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W.P.No.66 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.66 of 2023
& WMP Nos.47 & 49 of 2023

V.Nagarajan
Police Constable 700
(Under the order of Desertion)
Chidambaram Railway Police Station
Cuddalore District.

.... Petitioner

-Vs-

- 1.The Superintendent of Police
Railway Police Office
Tiruchirappalli-620 012.
- 2.The Inspector of Police
Chidambaram Railway Police Station
Chidambaram
Cuddalore District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the proceedings of the first respondent in Na.Ka.No.D2/L.R.416/2021/District Order No.9138/2021 dated 02.12.2021, District Order No.18/2022/Na.Ka.No.D2/L.R.9138 /2021 dated 10.01.2022 and the proceedings of first respondent issued in Na.Ka.No.D2/L.R.9138/2021 dated 27.01.2022 and quash the same with the



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consequential direction, directing the respondent to take back for duty of the petitioner with all attendant benefits.

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

ORDER

This writ petition has been filed challenging the impugned desertion order passed by the 1st respondent dated 02.12.2021 and the confirmation of the desertion order dated 10.01.2022 issued by the 1st respondent and for a consequential direction to the respondents to permit the petitioner to join back in service with all attendant benefits.

2.The case of the petitioner is that he joined as a Grade-II Constable in the police department on 01.10.1995. The petitioner was on authorized leave from 20.09.2021 to 08.11.2021. He joined duty one day before on 07.11.2021. In the meantime, his mother expired on 01.11.2021. Therefore, after joining duty, the petitioner requested for two days leave to perform the obsequies. Since the same was not granted, the petitioner was on medical leave from 09.11.2021 to 20.01.2022. It is under these circumstances, the desertion order came to be passed by the 1st respondent dated 02.12.2021. This desertion order was subsequently confirmed by



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order dated 10.01.2022. Aggrieved by the same, the present writ petition has been filed before this Court.

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3.The 1st respondent has filed a counter affidavit. The 1st respondent has stated that the petitioner abruptly absconded himself from duty after 09.11.2021. That apart, the 1st respondent has also stated in the counter affidavit that right from the year 1998, the petitioner was found to be a defaulter atleast on six occasions and in all those six occasions, disciplinary proceedings were initiated and punishment was imposed against the petitioner. In view of the same, the respondents have taken a stand that the previous conduct of the petitioner shows that the petitioner had a history for unauthorizedly absenting himself from work. Insofar as the subsequent development after the order of desertion was passed, the respondents have stated in the counter affidavit as follows:

5.It is submitted with respect to the averment in para 9 that after framing a full fledged charge memo and inspite of repeated summons dated 18.07.2022, 27.07.2022, 17.10.2022, 03.01.2023, 09.01.2023, 18.01.2023, 13.02.2023 the petitioner willfully absented himself from appearing before the oral enquiry officer. It is the petitioner who is willfully avoiding to face the enquiry in inspite of chances given to him. Because of this reason only the 1st respondent has declared the petitioner as deserter for his unauthorized absence from duty for more than 60 days from 09.11.2021 to 07.01.2022 vide proceedings in D2/LR.9138/2021 and this cannot be termed as arbitrary and illegal at any stretch of imagination. It is himbly submitted that the petitioner has made a vague attempt to permit him to join duty by the 1st respondent



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even though he was declared as deserter.

6.It is submitted that all the various grounds raised by the petitioner are false and baseless. There is no valid reason for the illegal act of willful desertion and the petitioner is declared as a deserter from duty. He is not struck off from duty as mentioned by the petitioner. Even after having declared as a deserter, the petitioner produced his medical certificates to join him in duty is nothing but an act of dereliction of duty punishable as per PSO 95(1). The petitioner never appeared before the 1st respondent on 20.01.2022 and expended his willingness to join duty. Even as on date the petitioner never appeared before enquiry officer and is not co-operating to complete the disciplinary proceedings. The petitioner has no leave kept in his credit, exceeded the time limit of 60 days, willfully absented from duty than stipulated time, never appeared before the disciplinary authority, there are all reasons for the rejection of his claim to join duty. It is submitted that nothing prevented the petitioner from applying a sick passport and the petitioner being a member of the uniformed service is expected to maintain devotion and strict discipline and cannot be kept saying that he was in depression. The earlier conduct and punishments suffered will speak volumes about the petitioner.

4.In view of the above, the respondents have sought for the dismissal of this writ petition.

5.Heard Mr.V.Ravikumar, learned counsel for the petitioner and Mr.V.P.R.Elamparithi, learned Additional Government Pleader for the respondents.



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6.The main grievance that was expressed by the petitioner is that his mother had expired on 01.11.2021 and hence, he wanted to perform the rituals and sought for extension of leave. That apart, he also suffered an illness for which the doctors had advised him to take bed rest. In view of the same, the petitioner had taken medical leave from 09.11.2021 to 20.01.2022. Even thereafter, when the petitioner was attempting to join duty, he was prevented from joining duty and the desertion order was confirmed by an order dated 10.01.2022.

7.On careful reading the counter affidavit filed by the respondents, it is seen that the petitioner had a history for unauthorizedly absenting himself atleast on six occasions from the year 1998 to 2012, which resulted in disciplinary proceedings initiated against him and in all those proceedings, punishment was imposed. Therefore, this antecedent of the petitioner assumes significance.

8.Insofar as the present order passed by the respondents declaring the petitioner as a deserter and confirming the same, it is seen that even after 20.01.2022, the petitioner has not chosen to participate in the disciplinary proceedings initiated against him inspite of repeated summons issued to him. In view of the same, from November 2021 till date the petitioner has not joined duty and the petitioner is also not co-operating for competition of the disciplinary proceedings.



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9.The explanation given by the petitioner is not satisfactory and therefore, there is no question of interfering with the order of desertion passed against the petitioner and the order confirming the order of desertion. Considering the facts and circumstances of the case, the only remedy that can be granted to the petitioner is to fix a time limit for completion of the disciplinary proceedings pending against the petitioner. This Court must keep in mind that the petitioner is working in disciplined force and hence, the absence of the petitioner will have an impact on the system.

10.In the light of the above discussion, the relief as sought for by the petitioner cannot be granted by this Court. However, there shall be a direction to the respondents to complete the disciplinary proceedings against the petitioner within a period of eight weeks from the date of receipt of copy of the order. The petitioner is directed to appear before the enquiry officer as and when notice is issued to him and the petitioner will co-operate for completion of the proceedings within the time frame fixed by this Court. The petitioner shall be given sufficient opportunity and it is left open to the petitioner to raise all grounds during the disciplinary proceedings. Any observations made in the writ petition will not have any bearing in the disciplinary proceedings.



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11.This writ petition is disposed of in the above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

NCS : Yes/No

KP

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N.ANAND VENKATESH, J.

KP

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