



WP(MD) No.16010 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.16010 of 2024
and
W.M.P(MD)No.13916 of 2024

C.Dhanasingh

... Petitioner

Vs.

1. The Director General of Police,
Mylapore,
Chennai.

2. The Superintendent of Police,
Tirunelveli District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings in R.C.No. 153690/AP 2(1) /2016 dated



WP(MD) No.16010 of 2024

10.01.2017 and quash the same and direct the respondents to reinstate the petitioner as a Grade II Police Constable with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr. J.Ashok

Additional Government Pleader

ORDER

The present writ petition has been filed seeking a Writ of Certiorarified Mandamus to quash the impugned order in R.C.No. 153690/AP 2(1) /2016 dated 10.01.2017 of the 1st respondent and direct the respondents to reinstate the petitioner as a Grade II Police Constable with all consequential benefits.

2. Heard Mr.V.Panneer Selvam, learned counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.



WP(MD) No.16010 of 2024

4. The petitioner has been dismissed from service in view of desertion from duty from 23.07.1996. On the departmental action taken against him, he was dismissed from service through order of the Superintendent of Police, dated 29.07.1997. The appeal filed by the petitioner against the order of removal before the Director General of Police, Tirunelveli Range, was also dismissed on 16.09.1998. The petitioner also filed a mercy petition on 19.02.2014 and the same was not considered. Hence, the petitioner filed a writ petition in W.P.No. 34334 of 2016 seeking a direction to consider the mercy application, in which, an order has been passed on 29.10.2016 to consider and pass orders. Thereafter, mercy petition was rejected on 10.01.2017.

5. The learned counsel for the petitioner submitted that the petitioner had rendered 8 years of service, the petitioner was removed from service. Despite the petitioner had stated about medical reasons, he did not file any medical certificate before the Superintendent of Police.

6. The learned counsel for the petitioner invited the



WP(MD) No.16010 of 2024

attention of the Court to the circular issued by the Director General of Police that in cases of desertion, the capital punishment like dismissal from service shall not be issued. For better appreciation the circular is extracted below :-

*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.*

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*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*



WP(MD) No.16010 of 2024

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



WP(MD) No.16010 of 2024

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

7. The circular does not restrict the powers of the Officers from imposing the punishment of removal from service on compulsory retirement. Only in cases where the person concerned could satisfactorily prove that his absence was only due to any valid reasons, the individual will be allowed to resume duty. Instructions have been given that major punishment shall not be issued. In the instant case, the petitioner has not convinced the concerned authority by showing that his absence was for valid reasons and he was not allowed to resume duty even after such satisfaction. In such circumstances, the petitioner cannot seek any support from the circular of the Chief Officer of Police.



WP(MD) No.16010 of 2024

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8. In fact, the petitioner had chosen to file a mercy petition after a lapse of 15 years and after having accepted the order of removal. Even now the petitioner had filed this Writ Petition also after a period of 7 years. I find no reason for interference.

9. If the petitioner has given any representation to the respondents to consider for grant him any eligible benefits, it is up to the first respondent to pass order if any, on this aspect. Only on these limited scope the representation of the petitioner can be considered on merits and orders can be passed within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

16.07.2024

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



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WP(MD) No.16010 of 2024

To

1. The Director General of Police,
Mylapore,
Chennai.

2. The Superintendent of Police,
Tirunelveli District.



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WP(MD) No.16010 of 2024

R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.16010 of 2024

Dated:
16.07.2024