



W.P.(MD) No.547 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.547 of 2021

R.Thirukumar

... Petitioner

Vs.

1.The Director General of Police,
Chennai.

2.The Commandant,
TSP XI Battalion,
Rajapalayam,
Virudhunagar District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records in R.C.No. 445517/AP 3(1)/2020, dated 21.08.2020 on the file of the 1st respondent and in C.No.D1/P.R.No.04/2007, dated 01.06.2007 on the file of the 2nd respondent and quash the same as illegal and consequently directing the respondents to reinstate the petitioner into service with all service and monetary benefits.



W.P.(MD) No.547 of 2021

For Petitioner : Mr.S.Kumar
For Respondents : Mr.N.Ga.Natraj
Government Advocate

ORDER

The petitioner herein, while he was working as Grade-II Constable with PC.No.2833 under the control of the 2nd respondent herein, was subjected to disciplinary proceedings on the ground of desertion from service, as he absented from his duties from 15.01.2007, by issuing a charge memo dated 13.04.2007. In response to the said charge memo, the petitioner submitted his explanation on 01.05.2007 stating that he was suffering from mental illness and he is undergoing treatment for the same. However, Respondent No.2 having not been satisfied with the said explanation, appointed an Enquiry Officer to enquire into the charges framed against the petitioner. But, the petitioner did not participate in the enquiry proceedings and accordingly, the enquiry was held ex-parte and the charges were held to have been proved. Basing on the said enquiry report, though an opportunity was afforded to the petitioner, once again the petitioner did not respond and



W.P.(MD) No.547 of 2021

accordingly, Respondent No.2 passed the order dated 01.06.2007 removing the petitioner from service. Thereafter also, the petitioner did not take any further steps and finally it is only in the year 2020, the petitioner submitted a mercy petition before Respondent No.1 contending that he has been undergoing treatment for mental illness from the year 2006 till the year 2020 and by producing a certificate issued by the Psychologist dated 06.03.2020, requested for considering his case on sympathetic grounds and requested for reinstatement into service. The petitioner also raised a ground of disproportionality of the punishment to the alleged charges framed against him. The said mercy petition of the petitioner was rejected by Respondent No.1 by passing an order in proceedings in Rc.No.445517/AP 3(1)/2020, dated 21.08.2020 on the ground that the petitioner failed to place any material in support of his contention about the medical treatment. Aggrieved by the said order as well as the original order of removal from service, the petitioner approached this Court by filing the present writ petition.

2. Along with the writ petition, the petitioner also filed the entire medical record commencing from 15.07.2006 till 22.02.2020 along with



W.P.(MD) No.547 of 2021

certain other materials relating to the medical treatment undergone by him. Perusal of the said material, especially Page Nos.1 to 28, that is the medical case sheet of the petitioner, *prima facie* shows that the petitioner had undergone treatment for mental illness till February 2020. As the petitioner was undergoing treatment for mental illness and depression from Psychologist, this Court is of the view that the same may be the reason for the petitioner in not participating during the oral enquiry conducted by the Enquiry Officer and also in not responding to the show cause notice issued by Respondent No.2 before issuing the removal order dated 01.06.2007. However, for the reasons best known, the petitioner appears to have not placed the entire material before the 1st respondent while submitting his mercy petition in the year 2020.

3. Similar issue has come up for consideration before the Hon'ble Apex Court in the case of ***Shri Bhagwan Lalarya v. Commissioner of Police*** reported in ***(2004) 4 SCC 560*** wherein the Hon'ble Apex Court at Paragraph Nos.11 and 14, observed as under:

“11. The order dated 16-1-1995 passed by



the respondents was produced by the respondents themselves in their reply to CWP before the High Court of Delhi that they had sanctioned leave without pay for the period from 7-10-1994 to 15-12-1994, the period of alleged unauthorised absence. The High Court has failed to appreciate and evaluate this aspect of the matter. The High Court also did not appreciate that after issuing sanction for leave for the period in question, the employee's legitimate expectation would be that no stern action would be taken against him with respect to the alleged act of misconduct which by no stretch of imagination can be considered an act of gross misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service. It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police.



WEB COPY



W.P.(MD) No.547 of 2021

service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of which, not only he but his entire family totally dependent on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside. (emphasis supplied)

14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary



W.P.(MD) No.547 of 2021

authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment.”

4. A learned Division Bench of this Court also in W.A.No.1608 of 2011, dated 26.02.2013, having taken note of the above decision of the



W.P.(MD) No.547 of 2021

WEB COPY

Hon'ble Apex Court, has been pleased to observe as under:

“9. Thus proportionately of the punishment has to be gone into by the Disciplinary Authority as well as by the Appellate Authority. The said aspect has not been considered in this case by the learned Single Judge. Hence, the order of the learned Single Judge is set aside and the matter is remitted back to the fourth respondent to consider the issue regarding the proportionality of the punishment and pass fresh orders within a period of eight weeks from the date of receipt of copy of this order. It is also made clear that in the event the quantum of punishment is reduced, the appellant shall not claim backwages for the period in which he has not performed his duty.”

5. In the light of the above, this Court is *prima facie* convinced from the material placed before this Court which shows that the petitioner has undergone treatment for mental illness and is of the considered view that it is a fit case where the 1st respondent should have a re-look into the matter by affording an opportunity to the petitioner of personal hearing and re-consider the matter, especially in the context of the fact that the petitioner was



W.P.(MD) No.547 of 2021

removed from service solely on the ground of desertion/unauthorised absence during the period from 15.01.2007 to 04.02.2007. There is no allegation of any previous misconduct on the part of the petitioner.

6. At this stage, it is brought to the notice of this Court by the learned Government Advocate that the petitioner has already filed a review petition against the order dated 21.08.2020 before the Additional Chief Secretary to the Government and the same is pending. In response to the same, the learned counsel for the petitioner submitted that the petitioner is intending to withdraw the review petition filed before the Additional Chief Secretary to Government with liberty to pursue the matter before the 1st respondent herein pursuant to the order passed by this Court in this writ petition.

7. Accordingly, the order passed by Respondent No.1 in Rc.No. 445517/AP 3(1)/2020, dated 21.08.2020 is set aside and the matter is remitted back to Respondent No.1 to reconsider the mercy petition submitted by the petitioner by duly affording an opportunity of personal hearing to the



W.P.(MD) No.547 of 2021

petitioner. The petitioner is also granted liberty to submit the entire medical record along with a detailed representation before the 1st respondent within a period of two weeks from today. On submission of such representation by the petitioner, the 1st respondent shall consider the said representation by duly taking into consideration the observation made supra and dispose of the same as expeditiously as possible, at any rate, within a period of two months from the date of submission of the representation by the petitioner.

8. Accordingly, this Writ Petition is allowed to the extent indicated above. No costs.

06.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



W.P.(MD) No.547 of 2021

WEB COPY

To

1.The Director General of Police,
Chennai.

2.The Commandant,
TSP XI Battalion,
Rajapalayam,
Virudhunagar District.



WEB COPY



W.P.(MD) No.547 of 2021

MUMMINENI SUDHEER KUMAR, J.

ABR

W.P.(MD) No.547 of 2021

06.03.2024