



W.P.(MD).No.18723 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.18723 of 2023

Nallachezhian

... Petitioner

Vs

1. The Director General of Police,
O/o.The Director General of Police,
No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.
2. The Deputy Inspector General of Police,
Madurai Range, Madurai.
3. The Superintendent of Police,
Office of the Superintendent of Police,
Madurai.

... 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 entire records connected with the impugned orders passed by the third respondent in C.No. F1/PR 05/2021, dated 24.03.2021, second Respondent in C.No.A4/1195771/AP/2021, dated 24.08.2021 and first respondent in Rc.No. 2117125-4/AP.2(3)/2022, dated 02.08.2022 quash the same, and direct the



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respondents to reinstate the petitioner into service and grant his all consequential service and monetary benefits.

For Petitioner : Mr.C. Thangamani

For Respondents : Mr.R.Ragavendran
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned orders passed by the third respondent in C.No. F1/PR 05/2021, dated 24.03.2021, second Respondent in C.No.A4/1195771/AP/2021, dated 24.08.2021 and first respondent in Rc.No.2117125-4/AP.2(3)/2022, dated 02.08.2022 and direct the respondents to reinstate the petitioner into service and grant his all consequential service and monetary benefits.

2.Heard, the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents. Perused the materials on record.

3.(i).The petitioner was appointed as Grade-II Police Constable on 15.12.2008. He had some misunderstanding with his wife. He had also met with an accident on 05.07.2020, as a result of which, he was unauthorisedly



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absent from 05.07.2020 and he did not attend the duty, following which, he was visited with a charge memo on 31.07.2020 for unauthorised absence for a period of 21 days without availing leave or permission and that he had deserted the police force. Since he did not give explanation, he was declared as a deserter from 05.09.2020.

(ii).On 22.01.2021, the third respondent has issued a charge in P.R.No.05/2021 under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, for unauthorized absence from 05.07.2020 and deserter from 05.09.2020.

(iii).The Deputy Superintendent of Police, Armed Force, Madurai was appointed as Enquiry Officer, who conducted the enquiry on 08.03.2021 and held that the charges were proved. On the basis of the finding of the enquiry officer, the third respondent vide order, dated 24.03.2021 passed punishment of removal from service. Against which, he preferred an appeal before the Deputy Inspector General of Police, Madurai Range and the same was also dismissed on 24.08.2021. Again, the petitioner filed a mercy petition before the first respondent and the same was also rejected on 02.08.2022. Challenging the same, this writ petition came to be filed.



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4.The learned counsel appearing for the petitioner submitted that it is only a case of 21 days of absence and that was also not wilful, because of the accident, which he met on 05.07.2020 and resulted in hospitalisation and medical treatment. That apart, the punishment of removal from service is shocking and it is disproportionate to the offence of desertion. Hence, prayed to allow this writ petition.

5.The learned Government Advocate appearing for the respondents filed a counter submitted by the third respondent and contended that it is not a case of desertion or absence from duty without permission for one time. The petitioner is a habitual deserter and previously, he was punished by the Department for the same cause of deserting the police force, for which, he was awarded with punishment on 05.03.2015, 24.02.2017, 02.06.2020, 04.05.2020, 01.06.2020 and the impugned order, dated 24.03.2021. He further submitted that highest discipline has to be maintained for the efficient and effective administration of police force and the offence of desertion can never be entertained or encouraged by dealing with easily at any point of time by the Department. The case in hand, is a typical case of habitual desertion repeatedly not one or two times, but six times. Hence, prayed to dismiss the writ petition.



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6.However, this Court has dealt with the case of desertion in W.P.No.582 of 2020, dated 16.08.2023, wherein, a learned Single Judge of this Court has observed that the punishment of removal from service for the offence of desertion would be disproportionate and for the offence of desertion lesser punishment should be inflicted on the delinquents, for which, the learned Single Judge relied upon the circular of Director General of Police, Chennai in Rc.No.235355/AP-IV(2)/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***



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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



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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.No doubt, high degree of discipline has to be maintained in the Police Force. The petitioner has remained absent 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, this Court hereby quash the impugned order of punishment passed by the first respondent dated, 02.08.2022 and the case is remitted back to the first respondent and the first respondent is directed to pass appropriate orders in line with 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 12 weeks from the date of receipt of copy of this order.



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8. Accordingly, this writ petition stands disposed of. There shall be

no order as to costs.

08.02.2024

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

To

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L.VICTORIA GOWRI, J.

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ORDER IN
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