the submissions made by the learned counsel on merit. The only question for which the matter was remitted to the file of the authority was to consider imposing lesser punishment. The common charge against the petitioner is that he was unauthorizedly absent. The learned counsel for the petitioner would claim that the petitioner met with a serious accident in the year 2011 and that he suffered severe injury and that was why he had been unauthorizedly absent. I may not agree with this contention because the learned Additional Advocate General has brought to my notice that even in the years 2008 to 2010, the petitioner was unauthorizedly absent repeatedly. Therefore, the excuse founded on the accident suffered in the year 2011 is not acceptable. At the same time, I need to take note of the fact that the Hon'ble Division Bench had taken an indulgent view by taking into account three facts:

- a) The petitioner was not unauthorizedly absent prior to the accident
- b) He had not taken any charge since 2015
- c) If the punishment imposed on the petitioner is confirmed as such, he will be getting a paltry sum and he would be eligible to get regular salary only after several years.

Factually speaking the first reason may not be correct. But it would not be proper for me to question it. It is beyond dispute that the Hon'ble Division



W.P(MD)Nos.14753 to 14764 of 2022

Bench had categorically stated that a cumulative punishment should be imposed on the petitioner.

9. Applying the principle of proportionality, I am satisfied that the impact of the punishment imposed on the petitioner would shock anybody's conscience. A person who has put in nearly 20 years of service would be drawing anywhere between Rs.35,000 - 40,000/-. The petitioner is however drawing only around Rs.10,000/-. This will certainly have a disproportionately adverse impact on the petitioner's life. It is for this reason, the Hon'ble Division Bench interfered in favour of the petitioner. The authority ought to have imposed cumulative punishment by clubbing all the cases together. By imposing individual punishment for each charge memo the punishments will have effect one after another successively. As a result, the petitioner can never rise. As already noted, as many as 12 charge memos have been issued against the petitioner. The punishment will be in currency and operate for the next 12 years. It is for this reason I am constrained to interfere. The impugned orders set aside on the ground that they are not in consonance with the order dated 24.03.2021 in W.A(MD)No.620 of 2020. The matter is remitted to the file of the respondent to pass an order afresh by taking in to account the observations made by the Hon'ble Division Bench.



W.P(MD)Nos.14753 to 14764 of 2022

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10. These writ petitions are allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.06.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

The Additional Chief Secretary to Government,
Home (Police VI) Department,
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