



W.P. No.23255 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.23255 of 2013

K.Sakthivel

... Petitioner

Vs.

1.The Director General of Police,
Mylapore, Chennai – 4.

2.The Superintendent of Police,
Armed Reserve,
Krishnagiri District

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in Rc.No.228160/AP.2(2)/2007-1 dated 01.09.2008 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.S.Ilamvaludhi
For Respondents : Ms.R.L.Karthika
Government Advocate.

ORDER

The petitioner herein was appointed as Constable on 28.02.1995. While the petitioner was working as such, he was subjected to disciplinary proceedings by issuing a charge memo on the ground of deserting the services



by absenting himself for a period of 21 days and accordingly, the enquiry officer was appointed. After conducting the enquiry, the petitioner was supplied with a copy of the enquiry report and in response to the same, the petitioner has submitted a representation accepting the fact that he has deserted his services due to his family problems and requested for taking him back to the duty on mercy.

2. However, the 2nd respondent, being not satisfied with the explanation submitted by the petitioner and also taking into consideration the fact that the petitioner has deserted the force ten times in his twelve years of service and the present incident is 11th incident and further also taking note of the fact that the petitioner absented from the force without permission on six occasions for shorter durations, the presence of the petitioner was found burdened and would set a bad example for other employees working in the disciplined force, the punishment of compulsory retirement from service was imposed on the petitioner, by an order dated 08.08.2007.

3. Surprisingly, the petitioner has not chosen to file an appeal against the said order dated 08.08.2007, whereby the petitioner was compulsorily



retired from service. However, after a lapse of about three months, the petitioner submitted a mercy petition dated 27.11.2007 before the 1st respondent requesting for taking back him into the service. The said petition was considered by the 1st respondent and an order was passed in proceedings Rc.No.228160/AP.2(2)/2007 dated 11.04.2008 rejecting the mercy petition. Thereafter, the petitioner approached this Court by filing writ petition in W.P.No.17672 of 2008 of 2008 challenging the original order of punishment dated 08.08.2007 and the order dated 11.08.2008 passed by the 1st respondent. The said writ petition was disposed of by this Court, by an order dated 25.07.2008 duly remanding the matter back to the 1st respondent for re-considering the same afresh and in accordance with Rule 15-A(1) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955. It is pursuant to the order passed by this Court, the 1st respondent passed the impugned order dated 01.09.2008, once again rejecting the mercy petition submitted by the petitioner.

4. A perusal of the impugned order dated 01.09.2008 discloses that the 1st respondent has only reiterated the contents of the original order of punishment dated 08.08.2007 while passing the impugned order but failed to



consider the case of the petitioner, in the context of the fact that the petitioner has only submitted a mercy petition and not contested the charge as such.

5. From the material on record it does not appear that the petitioner was punished on any previous occasion, though admittedly he was shown to have been absent on ten occasions. If the petitioner is absent on ten previous occasions and deserted the service, it is not understood as to why no steps have been taken on ten occasions for imposing appropriate punishment on the petitioner. If there is any such occasion where the petitioner was imposed with any punishment, the respondents ought to have referred the same in the impugned orders but there is no such indication of petitioner being subjected to any punishment on previous occasions, though there appears to be misconduct on the part of the petitioner by absenting himself from service on ten occasions.

6. If that be the case, straight away imposing punishment of compulsory retirement resulting in taking away the livelihood of the petitioner at the first instance when he was subjected to disciplinary proceedings on the ground of un-authorised absence for a period of 21 days,



in the considered view of this Court appears to be harsh and shockingly disproportionate to the nature of charge levelled and established against the petitioner. Further, the petitioner was aged 27 years as on the date of imposition of punishment of compulsory retirement. Further on perusal of the impugned order dated 01.09.2008, there is nothing to indicate that the 1st respondent has considered the case of the petitioner on the angle of mercy, but proceeded to pass an order in a mechanical manner by reproducing the contents of the original order dated 08.08.2007 passed by the 2nd respondent.

7. For these reasons and also taking into consideration that no counter affidavit is filed in this writ petition by the respondents, in the absence of any material before this Court to indicate that the petitioner was subjected to disciplinary proceedings on earlier occasions, though admittedly the petitioner had deserted the service on ten occasions, imposing the punishment of compulsory retirement from service especially when the petitioner was aged about 27 years is bound to be treated as punishment shocking to the conscience of the Court.

8. No doubt, the petitioner failed to prosecute the matter with required diligence and approached this Court only in the year 2013 against the order



passed as early as on 01.09.2008 but considering the fact that the petitioner was out of service since 08.08.2007 and the position of the respondent is no way altered because of the delay caused in filing the writ petition and also considering the fact that no prejudice is caused to the respondents, this Court is inclined to interfere with the impugned order. Accordingly, the impugned order dated 01.09.2008 is set aside. In the normal course, this Court, having arrived at a conclusion that the punishment of compulsory retirement is shockingly disproportionate to the proved charge against the petitioner, would have remanded the matter back to the respondents for reconsideration. But taking into consideration the long lapse of time of more than a decade since filing of the present writ petition and lapse of more than 15 years from the date of imposing punishment of compulsory retirement, this Court deems it fit and appropriate to give a quietus to the matter at this stage itself.

9. Accordingly, the punishment of compulsory retirement imposed on the petitioner through proceedings dated 08.08.2007 and the impugned proceedings dated 01.09.2008 are set aside and the same shall stand substituted with punishment of stoppage of increment for three years with cumulative effect having impact on the pension. Consequently, the respondents are directed to reinstate the petitioner into service within a period



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of four weeks from the date of receipt of a copy of this order. The period from the date of compulsory retirement i.e., 08.08.2007 till the date of reinstatement shall not be counted for any purpose. The petitioner shall also be not entitled for back wages. However, the services rendered by the petitioner till 08.08.2007 shall be taken into consideration for all purposes including for terminal benefits.

10. Accordingly, the writ petition is disposed of. The connected miscellaneous petitions, if any shall stand closed. No costs.

06.08.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

MUMMINENI SUDHEER KUMAR,J.

dpa

To:

- 1.The Director General of Police,
Mylapore, Chennai – 4.
- 2.The Superintendent of Police,
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Krishnagiri District.

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