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W.P.No.23165 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.23165 of 2013

P.Anbalagan

...Petitioner

-Vs-

1.Government of Tamil Nadu,
Represented by Secretary to Government
Home (Police) Department,
Secretariat, Chennai – 9.

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

3.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore – 18.

4.The Superintendent of Police,
Coimbatore District,
Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records (1) Pro.Rc.No.041898/A.P.1(1)/2010 dated 21.09.2010 of the 2nd respondent (2) Pro.Rc.No.D2/AP/29/2009 dated 19.01.2010 of the 3rd respondent and (3) Rc.No.J1/P.R.47/2009 dated 10.10.2009 of the 4th respondent to quash the same and to issue consequential



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directions to the respondents to reinstate the petitioner in service with all consequential benefits and pass such further orders.

For Petitioner : Mr.R.Sri Hari
for M/s.M.Ravi

For Respondents : Mr.T.M.Rajangam
Government Advocate

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records (1) Pro.Rc.No.041898/A.P.1(1)/2010 dated 21.09.2010 of the 2nd respondent (2) Pro.Rc.No.D2/AP/29/2009 dated 19.01.2010 of the 3rd respondent and (3) Rc.No.J1/P.R.47/2009 dated 10.10.2009 of the 4th respondent to quash the same and consequently direct the respondents to reinstate the petitioner in service with all consequential benefits.

2. The facts of the case in a nutshell:-

2.1 The petitioner was enlisted as Police Constable, Grade II on 01.08.2002 in TSP Unit and was transferred to Armed Reserve Unit, Salem thereafter. While he was serving in the First Battalion of Armed Reserve Unit, Salem and was on Guard Duty at M/s. Viscose Company from



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24.01.2009. Sirumugai Police Station limits that on 29.01.2009, the petitioner received intimation from his native place that his aged mother was seriously ill and that his presence was required forthwith. The petitioner applied for leave for one day on 30.01.2009 and with due permission of the Inspector of Police, Sirumugai Police Station, under whose jurisdiction he was working on Guard Duty, he proceeded to his native place. His mother's health condition worsened and she was bedridden and he had to remain in his native village, looking after her as there was nobody else to look after her. Due to the consequential mental agony and mental stress, he could not contact his superiors and extend his leave. Ultimately, in spite of his efforts to provide the best medical treatment to his mother, she expired on 12.12.2009.

2.2 While so, the fourth respondent herein in and by D.O.No.334/2009 (Na.Ka.No.H3/8072/2009) dated 02.04.2009 issued an order declaring him as 'deserter', since he was absent from 31.01.2009 to 20.02.2009 for 21 days without prior permission or leave. No opportunity was given to the petitioner to make representation for reinstatement within 60 days prior to passing the said order dated 02.04.2009. The fourth respondent issued a Charge Memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D.&A.) Rules vide Na.Ka.No.J1/P.R.47/2009 dated



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02.06.2009 in respect of his absence from duty from 31.01.2009 onwards for more than 21 days. The Deputy Superintendent of Police, Crime Records Bureau, Coimbatore, was appointed as Enquiry Officer, who conducted enquiry and submitted a report dated 26.8.2009, rendering findings that the charge had been proved. A copy of the said report was furnished to the petitioner on 26.9.2009 for his further representation thereon. The petitioner submitted his reply dated 01.10.2009 stating that due to unforeseen circumstances resulting from the prolonged illness of his mother, he was constrained to look after her and due to the mental stress, he was not able to inform the higher authorities for an extension of leave. In the circumstances, he requested to condone the absence on humanitarian grounds and drop the disciplinary proceedings. Thereupon, the fourth respondent, in and by Rc.No.J1/PR47/2009 dated 10.10.2009, passed final orders in the disciplinary proceedings, imposing a penalty of 'Removal from service'. Aggrieved by that, he preferred an appeal petition dated 12.11.2009 which was rejected by the 3rd respondent confirming the order of the Disciplinary Authority. Thereafter he filed a Mercy Petition dated 18.3.2010 which was also rejected by the 2nd respondent by his Pro.Rc.No.041898/AP.1(1)/2010 dated 21.09.2010. Being aggrieved by the above orders, the petitioner has come forward with the present writ petition.



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3. Learned counsel for the petitioner submitted that the only allegation against the petitioner is that of unauthorised absence and that too for a period of 21 days. By treating him as a deserter and thereafter, despite willingness to report for duty within the time stipulated prescribed, the officials did not allow him to join. In regard to passing of impugned orders by various authorities, the learned counsel contended they have miserably failed to note that the punishment as imposed would run shockingly disproportionate to the alleged offence namely unauthorised absence which is common in the Disciplined Force due to various situations persistently prevalent in the place of work and that was the reason why the authorities themselves have chosen to issue a circular that these types of delinquencies would not call for imposition of major penalty. Failure to consider the above in its proper perspective has resulted in grave injustice to the petitioner. The reason for his unauthorised absence was due to his mother's prolonged illness. He had to remain in the village to look after his mother with nobody else except him to attend her.

4. Learned counsel further submitted that the Hon'ble Division Bench of this Court in a similar case in W.A.No.58 of 2011 dated



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27.01.2011, held that the Government ought to consider the case of the petitioner for reducing the quantum of punishment imposed on him.

5. Learned Government Advocate filed a counter affidavit on behalf of the respondents in January 2015 and submitted that in the disciplinary proceedings, reasonable opportunities were given in the oral enquiry to defend his case. The Deputy Superintendent of Police, District Crime Records Bureau, Coimbatore District, who conducted the oral enquiry in this P.R has held the charge as proved after going through the contents of the oral evidences of PWs and documentary evidences and submitting a minute dated 26.08.2009 for passing final orders. A copy of the minute was given to the delinquent in this office memo dated 26.09.2009 to offer his further representation. He submitted his further representation on 01.10.2009.

5.1 In the explanation submitted before the Enquiry Officer he stated that he left the place of guard on rest and after getting one day permission went to his native place, where he became ill and there were no facilities available in his village to pass on the information to the station, he deserted the force. Whereas in his further representation, he has stated that due to the treatment of his mother who fully depends on him and family circumstances he could not resume duty and absented himself. He finally



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pleaded to take him back for duty this time by showing mercy on him.

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5.2 It is to be noted that he has given a different explanation for his absence despite the truth. Hence it is proved that he deserted the force wantonly and the Enquiry Officer drawn a minute holding the charge as proved. Desertion is a serious delinquency in disciplined force and should be dealt with as a deterrent punishment. The delinquent deserted the force on 5 occasions in a short span of service of 7 years and several opportunities to correct himself and perform better in future were given. Holding the Enquiry Officer's minute and the further representation of the delinquent, the punishing authority has not found any reason to show leniency. Because of that the delinquent had previously committed the offence of desertion and been awarded lesser punishments. He has not mended himself in spite of pardon given so far. On the proved minute, he was awarded with the punishment of "Removal from Service".

6. Learned Government Advocate further submitted that as per the provisions under Police Standing Order 95(1) his desertion was confirmed after giving an opportunity in Deserter Order in D.O.No.210/09 dated 25.02.2009 stating that if he wants reinstatement he may appear before the



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Superintendent of Police with the reason for desertion within 60 days of the receipt of the desertion order. Even though the applicant received the desertion order on 04.03.2009 he has not appeared with a request to be taken back for duty before the Superintendent of Police. A departmental action was ordered to deal with him u/r 3 (b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955 for his desertion in PR.No.47/09. After completion of the oral enquiry, his further representation has been obtained from him and considered. But his explanation and further representation are contradictory.

7. Heard both side and perused the materials available on record.

8. The only allegation against the petitioner is that he was on unauthorised absence from 31.01.2009 to 20.02.2009 for 21 days while working as Guard Duty at Sirumugai Police Station without any prior intimation or permission and without giving leave letter. Hence, he was declared as a deserter in D.O.No.334/2009 (Na.Ka.No.H3/8072/2009) dated 02.04.2009 and in that order, instructions were also issued that if he was willing to be taken to duty, he should report before the Superintendent of Police, Coimbatore, and explain the circumstances for his absence. As he did not comply with the said instructions within 60 days, his desertion was



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confirmed as per D.O.No.334/2009 dated 02.04.2009. For the offence of desertion, he was dealt with on a charge u/r 3(b) of the Tamil Nadu Police Sub-ordinate Services (Discipline and Appeal) Rules, 1955 in PR No.47/09 for desertion and he was declared as a deserter. The appeal to the 3rd respondent was rejected on 12.11.2009 and his Mercy petition to the 2nd respondent was rejected on 18.03.2010 and his Revision petition before the 1st respondent was also rejected on 31.01.2011.

9. At this juncture, it is pertinent to mention that there is a circular memorandum issued by the office of the Director General of Police, dated 06.12.2007 in Rc.No.235355/AP-IV(2)/2007 by which instructions were issued informing the unit officers 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



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retirement should not be given; any other punishment can be imposed and these guidelines should be strictly followed while dealing with desertion cases.

10. The above circular was also mentioned in the order passed by this Court in W.P.No.7927 of 2015 dated 21.12.2021 and the same is extracted for ease of reference.

*Rc.No.235355/AP-IV(2)/2007 Office of the
Director General of Police,
Chennai 600 004.
Dated 06.12.2007*

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/AP-1(1)/1990, dated 30.10.1990

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 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



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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 is found it will be viewed adversely.

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

***Sd/-P.Rajendran
Director General of Police***

11. The aforesaid circular memorandum is self-explanatory. When the circular memorandum of the Director General of Police clearly indicates that the punishment of 'dismissal/removal from service' or 'compulsory retirement' should not be imposed on a delinquent for charges of desertion and the punishment imposed itself is disproportionate to the charge, as held by the Hon'ble Supreme Court and which was relied upon by this Court in the



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aforesaid decision. However, the charge of unauthorised absence cannot be left unnoticed, particularly when it is brought to the notice of this Court that the petitioner had earlier indulged in instances of unauthorised absence on earlier five occasions.

12. By taking into account the ratio laid down by the Hon'ble Supreme Court of India, by this Court and the Circular Memorandum of the second respondent this Court is of the considered view that the order of "Removal of Service" passed by the 4th respondent made in Rc.No.J1/P.R.47/2009 dated 10.10.2009, as confirmed by the third respondent in Pro.Rc.No.D2/AP/29/2009 dated 19.01.2010 and that of the second respondent's order made in Pro.Rc.No.041898/A.P.1(1)/2010 dated 21.09.2010 and as confirmed by the first respondent by order dated 31.01.2011 are quashed and consequently this Court directs the respondents to pass appropriate orders to reinstate the petitioner from the date of his original punishment dated 02.04.2009 onwards as if he was never dismissed from service, together with continuity of service and other attendant service benefits within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner shall not be entitled to back wages during the non employment



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period.

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In the result, the **writ petition stands allowed with the above observations and directions.** No costs.

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cda

Index : Yes/No

Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai – 9.
- 2.The Director General of Police,
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