



W.P.No.31664 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.31664 of 2012

I.P.Sampaul

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Principal Secretary to Government,
Home Department,
Fort St.George,
Chennai – 600 009.

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

3.The Joint Commissioner of Police,
Triplicane, Egmore,
Chennai – 600 008.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records regarding the order of the first respondent in G.O.(2D) No.74, dated 28.02.2012 and quash the same and further direct the respondents to reinstate the petitioner in service with all service and monetary benefits.



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For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.M.Murali,
Government Advocate

ORDER

This writ petition has been filed by the petitioner to call for the records regarding the order of the first respondent in G.O.(2D) No.74, dated 28.02.2012 and quash the same and further direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

2. The case of the petitioner is that the petitioner was enlisted as Grade-II police Constable in the year 1976. Thereafter, he was transferred to Chennai City Armed Reserve in the year 1980, and to F3 Nungambakkam Police Station of East Zone, Chennai City Police.

2.1. While working in the Nungambakkam Police Station due to ill-health he was absent from duty from 20.07.2006. Therefore, without recourse to any of the Rules and Regulations alleging absenting from duty for



days he was declared as deserted on 24.08.2006 and thereafter for no fault of the petitioner in spite of his willingness to report for duty, in an by proceedings dated 19.09.2006 he was declared as a confirmed deserter. This was followed by initiation of disciplinary proceedings under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 in P.R.No.94/2006 by issuance of a charge memo dated 13.03.2007 wherein the sole charge was that he was remained absent unauthorisedly for over a period of 21 days and thereby with reference to the said charge, enquiry was initiated and the enquiry officer held the charge as proved. Based on which, a final order was passed by the third respondent in C.No.PR.94/PR.II/CZ/2006, dated 03.05.2007 imposing a penalty of removal from service. Thereafter, he has filed a Mercy Petition before the second respondent and the same was rejected on 22.01.2009. Subsequent to the same, he has filed an appeal before the first respondent, which was also rejected vide G.O.2(D)No.74, dated 28.02.2012. Being aggrieved by the said order dated 28.02.2012, 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 stipulated time 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 unauthorized 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.

4. The learned counsel further submitted that the enquiry came to be held in a manner not known to law though the enquiry findings would state that the petitioner had submitted the reasons for his unauthorised absence being due to the then prevailing family conditions. But there was no



opportunity whatsoever to examine and cross examine by establishing through evidence much less documentary evidence that the said absence was unauthorised because when the respondents had chosen to grant and extend time for reporting for duty on or before 17.09.2006 and that the petitioner having appeared himself for reporting duty, the authorities not considering and permitting him to rejoin and the order terminating the petitioner as confirmed and thereafter proceeding with the departmental inquiry, exhibits arbitrariness. The learned counsel for the petitioner placed reliance on the judgment of this Court in W.P.No.7927 of 2015 dated 21.12.2021 in which this Court had placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of B.C.Chaturvedi Vs. Union of India and others reported in AIR 1996 SC 484:1995 (6) SCC 634 and the relevant paragraphs are extracted hereunder:-

“14. In AIR 1996 SC 484:1995 (6) SCC 634 (B.C.Chaturvedi v. Union of India and others) the Hon'ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or



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Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment.

15. In this aspect, Hon'ble Supreme Court has laid down the law as follows:-

“..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing



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of the order by the Court. In the present case, petitioner was absent for 21 days. It is one of the clear instance where the punishment of dismissal from service is disproportionate to the charge”.

Further in support of his contention, he placed reliance on the circular memorandum dated 16.12.2007 issued by the Director General of Police, which will be adverted to later.

5. Learned Government Pleader has filed a counter affidavit on behalf of the respondents and submitted that the petitioner was a habitual absentee and for such repeated delinquencies, he was punished for about nine times. The contention of the petitioner that he had not committed any misconduct and he had only deserted the force is ridiculous and there is no parameter to decide which one is misconduct. Desertion from the force is a serious misconduct and the contention of the petitioner is wrong.

6. Learned Government Advocate appearing for the respondents would further submit that the petitioner is a confirmed deserter from 19.09.2006 and his service history shows that he had nine previous desertions to his credit



and one unauthorised absence earlier. As per Police Standing Order 95(1), he was declared as a deserter for long absence without leave, permission or intimation to superiors. Consequently, as per procedure, a charge under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 was framed against him, an enquiry was conducted and the delinquency was found proved and imposition of major penalty is the result of such a charge.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The only allegation against the petitioner is that he was on unauthorised absence for 21 days while working at F-3 Nungambakkam Police Station, Chennai district from 20.07.2006 without any prior intimation, permission and without giving leave letter. Hence, he was declared as a deserter on dated 24.08.2006 and in that order, instructions were also issued that if he was willing to be taken to duty, he should report



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before the Deputy Commissioner of Police, Chennai and explain the circumstances for his absence. As he did not comply with the said instructions within 60 days, his desertion was confirmed as per reference No.656 of 2006 dated 19.09.2006. 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.94/2006 for desertion and he was declared as a deserter. The Mercy petition to the second respondent was rejected on 22.01.2009 and his Revision petition before the first respondent was also rejected on 28.02.2012.

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



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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.

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



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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 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



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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 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.

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 dismissal passed by the Deputy Commissioner of Police made in PR No.94/2006 dated 04.05.2007, as confirmed by the first respondent vide its order made in G.O.(2D)No.74 Home (Police IV) Department dated 28.02.2012 is quashed



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and consequently this Court directs the respondents to pass appropriate orders to reinstate the petitioner from the date of his original punishment dated 19.09.2006 onwards as if he was never dismissed from service, together with continuity of service and other attendant service benefits, inclusive of back-wages and service benefits thereto, 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 period.**

13. In the result, the writ petition is allowed with the above observations and directions. No costs.

05.03.2024

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Index : Yes/No

Speaking Order : Yes/No

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J.SATHYA NARAYANA PRASAD,J.



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