



W.P.(MD)No.29220 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.29220 of 2022
and
W.M.P(MD)No.23170 of 2022

P.Thiraviaraj

... Petitioner

Vs.

1.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

2.The Principal/Commandant,
Ty. PRS/TSP V Battalion,
Avadi, Chennai – 109.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records, in relating to the impugned orders of removal from service as against the petitioner, which was passed by the first respondent dated 18.04.2021 and 23.04.2021 and to quash the same as illegal and arbitrary and consequently direct the respondents to reinstate the petitioner in the post of Grade II – Police Constable with all monetary benefits within the time limit that may be stipulated by this Court.



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For Petitioner	: Mr.B.Perumal Prabhu
For Respondents	: Mr.S.P.Maharajan, Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned orders of removal from service as against the petitioner, which was passed by the first respondent, dated 18.04.2021 and 23.04.2021, as illegal and arbitrary and consequently, to direct the respondents to reinstate the petitioner in the post of Grade II – Police Constable with all monetary benefits within a stipulated period.

2. The case of the petitioner is that was appointed as Grade II Police Constable on 16.10.2017 and he underwent basic police training with utmost sincerity. Thereafter, the petitioner went to his native place wherein his health condition was severely affected and therefore, he availed medical leave from 03.12.2017 to 17.12.2017(15 days). Subsequently, the petitioner met with an accident and suffered injury on his right foot and therefore, he availed medical leave from 18.12.2021 to 22.02.2018. On expiry of leave, the petitioner reported duty on



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23.02.2018. However, due to the absence, the petitioner was declared as Deserter vide proceedings, dated 10.01.2018, and the same was confirmed vide proceedings dated 16.02.2018. Subsequently, the petitioner was issued with a charge memo and Enquiry Officer was appointed and based on the enquiry report, the first respondent removed the petitioner from service. As against the same, he preferred an appeal before the Director General of Police, Chennai on 29.10.2018 and the same was rejected on 10.12.2018. Hence, the petitioner filed a writ petition before this Court in W.P(MD)No.7455 of 2019. During the pendency of that writ petition, the petitioner's mercy petition was considered and the earlier punishment was modified and the petitioner was reinstated. Subsequently, the petitioner underwent training from 01.06.2020. In such circumstances, due to the ill-health of the petitioner's mother, he went to his native place and met with an accident and took treatment at Government Hospital, Tuticorin and subsequently, he was affected with Covid-19 and thereafter, the petitioner sent medical certificate to the second respondent through registered post on 03.08.2020. However, without considering the health condition of the petitioner, the second respondent vide proceedings dated 28.06.2020



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declared the petitioner as a Deserter. Thereafter, without considering the explanation submitted by the petitioner to the charge memo issued, the first respondent passed removal order vide proceedings, dated 18.04.2021 and 23.04.2021. Challenging the same the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that without considering the health condition of the petitioner, the first respondent has removed the petitioner from service, which is not sustainable and hence, prayed for appropriate orders.

4. However, the learned Special Government Pleader appearing for the respondents would submit that as against the order passed by the first respondent, the petitioner is having an effective appeal remedy before the appellate authority. However, without exhausting the appeal remedy, the petitioner has filed this writ petition and therefore, this writ petition is liable to be dismissed.



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5. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the materials placed before this Court.

6. It is seen that the petitioner has filed this writ petition without exhausting the appeal remedy and therefore, this writ petition is not maintainable.

7. In the result, this Writ Petition is dismissed with liberty to the petitioner to approach the appellate authority to work out his remedy in the manner known to law. No Costs. Consequently, connected miscellaneous petition is closed.

02.01.2023

PM
NCC:Yes/No
Index:Yes/No



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M.DHANDAPANI,J.

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