



W.P.(MD).No.19444 of 2020

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02.04.2024**

**CORAM**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD).No.19444 of 2020**

**and**

**W.M.P.(MD)No.16214 of 2020**

P.Kathiresan

... Petitioner

**Vs.**

1.The Director General of Police,  
Mylapore,  
Chennai-4.

2.The Deputy Inspector General of  
Police,  
Trichy Range,  
Pudukkottai District.

3.The Superintendent of Police,  
Pudukkottai,  
Pudukkottai District.

... 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 order passed by the 3<sup>rd</sup> respondent in his proceedings in P.R.No. 30/2013 U/r 3(b) dated 03.09.2013 and the consequential rejection order passed



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by the 1<sup>st</sup> respondent in his proceedings in Rc.No.027299/AP.4(1)/2015 dated 25.06.2016 and quash the same as illegal.

For Petitioner : Mr.N.Nawaz Khan,  
For Ajmal Associates

For Respondents : Mr.D.Gandhi Raj,  
Special Government Pleader

### **ORDER**

The present writ petition has been filed to quash the impugned order passed by the 3<sup>rd</sup> respondent dated 03.09.2013 and the consequential rejection order passed by the 1<sup>st</sup> respondent dated 25.06.2016.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner was appointed as a Grade-II Police Constable on 01.12.2003. While he was serving as Grade-II Police Constable in the 3<sup>rd</sup> respondent Police Station at Pudukkottai, due to ill health, he was admitted as in-patient in Government Medical College Hospital, Pudukkottai on 04.02.2013 and he underwent intensive treatment. After which, he was discharged from the



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hospital on the medical advice that he should take rest for a period of 20 days.

Under such extraordinary situation, he absented from duty during the period he was in the hospital. Hence, he was not in a position to apply leave properly. In the meanwhile, desertion order dated 04.03.2013 came to be issued as against the petitioner. On receiving the desertion order on 23.03.2013, the petitioner approached the 3<sup>rd</sup> respondent, explaining the circumstances which prevented him from sending intimation and requesting leave and sought for reinstatement in service.

(ii) In the meanwhile, he was visited with a charge memo by the 3<sup>rd</sup> respondent dated 10.05.2013 for absenting duty continuously from 04.02.2013 till the confirmation of desertion order and the same was served by the petitioner on 05.06.2013. Subsequently, an Enquiry Officer was appointed on 12.06.2013, before him, the petitioner had submitted his elaborate explanation and the enquiry officer after conducting an enquiry submitted his report on 21.07.2013 holding the charges as proved. Thereafter, the 3<sup>rd</sup> respondent further called for explanation, for which, the petitioner had submitted his explanation and not being satisfied by his explanation, the impugned proceedings dated



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03.09.2013, by which a punishment of removal from service with effect from 04.09.2013 came to be passed. Aggrieved by the same, the petitioner preferred an appeal before the 2<sup>nd</sup> respondent during the year 2014 which was rejected by the 2<sup>nd</sup> respondent as “Time barred”. As against the same, mercy petition was further preferred by the petitioner on 18.02.2015 to the 1<sup>st</sup> respondent. However, the same came to be rejected on 25.06.2016. Challenging the aforesaid orders passed by the 3<sup>rd</sup>, 2<sup>nd</sup> and 1<sup>st</sup> respondents respectively, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner relying upon the dictum laid down in ***Krushnakant B.Parmar .Vs. Union of India and Another reported in 2012 3 SCC 178*** and ***Samaruth Begum .Vs. Director General of Police and others reported in 2019 (2) CWC 359*** submitted that for the delinquency of unauthorized absence / desertion, the respondents ought not to have removed him from service. In view of the same, he pressed for allowing the writ petition.



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4. Per contra, the 3<sup>rd</sup> respondent has filed a counter and the learned Special Government Pleader submitted that the petitioner is a habitual deserter and during his 11 years of service, he had absented from service willfully for more than ten occasions. Despite several chances being given by the respondents to the petitioner to correct himself, he had never made up his mind to continue his service without absenting from duty. He further submitted that the respondent department cannot approve such an irregular employee who consistently absents from duty and pressed for dismissal of the writ petition.

5. Heard, the learned Counsel on either sides. Carefully perused the materials available on record.

6. This Court has dealt with a similar issue in ***W.P.No.14901 of 2014 dated 07.04.2022*** and the relevant portion is extracted as follows:

*“4. In the case of 'R.Sudhakar .Vs. The Principal Secretary to Government, Home (Pol-V) Department and others', passed in W.P.No.7927 of 2015 dated 21.12.2021, I had an occasion to deal*



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*with these Circulars and thereby, had reduced the punishment of dismissal. The relevant portion of the order reads as follows:-*

*“2. The original punishment of dismissal from service as well as the modified punishment by the 2<sup>nd</sup> respondent herein into one of the Compulsory Retirement cannot be sustained on the sole ground that the Director General of Police had earlier issued Circulars dated 13.10.1990 and 06.12.2007, holding that in cases of desertion, the punishment of removal/dismissal from service or Compulsory Retirement should not be imposed. In a later circular, dated 06.12.2007, it was reiterated that these guidelines should be strictly followed, while dealing with dismissal cases and that any other minor punishment can be imposed. For the sake of clarity, the circular dated 06.12.2007 is hereby extracted,*

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/AP1(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.*



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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*



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*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*

*3. The original order of dismissal by the 3<sup>rd</sup> respondent, as well as the order of the Director General of Police modifying the punishment into one of the Compulsory Retirement, is in clear violation of the Circular issued by the Director General of Police. Likewise, the Director General of Police himself had violated his own proceedings by modifying the original punishment into one of the Compulsory Retirement. These kind of Circulars would be binding on all the authorities of the Government when it is issued from the highest authority of the department. As such, the very original punishment itself cannot be sustained. Consequently, it requires to be held that both the original punishment, as well as the modified punishment, are not only disproportionate to the impugned charges, but also violative of the procedure contemplated for imposing punishments in the aforesaid circulars."*

*5. On the issue of disproportionality of a punishment is concerned, the same has been dealt in various decisions of this*



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*Court, as well as the Hon'ble Supreme Court, to the effect that the ultimate punishment requires to be in conformity with the gravity of the charges. In one such decision of a learned Single Judge of this Court, in the case of R.Jayakumar Vs. The Deputy Commissioner of Police and another passed in W.P.No.26072 of 2004, dated 08.08.2008, the High Court had placed reliance on three decisions of the Hon'ble Supreme Court and interfered with the punishment of dismissal for the period of unauthorised absence of 21 days and directed the delinquent therein to be reinstated into services without the benefits of pay for the period of absence. The relevant portion of the order reads as follows:-*

*“11. Next point to be considered is proportionality of punishment. For the absence of 21 days, Petitioner was awarded punishment of dismissal from service. Placing reliance upon AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma); (1996) 7 SCC 634 (Malkiat Singh v. State of Punjab and others); (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) and (2006) 4 MLJ 1008 (J.Patric v. Government of Tamil Nadu, rep. by its Secretary, Home (Pol.VI) Department, Chennai and others), learned counsel for the Petitioner contended that in cases where the punishment imposed is disproportionate to the charge, court can set aside the same or modify the punishment based on the facts and circumstances of the case.*

*12. On the other hand, learned Government Advocate would submit that as far as the Petitioner is concerned, it was not an isolated case of desertion for 21 days. But he was in the habit of*



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*deserting habitually and therefore, punishment of dismissal from service came to be passed.*

*13. According to the Petitioner, he was unwell and hospitalised and his family members could not inform the higher officials about his ill-ness and his absence was not deliberate. Charges framed for absence for 21 days.*

*14. In AIR 1996 SC 484:1995 (6) SCC 634 (B.C.Chaturvedi v. Union of India and others), the Hon'ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various Judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment.*

*15. In this aspect, Hon'ble Supreme Court has laid down the law as follows:- “..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appeallate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of*



*judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”*

*16. In AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma), Government Servant overstayed the leave period subsequent to the order of rejection of application for explanation of leave. Observing that there was no wilful intention to flout the order that the punishment of dismissal merely on the ground of over-staying leave period was held to be harsh and disproportionate and the Supreme Court has ordered reinstatement with all monetary and service benefits granted with liberty to visit minor punishment.*

*17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing of the order by the Court. In the present case, Petitioner was absent for 21 days. It is one of the clear instance where the punishment of dismissal from service is disproportionate to the charge*



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18. *In the result, the impugned Orders are set aside and this Writ petition is allowed. Petitioner is ordered to be reinstated into service within a period of eight weeks from the date of receipt of copy of this order. Absence period and the period after dismissal are directed to be taken as “leave on loss of pay”. However, the said period shall be taken into account for continuity of service and other benefits.”*

5. *The aforesaid extract is self-explanatory. When the circular of the Director General of Police clearly indicates that the punishment of 'dismissal/removal from service' nor 'compulsory retirement' should not be imposed on a delinquent for charges of desertion, the punishment imposed itself is deemed to be disproportionate to the charges, as held by the Hon'ble Supreme Court and which was relied upon by this Court in the aforesaid decision. Hence, on this ground also, the impugned order of punishment cannot be sustained.”*

7. In line with the order extracted supra, this Court is of the considered view that the punishment of removal from service for the delinquency of desertion is disproportionate. In view of the same, this Court hereby quash the impugned proceedings passed by the 3<sup>rd</sup> respondent dated 03.09.2013 and the rejection order passed by the 1<sup>st</sup> respondent dated 25.06.2016. Consequently the matter is remanded back to the file of the 3<sup>rd</sup> respondent with a direction to



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decide the matter afresh by imposing any other punishment other than the removal from service / dismissal from service.

8. Accordingly, this Writ Petition stands allowed. No costs.  
Consequently, connected miscellaneous petition is closed.

**02.04.2024**

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

To

- 1.The Director General of Police,  
Mylapore,  
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- 2.The Deputy Inspector General of  
Police,  
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**L.VICTORIA GOWRI, J.**

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