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W.P.(MD) No.19591 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.19591 of 2017

and

W.M.P.(MD) Nos.15863 of 2017 & 20512 of 2023

E.David Karunaharan

... Petitioner

-vs-

- 1.The State of Tamil Nadu
rep.by its Principal Secretary to Government
Home (Pol.9) Department
Secretariat, Chennai
- 2.The Director General of Police
Office of Director General of Police
Santhome, Chennai-4
- 3.The Inspector General of Police
Armed Reserve, Chennai-10
- 4.The Deputy Inspector General of Police
Armed Reserve, Chennai-10
- 5.The Commandant
TNSP, IX Battalion
Manimutharu
Tirunelveli District

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the first respondent in his proceedings in G.O. (D)No.264 Home (Pol.9). Department dated 03.03.2017 and quash the same as illegal and consequentially to direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Ms.Jesima Yasmin
for M/s.Ajmal Associates

For Respondents : Mr.G.Suriya Anand
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order, dated 03.03.2017, passed by the first respondent, dismissing the petitioner from service, on the following grounds:

- (a) Violation of principles of natural justice.
- (b) Non-compliance of the directions of this Court issued on 19.10.2016 in W.P.(MD) Nos.5265 of 2008 and 12028 of 2010.



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- (c) The punishment imposed on the petitioner is disproportionate to the charge levelled against him, namely, unauthorized absence for a period of 21 days.

2. The petitioner is a Grade-II Police Constable. He has been dismissed from service under the impugned order, based on a charge levelled against him that he was unauthorizedly absent for a period of 21 days.

3. In the earlier order, dated 19.10.2016, passed in W.P.(MD) Nos. 5265 of 2008 and 12028 of 2010 filed by the very same petitioner, this Court, after quashing the order impugned therein in G.O.(2D) No.274, Home (Pol.IX) Department, dated 03.06.2010, on the ground of arbitrariness and violation of principles of natural justice, remanded the matter back to the respondents for fresh consideration, in view of the Circular issued by the Director General of Police, dated 30.10.1990 and the Judgment of the First Bench of this Court in ***R.Ramesh vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another***, reported in ***(2008) 6 MLJ 863*** and



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G.Anandan and others vs. State of Tamil Nadu and others, reported in
(2012) 5 MLJ 751.

4. Learned counsel for the petitioner would submit that despite the representation having been given by the petitioner on 12.12.2016, pursuant to the order dated 19.10.2016, passed in W.P.(MD) Nos.5265 of 2008 and 12028 of 2010, calling upon the respondents to adhere to the principles of natural justice and also calling upon them to consider the Circular, dated 30.10.1990, issued by the Director General of Police and the Judgments referred to in the order, dated 19.10.2016, passed in W.P.(MD) Nos.5265 of 2008 and 12028 of 2010, but without adhering to the principles of natural justice, the respondents have, once again under the impugned order, dismissed the petitioner from service. She would submit that the punishment imposed on the petitioner is disproportionate to the charge levelled against him. She would also submit that excepting for the charge, which is the subject matter of challenge in this writ petition, the petitioner is not facing any other disciplinary proceedings, while he was in service of the respondents.



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5. Learned counsel for the petitioner relied upon the following authorities in support of her contention that the punishment imposed on the petitioner is disproportionate to the charge levelled against him, namely, unauthorized absence for a period of 21 days:

- (a) The Division Bench Judgment of this Court rendered in the case of ***M.S.Narayanan vs. Central Administrative Tribunal (Madras Branch), rep. by its Registrar High Court Buildings, Chennai and others***, reported in ***(2008) 6 MLJ 863***; and
- (b) A Single Bench Judgment of this Court rendered in the case of ***G.Anandan and others vs. State of Tamilnadu, rep. by Commissioner of Police, Egmore, Chennai-8 and others***, reported in ***(2012) 5 MLJ 751***.
- (c) A Single Bench Judgment of this Court, dated 28.01.2022, passed in W.P.No.11066 of 2011, in the case of ***V.Mohanasundaram vs. The Management***



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***of Mandavelli Women's Co-operative Stores Ltd.,
and another.***

6. On the other hand, learned Government Advocate appearing for the respondents reiterated the contents of the counter affidavit filed by the respondents before this Court and he would contend that the petitioner is not entitled for reinstatement into service on account of his unauthorized absence. He would submit that even prior to the unauthorised absence of 21 days, the petitioner was continuously absent from duty for more than 60 days. He would also submit that the petitioner did not cooperate with the respondents for being medically examined by the Medical Board, despite the fact that a specific date was fixed for the same. He would also submit the Circular, which has been relied upon by the petitioner, cannot be made applicable to the case of the petitioner, since he did not cooperate with the respondents by appearing before the Medical Board for his medical examination on the specified date.

7. The petitioner is a Grade-II Police Constable. It is an admitted fact that the petitioner has been dismissed from service on account of his



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unauthorized absence for a period of 21 days. The petitioner has been found guilty of the charge levelled against him in the disciplinary proceedings, as the Enquiry Officer has held that the charge framed against the petitioner, namely, unauthorized absence for a period of 21 days, is proved. The Disciplinary Authority, based on the enquiry report submitted by the Enquiry Officer, originally imposed a punishment of dismissing the petitioner from service. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. The appeal preferred by the petitioner was also rejected by the first respondent. Thereafter, the petitioner submitted a mercy petition before the first respondent. The said mercy petition also came to be dismissed. Aggrieved by the same, the petitioner once again gave a mercy petition to the first respondent. However, after taking into consideration the contentions of the petitioner in the mercy petition, the first respondent has reinstated the petitioner into service by his order dated 19.05.2005. However, since the order of reinstatement into service was not implemented, the petitioner filed a writ petition before this Court in W.P.(MD) No.5265 of 2008. During the pendency of the said writ petition, the respondents modified the earlier order of reinstatement into service by once again imposing the punishment of dismissing the petitioner from service by the order of the first



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respondent, dated 03.06.2010. Aggrieved by the said order imposing the punishment of dismissing the petitioner from service, he filed another writ petition before this Court in W.P.(MD) No.12028 of 2010. By a common order, dated 19.10.2016, passed by this Court in W.P.(MD) No.5265 of 2008 and 12028 of 2010, this Court quashed the order passed by the respondents dismissing the petitioner from service and remanded the matter back to the respondents for fresh consideration on merits and in accordance with law, after giving due consideration to the decisions in the cases of **R.Ramesh** and **G.Anandan**, cited supra, and the respondents were also directed to consider the petitioner's representation afresh and pass final orders, within a period of six weeks from the date of receipt of a copy of that order. However, once again, the respondents have imposed the very same punishment of dismissing the petitioner from service under the impugned order dated 03.03.2017, which is challenged by the petitioner in this writ petition.

8. As seen from the aforementioned facts, the petitioner has been running from pillar to post for redressing his grievance. However, it is seen from the representations made by the petitioner as well as the submissions made by the learned counsel for the petitioner before this Court, the petitioner



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is only aggrieved by the disproportionate punishment imposed on him for the unauthorized absence. The charge levelled against the petitioner is that he was unauthorizedly absent for a period of 21 days.

9. In the decision relied upon by the learned counsel for the petitioner in the case of **M.S.Narayanan**, cited supra, it has been held by the Honourable Division Bench of this Court that punishment imposed on any delinquent should be proportionate to the gravity of misconduct. In fact, in the said decision, there is a reference to the departmental letter giving guidelines about the nature of disciplinary action and quantum of punishment that would be commensurate with the gravity of offence committed. As per the departmental letter, dated 29.11.1972, issued by the D.G.P. & T, in Letter No. 6/19/72-Disc.I, the types of cases, which may merit action for imposing one of the major penalties, are as follows:

- (i) Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant by the evidence forthcoming is not sufficient for prosecution in a Court of law e.g:-



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- (a) Possession of disproportionate assets;
 - (b) Obtaining or attempting to obtain illegal gratification;
 - (c) Misappropriation of Government property, money or stores;
 - (d) Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.
- (ii) Falsification of Government records.
 - (iii) Gross irregularity or negligence in the discharge of official duties with a dishonest motive.
 - (iv) Misuse of official position or power for personal gain.
 - (v) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.
 - (vi) False claims on the Government - like T.A. claims, reimbursement claims, etc.



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10. The petitioner's case does not fall under anyone of the aforementioned category of cases. The charge levelled against the petitioner also does not involve moral turpitude and failure on his part to maintain integrity.

11. In the decision relied upon by the learned counsel for the petitioner, referred to supra, though it has been made clear that the administrative authorities are the best Judges in the matter of punishment for the charges, an exception has been carved out. The exception to the said rule is that the Court can interfere with the quantum of punishment, if it finds that the punishment imposed on the delinquent is shockingly disproportionate and it would be most inequitable to allow the same to continue. In the case on hand, it is clear that the punishment imposed on the petitioner, namely, dismissing him from service on account of his unauthorized absence for a period of 21 days, does not fall under anyone of the category of cases, referred to supra, which merit action for imposing one of the major penalties. Admittedly, dismissing the petitioner from service is a major penalty. However, only due to the fact that the petitioner was unauthorizedly absent for



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a period of 21 days, he has been awarded the shockingly disproportionate punishment of dismissing him from service under the impugned order. In fact, it is to be noted that earlier, based on the mercy petition filed by the petitioner, the first respondent had modified the punishment and had reinstated him into service, which has been subsequently, modified once again under the impugned order. The respondents, under the impugned order, have also not taken into consideration the decisions, which have been relied upon by the learned counsel for the petitioner before this Court, which were specifically directed by this Court to be considered by the respondents, in its earlier order dated 19.10.2016. The said decisions make it clear that the punishment cannot be shockingly disproportionate to the charges levelled against the delinquent. The case on hand specifically falls within the ratio laid down by the Division Bench of this Court in its decision, referred to supra. The other Judgment in the case of **G.Anandan**, cited supra, also reiterates the proposition that awarding of punishment of dismissal or removal from service in desertion cases is not justified. For the unauthorized absence of 21 days, the petitioner has been dismissed from service, which in the considered view of this Court, is shockingly disproportionate and is not in accordance with the well settled law as laid down by the decisions referred to supra. The petitioner



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has been fighting for justice ever since 1999, when he was dismissed from service by the Disciplinary Authority. However, the petitioner, as seen from the grounds raised in this writ petition, is not seriously contesting the charge levelled against him in the disciplinary proceedings, namely, unauthorized absence for a period of 21 days. He has primarily raised the ground that the punishment of dismissing him from service is disproportionate to the charge levelled against him in the disciplinary proceedings.

12. Learned counsel for the petitioner also submits, on instructions, that the petitioner is ready to forego his claim for arrears of salary and other monetary benefits, if he is allowed to be reinstated into service, provided he is granted continuity of service with effect from 19.05.2005 being the date on which he was reinstated into service by the first respondent, based on the mercy petition filed by him.

13. Learned counsel for the petitioner also relies upon a Single Bench Judgment of this Court in the case of **V.Mohanasundaram**, referred to supra, and would submit that under similar circumstances, the order of dismissal from service was modified to one of compulsory retirement with



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continuity of service till the date of retirement of the petitioner therein. The petitioner therein was also granted death-cum-retirement benefits, including pensionary benefits, if any. Learned counsel for the petitioner seeks for a similar order from this Court.

14. Since the petitioner has been able to establish before this Court that the punishment imposed on him, namely, dismissing him from service under the impugned order is disproportionate to the charge levelled against him, this Court is inclined to grant a similar order, as was granted by the another learned Single judge of this Court in the case of **V.Mohanasundaram**, referred to supra. Only on the ground that a shockingly disproportionate punishment is imposed on the petitioner under the impugned order, this Court is quashing the impugned order and passing the following orders:

- (a) In the light of the above discussion, the impugned order, dated 03.03.2017, passed by the first respondent in his proceedings in G.O. (D)No.264 Home (Pol.9) Department, is hereby quashed.



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- (b) The punishment imposed on the petitioner under the impugned order of the first respondent, dated 03.03.2017, is hereby modified to one of compulsory retirement from service in favour of the petitioner with continuity of service till 30.06.2025 being the date of the petitioner's retirement from service. However, the petitioner is not entitled to claim for arrears of salary and other monetary benefits, based on his undertaking given by him before this Court through his counsel.
- (c) In view of the said modification, the petitioner would be entitled for the eligible death-cum-retirement benefits, including pensionary benefits, if otherwise eligible.



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15. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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

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To:

- 1.The Principal Secretary to Government,
Home (Pol.9) Department,
State of Tamil Nadu,
Secretariat, Chennai.
- 2.The Director General of Police,
Office of Director General of Police,
Santhome, Chennai-4.
- 3.The Inspector General of Police,
Armed Reserve,
Chennai-10.
- 4.The Deputy Inspector General of Police,
Armed Reserve,
Chennai-10.
- 5.The Commandant,
TNSP, IX Battalion,
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ABDUL QUDDHOSE, J.

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