



WEB COPY



Writ Petition No.575 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.575 of 2024

and

W.M.P.No.559 of 2024

S.Praveen Raj
S/o.Sekar

... Petitioner

Vs.

1.Government of Tamil Nadu
represented by
Principal Secretary to Government,
Home (Police IX) Department,
Secretariat, Chennai - 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai - 600 004.

3.The Commandant,
Office of the Commandant,
TSP VII Bn, Pochampalli,
Pochampalli (Taluk),
Krishnagiri District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of removal from service passed by third respondent in his E1/PR No.64/2020 dated 23.12.2020



Writ Petition No.575 of 2024

and in C.No:E1/PR 64/2020 u/r 3(b) dated 12.01.2021 and the order of the second respondent in his Pro.Rc.No:918839/AP IV(2)/2021, dated 24.01.2022, confirming the same, quash the same as unsustainable in law and issue consequential direction to the respondents herein to reinstate the petitioner in service with all consequential service and other attendant benefits.

For Petitioner : Mr.N.Kesavaraj
for Mr.R.Thamaraiselvan

For Respondents : Mr.V.P.R.Elamparithi
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the third respondent dated 23.12.2020 removing the petitioner from service and the order passed by the second respondent through proceedings dated 24.01.2022, confirming the order passed by third respondent.

2. The case of the petitioner is that he was selected as Grade-II Police Constable and was allowed to undergo basic training at Temporary Police Training School, Pochampalli, during the year 2020. Due to unforeseen family circumstances, which was beyond the control



Writ Petition No.575 of 2024

of the petitioner, he proceeded on casual leave for three days from 05.06.2020 to 07.06.2020. Even thereafter, he was not able to join the training for nearly 21 days.

3. The third respondent, through proceedings dated 01.07.2020, issued desertion order and the petitioner was asked to appear before the third respondent to explain his absence. The petitioner appeared before the third respondent and submitted his explanation for his absence from 08.06.2020. On being satisfied with the explanation, the third respondent, through proceedings dated 30.07.2020, took back the petitioner for duty. The petitioner was also informed that disciplinary proceedings will be initiated against him under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules (hereinafter referred to as 'the Rules').

4. The petitioner was undergoing training at Pochampalli. He once again fell sick for 20 days from 05.08.2020 to 24.08.2020 and he proceeded on medical leave. The petitioner has to re-join duty on 25.08.2020. Since he did not recover from his illness, he did not report for duty on 25.08.2020. The third respondent, therefore, once again



issued proceedings dated 17.09.2020 and declared the petitioner as a deserter and called upon the petitioner to appear before the third respondent and submit his explanation.

5. The petitioner was not able to appear before the third respondent within the appointed date and therefore, the third respondent passed orders dated 27.10.2020 confirming the order of desertion and directed initiation of disciplinary proceedings under Rule 3(b) of the Rules.

6. The petitioner faced disciplinary proceedings and he gave a detailed explanation by assigning reasons explaining his absence on two occasions. The third respondent appointed an enquiry officer and the petitioner attended the enquiry. The enquiry report dated 08.12.2020 was submitted with a finding that all charges have been proved. The petitioner submitted a further representation. Ultimately, the third respondent, through proceedings dated 23.12.2020, passed an order removing the petitioner from service. This order was subsequently confirmed by the second respondent in the mercy petition filed by the petitioner through proceedings dated 24.01.2022. The petitioner filed yet



Writ Petition No.575 of 2024

another petition before the first respondent which was in turn forwarded to the second respondent. Since no orders were passed, the present writ petition has been filed before this Court challenging the impugned orders passed by respondents 2 and 3.

7. The third respondent has filed a counter affidavit. The third respondent has taken a stand that the charges framed against the petitioner were proved and during the oral enquiry, three prosecution witnesses were examined and 24 prosecution exhibits were filed. Sufficient opportunity was also given to the petitioner. The third respondent has also stated that the petitioner himself admitted the delinquency committed by him. Ultimately, the third respondent came to a conclusion that the petitioner was in basic training and absented for duty twice. First time for more than 21 days and the second time for more than 60 days. Therefore, the punishment of removal from service was imposed. The third respondent, in the counter, has stated that the petitioner has not preferred any appeal to the appellate authority. However, the petitioner had merely submitted a mercy petition, which was dealt with by the second respondent and the punishment was also confirmed. In view of the same, it is stated that the petitioner himself has



Writ Petition No.575 of 2024

admitted the delinquency and the charges have also been proved and the petitioner, who was in basic training, had absented himself without any proper explanation. Hence, the punishment imposed against the petitioner has been justified and the respondents have sought for dismissal of the writ petition.

8. Heard Mr.N.Kesavaraj, learned counsel for petitioner and Mr.V.P.R.Elamparithi, learned Additional Government Pleader, appearing for respondents.

9. The main ground urged by learned counsel for petitioner is that the petitioner had given sufficient reasons for his absence and the absence of the petitioner was not willful. Therefore, it was contended that the order of removal from service is completely disproportionate to the nature of charges framed against the petitioner. Learned counsel, in order to substantiate his submission, relied upon the judgment of the Apex Court in SLP (C) No.15381 of 2006, dated 15.02.2012 [***Krushnakant B.Parmat v. Union of India & another***].



10. Learned counsel for petitioner further submitted that as per the circular memorandum dated 30.10.1990, in a case where disciplinary proceedings are initiated for absence, in such cases, punishment of removal/dismissal from service or compulsory retirement should not be given. Learned counsel submitted that this memorandum was not even taken into consideration by respondents 2 and 3. Hence, learned counsel sought for the interference into the punishment imposed against the petitioner.

11. *Per contra*, learned Additional Government Pleader appearing on behalf of respondents submitted that the petitioner had joined duty only in the year 2020 and he was allowed to undergo basic training. During the training period, the petitioner had absented himself on two occasions. During the first occasion, the petitioner had absented for more than 21 days and during the second occasion, the petitioner had absented for more than 60 days. Learned counsel submitted that no sufficient reason was given by the petitioner for his absence and in fact, the petitioner had admitted the absence. Therefore, the respondents 2 and 3 found that the absence of the petitioner was willful and therefore, proceeded to punish the petitioner by removing him from service.



Learned Additional Government Pleader submitted that the petitioner did not even challenge the order of punishment by filing an appeal. The petitioner merely submitted a mercy petition and it was considered and the mercy petition was rejected. Learned Additional Government Pleader, therefore, sought for the dismissal of this writ petition.

12. In the considered view of this Court, there is no dispute with regard to the fact that the petitioner during the basic training period was absent on two occasions. During the first occasion, he was absent for nearly 21 days. During the second occasion, he was absent for 60 days. Right from the beginning, the petitioner was giving one excuse or the other for not able to attend duty. During the enquiry, the petitioner himself admitted that he was not able to attend duty. Except for making such a oral statement, the petitioner was not able to produce any valid material to justify his absence.

13. The petitioner is in disciplined services. The petitioner had hardly joined the service in the year 2020 and he was allowed to undergo basic training. If the petitioner does not attend the training regularly even at such an initial stage, it will become very difficult for the respondents



Writ Petition No.575 of 2024

to maintain discipline in the police force. This is more so since the incident had happened during the pandemic period.

14. The petitioner is relying upon a circular memorandum dated 30.10.1990 to state that the punishment is disproportionate and that the petitioner should not have been removed from service. This circular memorandum has been explained by third respondent in the counter affidavit wherein it has been stated that this will apply in a case where the deserter appears before the Superintendent of Police/Commandant within 60 days from the date of desertion and explain the reasons for his absence. In the case in hand, the petitioner has not appeared before the Commandant within 60 days from the date of desertion. The petitioner has also not produced any medical certificates or other records to justify his absence.

15. Insofar as the judgment that has been relied upon by learned counsel for petitioner is concerned, the Apex Court has held that only in a case of willful absence, the extreme punishment of removal/dismissal from service can be resorted to by the disciplinary authority. If there is no willfulness on the part of the delinquent officer, it



Writ Petition No.575 of 2024

cannot result in an extreme punishment. On the facts of that case, the Apex Court found that the disciplinary authority did not even render a finding that the absence is willful and therefore, in the absence of such a finding, the Apex Court held that there was no misconduct on the part of the delinquent officer.

16. In the case in hand, the petitioner was declared as a deserter at least on two occasions. Even during the second occasion, before the expiry of 60 days, the petitioner had an opportunity to appear before the Commandant and explain the reasons for his absence. The petitioner did not avail of this opportunity and therefore, the order of desertion was confirmed. Even during the disciplinary proceedings, the petitioner was not able to come up with any convincing answer as to why he had absented himself for such a long time. This was taken into consideration by the respondents and it was found that the absence of the petitioner was willful and consequently, the punishment of removal from service was imposed.

17. This Court exercising jurisdiction under Article 226 of the Constitution of India cannot substitute its opinion to the opinion of the



Writ Petition No.575 of 2024

disciplinary authority. This Court must only see if there is any apparent illegality/ infirmity in the order passed by the respondents. This Court is not able to find any such illegality in the reasons assigned and the final orders passed by the respondents. In view of the same, a writ of certiorari cannot be issued.

18. Therefore, this Court is not inclined to interfere with the impugned proceedings of the third respondent dated 23.12.2020 and the order passed by the second respondent through proceedings dated 24.01.2022, confirming the order passed by third respondent

In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2024

Neutral Citation: Yes/No
Index: yes/no
Speaking Order/Non-Speaking Order
gm



Writ Petition No.575 of 2024

N.ANAND VENKATESH, J

gm

To

- 1.The Principal Secretary to Government,
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Secretariat, Chennai - 600 009.
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Writ Petition No.575 of 2024

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