



W.A.No.1454 of 2022 and 2046 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.07.2024

DELIVERED ON: 20.08.2024

CORAM:

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR,
ACTING CHIEF JUSTICE**

and

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.A.Nos.1454 of 2022 and 2046 of 2019

and

CMP.Nos. 9386 of 2022 & 20804 of 2019

W.A.No.1454 of 2022

1. The Commandant

TSP XII Battalion,

Mandapam Camp, Manimutharu,

Tirunelveli District.

2. The Director General of Police,

Chennai-600004.

3. The Principal Secretary to Government,

Home (Police II) Department,

Fort St.George, Chennai -600009.

..Appellants

Vs

P.Palaniswamy

..Respondent



W.A.No.1454 of 2022 and 2046 of 2019

W.P.No. 2046 of 2019

WEB COPY

1. The State of Tamilnadu,
Rep. By its Secretary to Government,
Home Department, Secretariat,
Chennai-600009.

2. The Director General of Police,
Mylapore,
Chennai-600004.

3. The Commandant,
TSP, Vth Bn (Tamil Nadu Special Police)
S.M. Nagar, Avadi,
Chennai-600109.

4. The Assistant Commandant,
TSP, Vth Bn (Tamil Nadu Special Police)
S.M. Nagar, Avadi,
Chennai-600109.

..Appellants

Vs

M.Arokiasamy

..Respondent

Common Prayer: These Writ Appeals filed under Clause 15 of the Letters Patent against the order passed in W.P.No.18993 of 2016 dated 05.07.2021 and W.P.No. 28467 of 2014, dated 17.07.2018.



WEB COPY



W.A.No.1454 of 2022 and 2046 of 2019

For Appellants : Mr P.Kumaresan, AAG

Assisted by

Mr S.Prabhakaran, GA

(in both WAs)

For Respondents : Mr.K.Venkataramani, Sr. Counsel

For Mr.Muthappan (in W.A.No.
1454 of 2022)

For V.Thiyagu (in W.A.No. 2046
2019)

COMMON JUDGMENT

(D.KRISHNAKUMAR, ACTING CHIEF JUSTICE.)

Aggrieved by the orders passed by the writ court in W.P.No.18993 of 2016 dated 05.07.2021 and W.P.No. 28467 of 2014, dated 17.07.2018, these writ appeals have been filed by the appellants.

2. Since the issue involved in both writ appeals are the same, both the writ appeals are clubbed together and common judgment is passed.

W.A.No.1454 of 2022

Brief facts:

3.1 The respondent was appointed as a Grade II Police



W.A.No.1454 of 2022 and 2046 of 2019

constable in TSP-I Battalion by the Petitioner Department on 01.12.2003, subsequently transferred to the TSP XII Battalion in June 2006. He was given three days casual leave from 14.03.2007 to 16.03.2007, which the respondent extended on two occasions, from 17.03.2007 to 20.03.2007, thereafter he failed to report for service 21.03.2007. Since there was no permission granted and he absented himself from duty for more than 21 days, he was struck off as a 'deserter' by order in B.O. 122/2007 dated 11.04.2007. The respondent was issued with a charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1956 for the offence of 'desertion' in PR 25/2007. The enquiry officer's report, which obtained an explanation from the respondent, confirmed that he was not willing to continue his service in the department. The said findings was agreed by the disciplinary authority, and awarded the punishment of 'removal from service' to the respondent. A mercy petition was submitted by the respondent, after six years, to the Director General of Police and the same came to be rejected by proceeding in C.No. 100691/ AP 3 (1) /2014, dated 01.09.2014, stating that it was not appropriate to reinstate the



W.A.No.1454 of 2022 and 2046 of 2019

respondent, who had no inclination to serve in the department.

WEB COPY

3.2 Aggrieved by the said order of the DGP and the earlier disciplinary proceedings, the respondent/petitioner has filed a writ petition in W.P. No. 18993 of 2016 before this Court, wherein this Court by order dated 05.07.2021, set aside the orders passed by the appellant-department and modified the punishment awarded by the appellant. Challenging the same, the present this Writ Appeal No. 1454 of 2022.

3.3 The learned counsel for the appellant has submitted that the appellant has sanctioned 3 days of casual leave to the respondent on his request, after which he did not report for duty, instead he extended the leave in two more occasions through telegram, thereafter he absented again without any leave or prior permission. Since the absence was for more than 21 days continuously, on his own accord, he was struck off as deserter with instructions to appear before the competent authority with valid reasons for the absence within 60 days. After conducting oral



W.A.No.1454 of 2022 and 2046 of 2019

enquiry and based on the report of the enquiry officer, the punishment was awarded to the respondent as per TNPSS D&A rules.

3.4 The learned counsel for the appellant has submitted that based on the written statement submitted by the respondent that he was not willing to continue his service in the department, the disciplinary authority awarded the punishment of 'Removal from Service'. The respondent did not prefer any appeal within stipulated time and submitted his mercy petition to the Director General of Police after a period of six years, which was duly considered and rejected on the ground that the respondent had no inclination to serve in the department.

3.5 The learned counsel for the respondent has submitted that there were no previous delinquencies or punishments against the respondent and therefore, the major punishment of removal from service awarded by the appellant is excessive. The learned counsel for the respondent has further submitted that before the writ court,



W.A.No.1454 of 2022 and 2046 of 2019

the respondent undertook not to claim continuity of service and backwages for the period from the date of the original punishment until the date of reinstatement. Based on the undertaking given by the respondent, the writ court modified the order of punishment; hence, the impugned order does not require any interference by this Court.

4. W.A.No.2046 of 2019

Brief facts: of the Case

4.1 The respondent was appointed as a Grade II Police Constable on 31.10.1997. He was served a charge memorandum on 14.03.2003 for prolonged absence and was declared a 'Deserter'. He has submitted his explanation stating that he was suffering from a severe ulcer requiring prolonged treatment. The appellant conducted an enquiry and held the charges proved, and on 05.06.2003, he was removed from service for absence of duty without proper intimation on four occasions and desertion from duty since 01.11.2002. The 3rd respondent/ Commandant of T.S.P V Battalion issued the final removal order in P.R. No. 07/2023. After four years of removal



W.A.No.1454 of 2022 and 2046 of 2019

WEB COPY

from service, the respondent has sent a detailed proposal to the Director General of Police, Tamil Nadu, on 14.11.2007 and the same was rejected on 28.04.2008. Aggrieved by the same, he filed Writ Petition No. 28467/2014, which was allowed on the ground that the removal was harsh and excessive, considering his age and family implications. The Writ Court set aside the removal order, directed his reinstatement with continuity of service and benefits, excluding backwages for the period of non-employment. Challenging the same, the present Writ Appeal No. 2046/2019 has been filed.

4.2 The learned Additional Advocate General appearing for the appellant has submitted that the respondent was on leave for 21 days from 06.09.1999, whereby a punishment of reduction of pay was awarded and was modified into Censure in 2000. The second time again from 29.12.1999 he was absented from duty for 21 days, for which he was awarded a punishment of reduction of pay for two stages. The learned Additional Advocate General appearing for the appellant has further submitted that when the respondent was



W.A.No.1454 of 2022 and 2046 of 2019

directed to rejoin service, he did not return for the duty, hence the appellant issued a charge memo against the respondent and awarded punishment of postponement of increment for two years. On the fourth time, the respondent deserted the force on 09.04.2001, which was dealt departmentally, and was awarded the punishment of postponement of increment for two years. Finally for the fifth time on 01.11.2002, he was issued with on a charge u/r. 3(b) of TNSPSS (D&A) Rules, 1955 in P.R. No.07/2023. The respondent submitted an explanation stating reason that he had stomach pain, therefore he was not able to inform the superiors. Since the respondent did not produce any Medical Certificate for the same, the 3rd respondent/Commandant, TSP V Battalion, passed final orders imposing punishment of "removal of service" on 05.06.2003.

4.3 The learned Additional Advocate General appearing for the appellant has further submitted that the respondent did not prefer any appeal against the said punishment order. After 4 years of the removal from service, the respondent sent a detailed proposal



W.A.No.1454 of 2022 and 2046 of 2019

to the Director General of Police, Tamil Nadu and the same was rejected by order dated 28.04.2008.

WEB COPY

4.4 The learned Additional Advocate General appearing for the appellant has submitted the writ Court without considering the fact that the respondent was awarded with five major punishments and the lethargic and irresponsible attitude of respondent, modified the punishment awarded by the appellant. Therefore, the impugned order of the writ court is liable to be set aside.

4.5 On the other hand, learned Senior Counsel for the respondent argues that the punishment of removal from service is disproportionate and excessive. The respondent has undertaken before the writ court not to claim continuity of service from the date of removal to the date of reinstatement and has assured not to repeat the delinquency. Therefore, the impugned order of the writ Court does not require interference by this Court.

Discussion:



W.A.No.1454 of 2022 and 2046 of 2019

WEB COPY

5. The issues in both cases are similar. The respondents, who worked in uniformed service, were unauthorisedly absent from duty and subsequently removed from service by the disciplinary authority following an enquiry. Those removal orders were later modified by the writ court. The question before us is whether the impugned orders of the writ court are sustainable in law, particularly given that the punishment was awarded to uniformed service personnel, who are required to maintain devotion to duty.

6. Admittedly, the said allegations of failure of devotion of duty or behaviour of unbecoming of a Government Servant cannot be decided without concluding whether the alleged absence from duty is willful or because of compelling circumstances.

7. To substantiate his arguments, the learned Additional Advocate General has placed reliance on the decision of the Hon'ble Division Bench of this Court (in which one of us namely D.K.K.J is a member of the Bench) in the case of ***J.Arul Dass Vs.The Director***



W.A.No.1454 of 2022 and 2046 of 2019

WEB COPY

General of Police, CRPF, C.G.O Complex & Othes (W.A.No.

1280 of 2010, dated 28.06.2023) reported in

MANU/TN/3685/2023. In the said decision, the Hon'ble Division

Bench, after having perused the entire materials, has held that the

absence of the appellant is wilful and held that the appellant is

guilty of failure of devotion of duty, and confirmed the dismissal

order passed by the authorities concerned. The relevant portion of

the judgment is extracted below;

“13.As rightly point out by the learned Single judge in the above writ petition, the members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Moreover, a member of the uniformed force who overstayed his leave by few days must be able to give a satisfactory explanation. In the present case, the appellant/writ petitioner failed to give a satisfactory explanation with proof for his overstay his leave. Therefore, he cannot be said to be one merely overstaying his leave. He must definitely be treated as a deserter. The conduct of the appellant/writ petitioner seen from the materials on record that his



W.A.No.1454 of 2022 and 2046 of 2019

absence is wilful and the respondents have rightly held that the appellant/writ petitioner is guilty of failure of devotion of duty. Moreover, it is stated by the learned respondent's counsel that considering the family background of the appellant/writ petitioner and his length of service the 2nd respondent has modified the punishment of "Dismissal from Service" as "Compulsory Retirement from Service" with effect from 07.12.2007 by granting full compensation pension and retirement gratuity vide his order No.R.XIII.10/2007-EC -III dated 06.05.2008. It is also not in dispute that the appellant/writ petitioner is drawing his retirement pension as ordered by the 2nd respondent. Therefore, we are satisfied that, the dismissal of the appellant/writ petitioner from the force is justifiable action.

14.In the light of the above discussion, the writ appeal stands dismissed. However, there shall be no order as to cost ”

8. It is also useful to rely upon the decision of the Hon'ble Supreme Court in the case of ***Union of India v. Kulbeer Singh, reported in (2019) 13 SCC 20***, wherein the Hon'ble Supreme Court has confirmed the punishment order passed by the authority concerned by holding that the unauthorised absence of the Armed Force Personnel without any substantiating materials cannot be



W.A.No.1454 of 2022 and 2046 of 2019

condoned. The relevant portion of the judgment is extracted below;

“7. Insofar as the second submission is concerned, it is evident from the statement, which was extracted earlier, that the respondent had admitted his absence for 302 days without leave. The statement contains a justification for the absence. From the record, it is evident that the respondent did not make any effort to apply for extension of his leave. Absence of 302 days from his duty by a member of the Armed Force could not be condoned. We are clearly of the view that the Armed Forces Tribunal was in error in coming to the conclusion that the punishment which was imposed was harsh. The only basis for the finding was that the respondent had put in twelve years of service. This was all the more a reason why any responsible member of the Armed Force should not have absented from service without permission. The Tribunal clearly misdirected itself in law in coming to the conclusion that the punishment of dismissal from service was harsh and disproportionate.

8. We accordingly allow the appeal and set aside the impugned judgment and order of the Armed Forces Tribunal dated 21-8-2015 [Kulbeer Singh v. Chief of the Army Staff, 2015 SCC OnLine AFT 877] . In consequence,



WEB COPY



W.A.No.1454 of 2022 and 2046 of 2019

OA No. 483 of 2012 filed by the respondent shall stand dismissed. However, there shall be no order as to costs.”

9. In the cases on hand, as far as W.A.No. 1454 of 2022 is concerned, the respondent namely P.Palaniswamy went on casual leave initially with the permission of the authorities from 14.03.2007 to 16.03.2007 i.e for a period of 3 days and thereafter, without reporting duty and by sending wire information, he was on leave from 17.03.2007 to 20.03.2007, thereafter from 21.03.2007 to 10.04.2007 he remained absent without any information to the authorities concerned. Therefore as per the revised Police Standing order No. 95 Volume (1), the 1st respondent has passed desertion order dated 11.04.2007 and subsequently confirmation order of desertion dated 05.06.2007. It is also reveals from the records that after receipt of the said desertion order, the respondent did not submit any explanation and not reported for duty, hence as per Rule 3(b) of the Police Subordinate Service Rules 1955, the appellants initiated disciplinary action and passed final orders of removal of service, dated 05.10.2007 .



W.A.No.1454 of 2022 and 2046 of 2019

WEB COPY

10. After thorough examination of records, we do not find any reason to consider the case of the respondent, who being a uniformed service personnel and required more devotion and discipline on the duty. Further more, the respondent in his letter dated 23.10.2007 (submitted in the typed set of papers at page no. 48) has stated that he is not intended to serve in the department due to his family circumstances. The records further reveal that the mercy petition submitted after six years before the Director General of Police, without approaching the appellate authority, was rightly rejected on the grounds of delay and based on the letter dated 23.10.2007 submitted by the respondent.

11. In view of the above, it is clear that the allegation against the respondent is that he overstayed for about 21 days and not reported for duty without any valid reason. The respondent remained unauthorisedly absent without prior intimation or permission from the competent authorities. Therefore, the disciplinary authority issued a charge memo and conducted an



W.A.No.1454 of 2022 and 2046 of 2019

enquiry in accordance with the discipline and appeal rules. The procedure as contemplated under the discipline and appeal rules has been followed in the present case and there is no infirmity as such. Therefore, we are of the considered view that the order of the writ court to reinstate the respondent into service is unsustainable in law and liable to be interfered with.

12. As far as W.A.No.2046 of 2019 is concerned, the respondent namely M.Arokiasamy had a history of absenteeism, being absent for 21 days on two separate occasions in 1999, which resulted in punishments of pay reduction and later to Censure. Further absences occurred in December 1999, April 2001, and November 2002, each leading to various disciplinary actions, including pay reduction and postponement of increments. Despite being directed to rejoin service, the respondent failed to comply, resulting in a charge memo and subsequent punishments. On 01.11.2002, a final charge under Rule 3(b) of the TNSPSS (D&A) Rules, 1955 was issued by the appellants and after conducting disciplinary proceedings and taking into consideration the fact that



W.A.No.1454 of 2022 and 2046 of 2019

WEB COPY

the respondent failed to provide a medical certificate to support his claim of stomach pain, the appellant had passed the final order of removal of service against the respondent. Further, the respondent did not prefer any appeal against the said punishment order. After 4 years of removal from service, the respondent sent a detailed proposal to the Director General of Police, Tamil Nadu and the same was rejected by order dated 28.04.2008.

13. Undisputedly, no one can deny that there may be certain circumstances for a person to remain unauthorisedly absent. However, such unauthorised absence must be satisfied by producing all relevant records. More so, the disciplinary authority, in such circumstances, is expected to take a lenient view. Though unauthorised absence in uniformed service is a grave misconduct, if an employee is able to establish certain circumstances, then a lenient view would be taken by the competent authority. However, if an employee is unable to prove any such circumstances, then the competent authority has no option but to impose major penalty. In this case, the respondent had deserted on four occasions prior to the



W.A.No.1454 of 2022 and 2046 of 2019

passing of the final order of removal of service. In view of the above, the order of the writ court modifying the said punishment order is unsustainable and also liable to be set aside.

Conclusion:

14. On thorough examination of the records and considering the rival submissions made by both the learned counsels and in light of the decision of the Hon'ble Supreme Court and this Court cited supra , We conclude as follows;

15. In both the writ appeals, the intentional overstay by the respondents is established. When an intentional overstay/unauthorised absence is established, then there is no possibility of taking a lenient view either by the disciplinary authority or by the Court of law. However, considering the fact that respondent in W.A.No. 1454 of 2022 has expressed his unwillingness due to family circumstances, we are of the view that the order of removal of service is to be modified as 'compulsory retirement from service' without any back wages. The respondent is



W.A.No.1454 of 2022 and 2046 of 2019

entitled to the monetary benefits as per rules in force.

WEB COPY

16. Insofar as W.A.No. 2046 of 2019 is concerned, the respondent had deserted four times prior to the issuance of impugned removal of service order and no records are produced by the respondent to substantiate his medical reasons, therefore we are not inclined to modify the punishment order, and accordingly the impugned order of writ Court is set aside and the punishment order of removal of service by the 3rd appellant in Ta.Ba.07/03, Rule 3 (B) dated 05.06.2003 is confirmed. We find some force on the contention of the learned Additional Advocate General appearing for the appellants.



W.A.No.1454 of 2022 and 2046 of 2019

WEB COPY

17. In the result, these writ appeals are allowed. No costs.

The appellants are directed to grant monetary benefits to the respondents as per rules in force, within a period of twelve weeks from the date of receipt of a copy of this order.

[D.K.K. A.C.J.,]

[K.B.,

J.]

20.08.2024

Index: yes

Internet:yes

Speaking Order

ak



WEB COPY



W.A.No.1454 of 2022 and 2046 of 2019

**D.KRISHNAKUMAR, A.C. J.,
&
K. KUMARESH BABU, J.**

ak

**Judgement in
W.A.No.1454 of 2022 and 2046 of 2019**

20.08.2024