



W.P.(MD)No.23171 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23171 of 2016

and

W.M.P.(MD) No.16640 of 2016

H.Jeyakumar

... Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

2.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

3.The Director General of Police,
Chennai.

4.The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the proceedings



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of the 1st respondent in P.R.No.9/4/2007 dated 05.07.2007 as confirmed by the 2nd respondent in C4/AP.72/2007 dated 26.10.2007 as modified by the 3rd respondent in R.C.No.103824/AP 2(1)/2010 dated 20.07.2010 as confirmed by the 4th respondent in G.O.(2D)No.310 Home (Police VI) Department dated 14.09.2015 and quash the same.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed challenging the impugned order, dated 05.07.2007 confirming by the Appellate authority, dated 26.10.2007 as modified by the 3rd respondent, dated 20.07.2010 and confirmed by the 4th respondent, dated 14.09.2015.

2. The petitioner has joined as Grade-II Police Constable on 30.08.1998, then promoted as Grade-I Police Constable, then Head Constable. While he was serving as Grade-I Police Constable the petitioner had applied



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casual leave for 5 days from 30.06.2006 to 04.07.2006 and the same was sanctioned. While he was on leave he fell ill, undergone treatment for jaundice in serious condition. Since he could not move to parent station, he requested to grant sick passport. The Medical Officer at Government Hospital, Thuckalay recommended leave for 30 days from 05.07.2006 to 03.08.2006 and instructed to report duty to expiry of leave on 04.08.2006. Even after 30 days, the petitioner could not recover from illness and on 04.08.2006 the medical officer recommended further rest for 20 more days. Hence, the petitioner could not report as per instructions. But he submitted a report along with the medical certificate through registered post for extension of leave. The Sub-Inspector of Police, Kanyakumari Police Station, who is the immediate superior refused to receive registered post and returned the same and had intentionally refused to receive.

3. Thereafter, a charge memo, dated 12.01.2007 was issued in P.R No.9 of 2007, wherein the petitioner was alleged that he was unauthorizedly absented for duty from 04.08.2006 to 24.08.2006 and also alleged that he deserted from duty. The petitioner has submitted an explanation and after full-fledged enquiry, the 1st respondent, vide order, dated 05.07.2007 imposed a



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punishment of reduction in time scale of pay in two stages for two years and reduction of future increment as well. The petitioner has filed an appeal and the same was rejected on the ground of limitation. The petitioner has filed a mercy petition, where the punishment was modified as reduction in time scale of pay by two stages for two years without cumulative effect. The petitioner filed second mercy petition and the same was rejected vide order dated 14.09.2015. Aggrieved over the same, the present writ petition is filed.

4. The respondents have filed counter stating that the petitioner was granted opportunity and there is no violation of principles of natural justice. The petitioner has not submitted any evidence to substantiate his case. The alleged application which the petitioner claimed to have sent through the registered post, is false and the respondents have not received any such registered post. The petitioner has not submitted any evidence that the registered post was returned without accepting the same. In spite of direction by the respondents, the petitioner has failed to appear, hence disciplinary proceeding was initiated and based on the facts and circumstances of the case appropriate punishment was imposed. Therefore, the respondents pray to dismiss the writ petition.



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5. Heard Mr.M.P.Senthil, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents. Perused the material documents available on record.

6. The Learned Counsel appearing for the petitioner had produced the photo copy of the registered post cover in the typed set of papers filed along with the writ petition. On perusing the same there is a postal endorsement that the postman had tried to deliver the post on 08.08.2006 and had waited for the respondents to receive on 09.08.2006, then the post was directed to return to sender on 10.08.2006, then it was returned to the petitioner on 12.08.2006. Infact the petitioner had produced the recommendation of the doctor to avail leave for 20 days along with the letter seeking for extension of leave for 20 days. Therefore, this Court is of the considered opinion that the respondents have refused to receive the registered post and the said fact is proved.

7. On perusing the order dated 05.07.2007 of the Superintendent of Police, it is seen that the copy of the registered letter receipt dated 08.08.2006 issued by the Postal Department is marked as Ex.D1 and the photocopy of the



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envelope is marked as Ex.D2. And the authority while considering the same has held as under:

“The copy of the registered letter receipt dated 08.08.2006 issued by the Postal Department is marked as Ex.D1 and the xerox copy of the envelope is marked as Ex.D2 furnished by the delinquent have no material evidence in favour of the delinquent to disprove the charge against him.”

8. This Court is of the considered opinion that the authority has failed to appreciate the evidence. This Court is at loss, if not this evidence, what evidence can prove the case of the petitioner Generally the private individuals would refuse to receive the post. The respondent in official capacity has refused to receive the registered post cannot be appreciated. Moreover, the petitioner has submitted a medical certificate along with the leave letter in the said registered post. Therefore, this Court is of the considered opinion the punishment imposed on the petitioner is liable to be quashed. Accordingly, the impugned order of punishment is quashed. The respondents are directed to implement this order within a period of 8 weeks from the date of receipt of a copy of the order.



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9. For the reasons stated above the Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

- 1.The Superintendent of Police,
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- 2.The Deputy Inspector General of Police,
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- 4.The Principal Secretary,
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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 23171 of 2016**

23.03.2023