



W.P.No.126 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.126 of 2020

M.Arivazhagan

... Petitioner

Vs.

1.The Superintendent of Police,
Cuddalore District

2.The Deputy Inspector General of Police,
Villupuram Range

3.The Director General of Police,
Tamil Nadu, Chennai-4

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the records of the respondents in connection with the impugned orders passed by the first respondent in PR No.73/2009 dated 28.04.2010 and confirmed by the third respondent in his Rc.No.083973/AP.1(1)/2018 dated 02.11.2018 and quash the same.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.V.Manoharan,
Additional Government Pleader



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ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 28.04.2010 and confirmed by the third respondent by order dated 02.11.2018, thereby modified the punishment of removal from service into compulsory retirement.

2. The petitioner was recruited as Grade-II Police Constable and appointed to service on 15.04.1997. Subsequent to his transfer to Cuddalore District, while he was serving as Constable at Tirupakkam Police Station, Cuddalore District, he was deputed to court duty to attend the case in connection with SC.No.42 of 2009. However the petitioner did not report for duty for roll call on 19.06.2009 and continued to be absent without any leave or permission from the superior officers. Therefore, after completion of his absence for a period of 21 days, he committed delinquency of desertion. The petitioner was issued desertion notice thereby declaring him as a deserter and directed the petitioner to appear for duty within a period of 60 days from the date of the order. Accordingly, the petitioner reported duty on 17.08.2009 and he



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continued duty. Thereafter the petitioner was served with charge memo under Rule 3(b) of the Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules alleging that the petitioner was directed to attend the court duty on 18.06.2009 and he did not report for duty and continued to be absent for more than 21 days. The petitioner submitted explanation and without being satisfied with the explanation submitted by the petitioner, enquiry officer was appointed to conduct enquiry. Enquiry officer concluded that the charge against the petitioner is proved. Thereafter, the petitioner was served with enquiry report and directed to submit explanation, if any. The petitioner submitted explanation and on receipt of the same, the disciplinary authority imposed punishment of removal from service by order dated 28.04.2010. However, the second respondent, on *suo motu* review, modified the punishment imposed on the petitioner into that of compulsory retirement from service by order dated 08.09.2010. Thereafter, the petitioner submitted representation on 26.03.2018 by way of mercy petition to reconsider the decision of compulsory retirement and sought for reinstatement into service. It was rejected by an order dated 02.11.2018 and aggrieved by the same, the



present writ petition has been filed.

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner cannot be imposed with major penalty of dismissal, removal and compulsory retirement from service based on the memorial circular issued by the third respondent. It states that a person who is taken back for duty after declaring him as a deserter by the disciplinary authority, cannot be proceeded under Rule 3(b) of the Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules. Even after taking back the petitioner for duty, he was served with charge memo under Rule 3(b). While modifying the punishment into compulsory retirement, the second respondent failed to consider the same. As per the circular issued by the third respondent, the petitioner can be proceeded only under Rule 3(a) and imposed with minor penalty. The petitioner could not able to attend duty on 18.06.2009 since he fell ill and all of sudden he had gone to hospital for his treatment. Therefore, the punishment imposed on the petitioner is excessive, exorbitant, unreasonable and disproportionate to the nature of delinquent.



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3.1 He further submitted that while rejecting the mercy petition submitted by the petitioner, the third respondent considered the previous punishments imposed on the petitioner and imposed capital punishment of removal from service. If the third respondent relied upon the previous punishment imposed on the petitioner, the petitioner should have been given opportunity to explain about the previous punishments. The petitioner was not given opportunity of hearing and rejected the mercy petition submitted by the petitioner. In support of his contention, he relied upon several judgments.

4. The first respondent filed counter stating that the petitioner was deputed to attend the court work at Mahila Court, Cuddalore on 18.06.2009 in connection with a criminal case. However, the petitioner failed to report duty and he was absent for duty from 19.06.2009 without any permission or leave or information for more than 21 days. Thus he committed the offence of desertion and he was struck off as a deserter as per the proceedings dated 14.07.2009. In the said order, he was



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instructed to appear before the Superintendent of Police, Cuddalore within a period of 60 days from 19.06.2009 i.e. from the date of desertion and explain his circumstances if he was willing to be taken for duty. Accordingly, the petitioner appeared and he was taken back for duty by the proceedings dated 17.08.2009. The petitioner reported for duty on 18.08.2009. Thereafter, the petitioner was served with charge memo and proceeded with disciplinary proceedings and the charge held to be proved and the petitioner was imposed punishment of removal from service by order dated 28.04.2010. It was duly served on the petitioner on 14.06.2010. However, the petitioner did not prefer any appeal. On *suo motu* review, the punishment imposed on the petitioner was modified into that of compulsory retirement from service by order dated 08.09.2010. After a period of eight years, the petitioner submitted mercy petition before the third respondent and the same was rejected by order dated 02.11.2018. Even thereafter, the petitioner did not prefer any writ petition immediately and this writ petition has been filed after period of two years from the date of the order passed by the third respondent. Therefore, after 14 years, the petitioner cannot be reinstated into service.



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5. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

6. On perusal of records, the petitioner kept quiet for eight years from the date of modifying the punishment into compulsory retirement to prefer mercy petition before the third respondent. Mercy petition was rejected by order dated 02.11.2018 and the petitioner had taken another two years to prefer this writ petition.

7. The learned Senior Counsel appearing for the petitioner submitted that in respect of the delay, the petitioner was not served with the modified punishment order. After obtaining information under Right to Information Act, the petitioner came to understand that the punishment of removal from service was modified into compulsory retirement from service. Further, there is no limitation to file a mercy petition as against the order of punishment. The above reasons are acceptable one and as



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such, the writ petition cannot be dismissed on the ground of laches.

8. The third respondent had issued a circular holding that in case of desertion, the punishment of removal, dismissal from service or compulsory retirement should not be imposed. It is relevant to extract the said circular dated 06.12.2007 hereunder:

CIRCULAR MEMORANDUM

Sub: Police - Desertion cases - Head constables and Police Constables - Taking delinquents on duty - Major punishment awarded - Instructions issued - Regarding.

Ref: Circular Memo in C.No.243881/AP1(1)/1990, dated: 30.10.1990.

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The attention of the Unit Officers is invited to the Chief Office Circular Memorandum cited.

2) In the above Circular Memorandum, clear instructions were already issued that while taking Head Constables and Police Constables for duty in desertion cases and disposing of P.Rs emanated from the delinquency of desertion, penalty such as removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and this guideline should be kept in view, while dealing with



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desertion cases.

3) While disposing of review/mercy petitions of the subordinate police personnel, I noticed that scant regard is shown to the earlier Chief Office instructions and the Superintendents of Police are still in the habit of awarding the maximum penalty of dismissal or removal from service in desertion cases after taking them for duty. This action is unfair, cannot be justified and consequently cannot be accepted.

4) Hence, it is reiterated that when a Head Constable/Police Constable is struck off as a deserter, notice is to be issued directing the delinquent to appear before the Superintendent of Police within two months. When he appears, Superintendent of Police should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. If Superintendent of Police is not satisfied, the delinquent should not be taken for duty. If on the other hand, Superintendent of Police is satisfied, he can be taken for duty. In such cases while disposing of P.Rs punishment of removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and these guidelines should be strictly followed while dealing with desertion cases.

5) The above instructions should be scrupulously followed and there should not be any violation. If any deviation



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is found it will be viewed adversely.

6) The receipt of the Chief Office Memo should be acknowledged forthwith.

9. Originally the petitioner was removed from service and on *suo motu*, the second respondent modified the punishment into one of the compulsory retirement. It is clear violation of the circular issued by the third respondent. In fact, the third respondent itself violated its own circular by rejecting the mercy petition submitted by the petitioner and confirmed the punishment of compulsory retirement. Therefore, the punishment of compulsory retirement cannot be sustained and it requires some modification.

10. Insofar as disproportion of the punishment, it requires to be in conformity with the gravity of the charges. The petitioner was charged for his absence of 21 days. Therefore, the petitioner was struck off as deserter as per the proceedings dated 14.07.2009. Further, he was instructed to appear within 60 days from the date of desertion to explain the circumstances for which he was absent. The petitioner appeared and



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explained the circumstances on which he absented for duty from 19.06.2009. After being satisfied with the explanation, the petitioner was taken back for duty by the proceedings dated 17.08.2009. The petitioner had also joined duty on 18.08.2009. Therefore, the order of compulsory retirement for desertion is highly disproportionate to the charge levelled against the petitioner. Therefore, the petitioner should be imposed lesser punishment.

11. Insofar as mentioning of the earlier punishments while imposing capital punishment, the petitioner should be given opportunity of hearing. In order to substantiate this ground, the learned Senior Counsel appearing for the petitioner relied upon the judgment of this Court rendered in WP.No.12354 of 2020 dated 01.08.2022 in the case of ***T.Sarath Kumar Vs. Director General of Police and two others***, wherein this Court relied upon the judgment rendered in WP.No.5498 of 2006 dated 11.11.2009 in the case of ***Somasundaram Vs. Superintendent of Police, Krishnagiri and three others***, wherein it is held that the mind of the punishing authority has been prejudiced by the



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past conduct of the petitioner. But no opportunity was given to put forward his explanation with regard to the past conduct. This apparatus formed the basis for the decision to impose punishment of compulsory retirement.

12. In view of the above, the orders impugned in this writ petition are quashed insofar as imposing disproportionate punishment; Since the charge of unauthorised absence cannot be left unnoticed, particularly when it is brought to notice of this Court that the petitioner had earlier indulged in instances of unauthorised absence, therefore, the punishment of compulsory retirement imposed on the petitioner is modified into that of punishment of three stages reduction in scale of pay with cumulative effect.

13. Accordingly, the respondents are directed to reinstate the petitioner back into service forthwith together with continuity of service and other service benefits. The petitioner is not entitled for any salary from the date of the original punishment of removal from service till the



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reinstatement into service. It is made clear that the reinstatement of the petitioner is subject to the condition that the petitioner shall be subjected for physical endurance and on his physical fitness.

14. With the above direction, this writ petition stands allowed.

There shall be no order as to costs.

20.08.2024

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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