



W.P.No.26932 of 20 --

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.26932 of 2018

and

WMP.No.34627 of 2019

R.Nivetha

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by Secretary to Government,
Home (Police) Department,
Secretariat, Chennai 600 009.
2. The Director General of Police,
Tamil Nadu, Chennai 600 004.
3. The Deputy Commissioner of Police,
Armed Reserve-II,
Greater Chennai City Police,
Chennai 600 008.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent relating to order in Proc.P.R.No.175/Tha.Pi-5(2)/2014 u/r 3(b) dated 11.07.2015 and the Proceedings of the 2nd respondent in R.C.No.119460/AP.3(2)/2016 dated 03.02.2018 and to quash the same and to consequently direct the respondents to reinstate the petitioner in service, with effect from date on which the petitioner has been “Dismissed from Service” and to grant her all consequential benefits.

For Petitioner : Ms.T.Subhiksha
for M/s.M.Ravi

For Respondents : Ms.R.L.Karthika, G.A.

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent in Proc.P.R.No.175/Tha.Pi-5(2)/2014 u/r 3(b) dated 11.07.2015 and the Proceedings of the 2nd respondent in R.C.No.119460/AP.3(2)/2016 dated 03.02.2018 and to quash the same and to consequently direct the respondents to reinstate the petitioner in service, with all consequential benefits.

2. The case of the petitioner is that:



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i) The petitioner was enlisted as Woman Police Constable, in the year 2010. While she was serving as Woman Police Constable in the 13th Platoon 'E' Coy, Armed Reserve Unit-II, St. Thomas Mount, Chennai 16, during the year 2013, she applied for 2 days casual leave i.e. On 18.08.2013 and 19.08.2013 due to some domestic problems. All of a sudden, on the night of 19.08.2013, she had severe uneasiness followed by heavy pain all over the body and became unconscious. Immediately, her family members took her to a nearby clinic and the Doctor had immediately administered first aid and medical treatment and thereafter referred her to the Government Hospital, Uthangarai for further treatment. It was diagnosed at the Government Hospital, Uthangarai that she was suffering from sever peptic ulcer and advised her to take complete rest with restricted diet. The Doctor recommended 30 days leave and issued a Medical Certificate to that effect. After 30 days, the Government Doctor advised her to take a further period of 25 days in continuation of medical treatment for peptic ulcer, as she had not recovered from the illness. Since allopathic medicines for peptic ulcer did not suit her body and caused side effects, she was advised to take native treatment at the foot hills of Gollapatti Village, which is situated in a remote tribal village in Yercaud foot hills. Due to that reason, she was not able to



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rejoin duty on 14.10.2013 on the expiry of leave. Since she did not attend duty for 21 days from that date, she was declared as “deserter”. In continuation of peptic ulcer, she was attacked by jaundice and hence, she was unable to appear before the concerned authority within 60 days.

ii) The Deputy Commissioner of Police (AR), Unit-II, Greater Chennai City Police, i.e. the third respondent herein, had initiated disciplinary proceedings against the petitioner under Rule 3 (b) of the Tamil Nadu Police Subordinate Service (D&A) Rules and issued a charge memo dated 13.11.2013 for absence from duty from 14.10.2013 onwards for more than 21 days.

iii) At that juncture, complication arose in delivery of her child, as the umbilical cord wrangled around the baby's neck and hence with great difficulty and after waiting for more than 4 to 5 hours, the petitioner had delivered the child. She was advised to take complete bed rest after the delivery. As her child was not fully grown, utmost care and attention was required to be showered on him. During that time, when she was already suffering with mental trauma, the enquiry officer conducted the enquiry in



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hasty manner and exparte enquiry was conducted. The petitioner could not attend the enquiry as both her health condition as well as her child's condition was miserable. At that point of time, another bolt from blue came to the petitioner by way of mother-in-law, who was inflicted with serious complications in her uterus and after intensive treatment, she was also constrained to undergo a major surgery on 22.02.2015. The sudden illness of the petitioner, followed by sudden marriage, followed by premature and complicated delivery of her child, her requirement to take care of the not fully grown child followed by her mother-in-law's serious ill health have all exposed her to severe depression, which resulted in her overstayal of leave and inability to participate in the enquiry proceedings.

iv) The third respondent without taking any of the aforesaid factors into consideration, had passed a harsh, unjust and disproportionate order of “dismissal from service” with effect from 18.08.2013 vide proceedings in P.R.No.175/Tha.Pi-5(2)/2014, dated 11.07.2015. In the said order, the third respondent has not even hold the mandatory requirement of informing about the scope and time period for filing appeal against the order of dismissal from service and the same resulted in non preferring of any appeal



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against the dismissal order. Thereafter, coming to know of the avenue of preferring a mercy petition, the petitioner submitted a detailed mercy petition dated 27.07.2016 to the Director General of Police, i.e. the second respondent herein with a request to reinstate her in service. The said mercy petition did not evoked any response from the second respondent. Under these circumstances, she preferred a mercy petition on 10.12.2017 to the first respondent, Government of Tamilnadu, and it is pending.

v) Subsequently, the second respondent had passed an order dated 03.02.2018 rejecting the mercy petition submitted on 27.07.2016 on the ground that as he had already passed an order against the petitioner in the capacity of Commissioner of Police on Greater Chennai, it is not appropriate for him to entertain the mercy petition of the petitioner. Under these circumstances, against the order dated 11.07.2015 of the petitioner, wherein dismissal from service of the petitioner is passed and against the order dated 03.02.2018 of the second respondent, wherein the petitioner's mercy petition was rejected, the present Writ Petition has been filed.

3. A counter affidavit has been filed on behalf of the respondents.



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i) It is averred in the counter affidavit that the petitioner had availed medical leave up to 13.10.2013 on the recommendation of the medical officer. On expiry of the leave, she had not returned for duty on 14.10.2023, but absented herself without prior intimation or prior permission for more than 60 days. Hence, as per Police Standing Order 95(1) and 95(2), she was declared as “deserter” from the discipline force. The petitioner was dealt with on a charge under 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal), Rules, 1955 in Punishment Roll No.175/PR.V(2)/2014 for unauthorised absence from duty. An oral enquiry was conducted by the Assistant Commissioner of Police, Headquarters, Greater Chennai Police, Pudupet, Chennai and the petitioner was given all reasonable opportunity to defend her case. But she has not attended the oral enquiry. Hence, the enquiry officer conducted oral enquiry exparte and submitted his Minute in the Punishment Roll.

ii) It is further stated in the counter that the disciplinary authority has agreed with the Minute Drawing Officer. He had also given an opportunity to the petitioner to give further representation on the Minute of the Enquiry Officer. But the petitioner has not submitted any representation. Thereafter,



the disciplinary authority i.e., the third respondent herein passed orders in the Punishment Roll and imposed the punishment of dismissal from service with effect from 18.08.2013 (i.e., from the date of desertion) vide order dated 11.07.2015.

iii) It is further averred in the counter that the petitioner had preferred a mercy petition to the second respondent herein on 27.07.2016. By that time, the appellate authority/Commissioner of Police, Greater Chennai Police has been promoted as Director General of Police/Head of the Department. Hence, the Director General of Police, Tamil Nadu who had already reviewed the punishment awarded to the petitioner as appellate authority/Commissioner of Police, Greater Chennai Police had considered it not appropriate to entertain the mercy petition and rejected the request of the petitioner by order dated 03.02.2018. Accordingly, it is stated in the counter that the Writ Petition is devoid of merits and unsustainable and prayed to dismiss the same.

4. The learned counsel for the petitioner would submit that the only allegation against the petitioner is that she was on unauthorised absence and that too for a period of 21 days. While passing the impugned orders by the



second and third respondent, they have miserably failed to note that the punishment as imposed would run shockingly disproportionate to the alleged offence viz., unauthorised absence, which is common in the respondent Department due to various situations prevalent in the place of work. Due to that reason only, the authorities themselves have chosen to issue a circular that these type of delinquencies would not call for imposition of major penalty.

5. The learned counsel submits that the respondents without considering the difficulties being faced by the petitioner due to her severe health issues and her child's health condition and the trauma suffered by her, passed the order of dismissal, which is grave injustice to the petitioner. He further submits that a Division Bench of this Court in an identical circumstances in W.A.No.58 of 2011, dated 27.01.2011 held that the Government has to consider the case of the petitioner therein for reducing the quantum of punishment imposed on him.

6. The learned counsel further submits that the respondents failed to



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consider that this is not a wilful absence from duty but only overstayed beyond the permitted leave and that too for bonafide reasons, which was beyond the control of the petitioner. The overstayed of the petitioner was neither wilful nor wanton. Hence, the charge of wilful absence of “desertion” did not arise at all and hence the order of extreme punishment of dismissal from service is unjustified and unwarranted.

7. The learned counsel further submits that any order of dismissal from service can have prospective effect only. But in the present case, the third respondent passed the order of dismissal dated 11.07.2015 to take effect from 18.08.2013, but on which date the petitioner was on leave. As such, the alleged desertion is unlawful.

8. The learned counsel further submits that as per the ratio laid down by the Apex Court and this Court in catena of judgments that a major penalty of dismissal from service for overstayed of leave is harsh and disproportionate and is liable to be set aside. In the light of the said judgments, the orders impugned in this Writ Petition are liable to be set aside.



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9. The learned counsel further submits that as and when the second respondent decided to reject the mercy petition submitted by the petitioner for the reasons stated therein, he ought to have referred the matter to the first respondent for orders and for disposal of the mercy petition instead of rejecting the claim. Accordingly, the learned counsel for the petitioner submits that viewed from any angle, the impugned orders are liable to be set aside and the petitioner is entitled for the relief sought for in this Writ Petition.

10. On the other hand, the learned Government Advocate appearing for the respondents would submit that the petitioner has been given reasonable opportunities to defend her case during oral enquiry, but she had not turned out for enquiry and cross-examine the witnesses. The disciplinary authority has also given opportunity to her to submit further representation on the Minute of the Enquiry Officer but she had not submitted any representation. The disciplinary authority on considering that the conduct of the petitioner will affect the morality of the other Junior Police Constables in the disciplined force, if such person like the petitioner herein is allowed to work in the disciplined force, and accordingly awarded the capital



punishment.

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11. The learned Government Advocate further contends that as the second respondent, who is holding the post of Director General of Police at the time of considering the mercy petition of the petitioner, worked as Commissioner of Police, Greater Chennai Police earlier and had *suo motu* reviewed the order passed by the disciplinary authority against the petitioner, has considered it is not appropriate to entertain the mercy petition by him and rejected the same. The learned Government Advocate would submit that there is no illegality or irregularity in the impugned orders and accordingly, sought to dismiss the Writ Petition.

12. This Court gave serious consideration to the arguments advanced by the respective counsels and carefully examined the materials available on record.

13. The only allegation against the petitioner is that she was unauthorised absence for 21 days while she was working as Woman Police Constable in the 13th Platoon 'E' Coy, Armed Reserve Unit-II, St. Thomas



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Mount, Chennai 16 without any prior intimation or permission and without submitting leave letter on expiry of medical leave on 13.10.2013. Hence, she was declared as “deserter”. On account of evidence of desertion, she was dealt with charge under Rule 3 (b) of the Tamil Nadu Police Subordinate Service (D&A) Rules vide proceedings dated 13.11.2013. An oral enquiry was conducted, but the petitioner could not participate in the enquiry. The Enquiry Officer conducted exparte evidence and submitted his Minute. The third respondent agreed with the minute and after giving opportunity to the petitioner, passed an order dated 11.07.2015 imposing the punishment of dismissal from service with effect from 18.08.2013.

14. Admittedly, in the punishment order, there is no mention informing the petitioner about the availability of remedy of appeal against the said order. Thereafter, the petitioner filed mercy petition to the second respondent on 27.07.2016, but there is no response therein and hence she submitted a mercy petition on 10.12.2017 to the first respondent. Subsequently, by order dated 03.02.2018, the second respondent rejected the mercy petition submitted by the petitioner stating that the officer who is holding the post of the Director General of Police at the time of considering



the mercy petition had earlier reviewed the punishment initiated against the petitioner *suo motu* in the capacity of Commissioner of Police, Greater Chennai Police. The second respondent opined that as per the rulings of the Apex Court, the same officer cannot sit over his own earlier order passed by him.

15. On perusal of the order dated 11.07.2015, wherein the third respondent has imposed the punishment of dismissal from service, it appears that the punishment was imposed with effect from 18.08.2013 treating that day as date of desertion. However, as per the admitted facts and as per the admission made in the counter affidavit filed by the respondents, originally the petitioner was granted with 2 days casual leave on 18.08.2013 and 19.08.2013. Thereafter, due to her medical grounds and basing on the certificate issued by the Government Doctor, she was granted medical leave for 30 days. Subsequently, the medical leave was extended for 25 days. Accordingly, she was due for duty on 14.10.2013. But she did not attend duties from 14.10.2013. Therefore, on the ground that the petitioner absented for duties without prior intimation or prior permission or leave for more than 60 days, she was declared as “deserter”.



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16. In view of these facts as it is established that the petitioner was on casual leave and medical leave with effect from 18.08.2013 to 13.10.2013, the order of the third respondent dismissing the petitioner from service with effect from 18.08.2013 is erroneous and illegal. Besides this, the third respondent ought to have considered the circular issued by the office of the Director General of Police in RC.No.235355/AP-IV(2)/2007, dated 06.12.2007, wherein instructions were issued informing the unit officers of the Police Department that when a Head Constable/Police Constable is struck off as a deserter, notice has to be issued directing the delinquent to appear before the Superintendent of Police within two months. If 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. On the other hand, if the Superintendent of Police is satisfied, then he can be taken for duty. In such case, while disposing of the 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. In fact, the said circular was considered by this Court in



Writ Petition No.7927 of 2015 dated 21.12.2021 and the same is extracted

herein for proper application of this case:

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“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 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.



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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”*

17. On careful perusal of the above circular, it is clear that the Director General of Police i.e., the second respondent has instructed the unit officers that the punishment of dismissal/removal from service or compulsory retirement should not be imposed on the delinquent for charges of desertion. But the third respondent while passing an order dated

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11.07.2015 without considering the above circular, imposed the punishment of dismissal from service, which is a clear violation of instructions issued by the second respondent.

18. The second respondent also while rejecting the mercy petition submitted by the petitioner without considering all these aspects and factual positions narrated by the petitioner in her mercy petition for her absence of duty at the relevant point of time, simply rejected the mercy petition vide his order dated 03.02.2018 stating that he cannot sit over his own earlier order passed by him in the capacity of Commissioner of Police, Greater Chennai Police. This Court has no dispute with the opinion expressed by the second respondent on this aspect and this Court appreciate the decision of the second respondent for not sitting over his own order, as held by this Court and the Apex Court time and again. But the second respondent while taking such decision to not to sit over his own order to consider the mercy petition of the petitioner, he ought to have forwarded the same to the first respondent for taking appropriate decision. The second respondent instead of taking such decision to forward the mercy petition of the petitioner to the first respondent, simply rejected the mercy petition, which in considered opinion



of this Court is not reasonable and unjustified.

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19. In fact, before 18.08.2013, i.e., when the petitioner went on leave, no adverse remarks or any issues against the petitioner. On careful examination of the reasons stated by the petitioner in her affidavit, filed in support of this Writ Petition, this Court cannot brush aside the grievance put forth by her being a woman. The fact of petitioner's ill-health due to peptic ulcer is admitted by certificate of the Government Medical Officer, Government Hospital, Uthangarai. This Court cannot ignore the specific reasons stated by her with regard to the complication arose during the delivery of her child. It is her case that the umbilical cord wrangled around the baby's neck and hence after waiting for more than 4 to 5 hours and with great difficulty she had delivered the child. She also states that the child was not fully grown and as such utmost care and attention were required towards the child. Therefore, it is clear that the petitioner had suffered with mental trauma during that period. All these sufferings of the petitioner have to be considered on humanitarian ground.

20. On comprehensive examination of the materials available on



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record, in the light of the facts and circumstances of the case, this Court is of the considered opinion that the order of dismissal from service of the petitioner passed by the third respondent is illegal, unjust, irrational and disproportionate in the light of the circular memo RC.No.235355/AP-IV(2)/2007, dated 06.12.2007 issued by the office of the Director General of Police, Chennai and accordingly, it would not sustain in the eye of law. Similarly, the order dated 03.02.2018 passed by the second respondent in rejecting the mercy petition submitted by the petitioner also would not sustain for the reasons stated above.

21. At this juncture, the learned counsel for the petitioner has placed reliance of the order passed by this Court in W.P.No.23165 of 2024, dated 30.04.2024. On perusal of the same, this Court is of the considered view that the views as expressed above by this Court is supported by the said order. The relevant paragraphs of the said order is extracted hereunder:

“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



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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 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



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clear that the petitioner shall not be entitled to back wages during the non employment period.”

22. For the aforesaid reasons and in the light of the ratio laid down by the Apex Court and this Court and in view of the circular memo dated 06.12.2007, issued by the second respondent, this Court is of the considered opinion that the order of “dismissal from service” passed by the third respondent in P.R.No.175/Tha.Pi-5(2)/2014 dated 11.07.2015 and the order rejecting the mercy petition of the petitioner vide proceedings in R.C.No.119460/AP.3(2)/2016 dated 03.02.2018 are illegal, unjust, irrational and disproportionate. Hence, they are liable to be quashed.

23. Accordingly, this Writ Petition is allowed with the following directions:

i) The proceedings in P.R.No.175/Tha.Pi-5(2)/2014 dated 11.07.2015 of the third respondent and the proceedings of the second respondent in R.C.No.119460/AP.3(2)/2016 dated 03.02.2018 are hereby quashed;

ii) The respondents are directed to reinstate the petitioner into service within a period of four weeks from the date of receipt of a copy of this order with continuity of service and other attendant benefits; and



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iii) It is made clear that following the principle of “No Work-No Pay”, the petitioner is not entitled for salary during the non-employment period.

No costs.

Consequently, connected miscellaneous petition is closed.

12.12.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai 600 009.
2. The Director General of Police,
Tamil Nadu, Chennai 600 004.
3. The Deputy Commissioner of Police,
Armed Reserve-II, Greater Chennai City Police,
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