



W.P.(MD).No.6288 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.6288 of 2021

S.Vijay Amirtharaj

... Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu,
Chennai.

2.The Inspector General of Police,
Armed Police,
Trichy.

3.The Commandant,
TSP-I Battalion,
Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned punishment order of removal from service imposed by the 3rd respondent against the petitioner vide Na.Ka.No.D2/12723/2018, dated 29.11.2018 which confirmed on 12.01.2019 and its consequential order on punishment roll in PR.No.03/2019 under rule 3(b) dated 07.06.2019 and



W.P.(MD).No.6288 of 2021

consequential order passed by the 1st respondent in RC.No.604438/AP. 3(1)/2020, dated 29.10.2020 and quash all the same as illegal and unconstitutional, consequently reinstate the petitioner in his service as Grade II Police Constable in TSP-I BN, Trichy along with all service and monetary benefits.

For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.D.Gandhiraj,
Special Government Pleader

ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to call for the records relating to the impugned punishment order of removal from service imposed by the 3rd respondent against the petitioner vide Na.Ka.No.D2/12723/2018, dated 29.11.2018 which confirmed on 12.01.2019 and its consequential order on punishment roll in PR.No.03/2019 under rule 3(b) dated 07.06.2019 and consequential order passed by the 1st respondent in RC.No.604438/AP. 3(1)/2020, dated 29.10.2020 and quash all the same as illegal and unconstitutional, consequently reinstate the petitioner in his service as Grade II



W.P.(MD).No.6288 of 2021

Police Constable in TSP-I BN, Trichy along with all service and monetary benefits.

2. The facts and circumstances which led to the filing of this writ petition are as follows:

2.1. The petitioner was appointed as Grade II Police Constable on 18.02.2013 by direct recruitment and posted at 10th Battalion, Ulundhurpettai, for training. After completion of basic training, the petitioner was transferred to TSP 1st Battalion, Trichy, and then transferred to 8th Battalion, New Delhi, during the year 2015. Further, he was transferred back to TSP 1st Battalion, Trichy, during the year 2018. On 01.01.2018, he availed casual leave for four days to attend local festival. Suddenly, since his mother fell ill, he was constrained to extend his leave to one more day on 05.11.2018. Since there was no improvement in the health condition of his mother, further he remained absent from 06.11.2018 to further 21 days. On 29.11.2018, treating the petitioner as deserter with effect from 06.11.2018, the desertion order came to be passed with an instruction to report for duty within 60 days along with valid reason.



W.P.(MD).No.6288 of 2021

WEB COPY

2.2. While so, the desertion order came to be confirmed by the proceedings of the 3rd respondent on 29.11.2018, for which, he was visited with a charge memo and on the basis of the same, the desertion was confirmed by an order dated 12.01.2019 since no appeal has been filed by the petitioner on time. Hence, an order on his punishment has been passed on 10.06.2019 and a punishment of removal from service was imposed on him and the same was confirmed by the 2nd respondent by an order dated 08.08.2019 in the Review Petition which was filed by the petitioner, against which, the petitioner filed a mercy petition before the 1st respondent which was also rejected on 29.10.2020, confirming the orders of the respondents 2 and 3. Assailing the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner submitted that, the punishment of removal from service for the delinquency of desertion is shockingly disproportionate and pressed for allowing the writ petition.

4. The 3rd respondent has filed a counter affidavit and the learned Special Government Pleader Mr.D.Gandhiraj vehemently submitted that, the writ



W.P.(MD).No.6288 of 2021

petitioner had deserted the post by absenting himself from duty for six times, for which, he had earned six punishments in total. Further, he submitted that, for absenting from duty for more than 21 days in a disciplinary force, cannot be tolerated for six times. Hence, he had earned six punishments including the current one of removal from service. Since the petitioner had already been given five chances to rectify himself by awarding minor punishments and since he had not changed his attitude of frequently absenting himself from duty, finally left with no other way, the punishment of removal from service came to be passed and the same need not be interfered with and pressed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. Carefully perused the materials available on record.

6. I have dealt with a similar case in W.P.(MD)No.18723 of 2023, by an order dated 08.02.2024, I have passed a favourable order to the petitioner therein on the basis of the circular of the Director General of Police, Chennai,



W.P.(MD).No.6288 of 2021

in Rc.No.235355/AP-IV(2)/2007, dated 06.12.2007 and the same is extracted as follows:

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.*

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.*



WEB COPY



W.P.(MD).No.6288 of 2021

6) The receipt of the Chief Office Memo should be acknowledged forthwith.

Sd/-P.Rajendran, Director General of Police

7. No doubt high degree of discipline has to be necessarily maintained in police force. The petitioner had absented frequently, not only one time, but more than five times. Therefore, it cannot be condoned by all means and it has to be dealt with by strict hands, however, relying upon their own memorandum, I am of the considered view that the punishment of removal from service is shockingly disproportionate for the delinquency of desertion. Hence, I hereby quash the impugned order of punishment passed by the respondents, vide impugned proceedings bearing RC.No.604438/AP.3(1)/2020, dated 29.10.2020 and the case is remanded back to the 1st respondent. The 1st respondent is directed to pass appropriate orders in the line of the circular of the Director General of Police, Chennai in Rc.No.235355/AP-IV(2)/2007, dated 06.12.2007 within a period of twelve (12) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.6288 of 2021

WEB COPY

8. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

11.07.2024

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

To

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W.P.(MD).No.6288 of 2021

L.VICTORIA GOWRI, J.

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W.P.(MD).No.6288 of 2021

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