



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 10.03.2025

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.2131 of 2024

M.Tamilarasan

.. Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by the Additional Chief Secretary to Government,
Home (Police Department),
Secretariat,
Chennai – 600 009.

2.The Director General of Police,

Kamarajar Salai,
Mylapore,
Chennai – 600 004.

3.The Commandant,

Tamil Nadu Special Police IV Battalion,
Kovaipudur,
Coimbatore - 42.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Orders (iii) G.O (2D) No.514 dated 14.12.2022 passed by the 1st respondent, (ii) Rc.No.16755/AP3(1)/2017 dated 11.12.2017 passed by the 2nd respondent and (i) PR No.E3/PR63/2016 dated 05.10.2016 passed by the 3rd respondent and quash the same and



consequently direct the respondents to reinstate the petitioner with continuity in service, back wages and all attendant benefits from 05.10.2016.

For Petitioner .. Mr.N.Manoharan

For R1 to R3 .. Mr.V.Nanmaran, AGP.

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to an order dated 14.12.2022 passed by the 1st respondent and an order dated 11.12.2017 passed by the 2nd respondent and an order dated 05.10.2016 passed by the 3rd respondent and to quash the same and direct the respondents to reinstate the petitioner with continuity in service and to pay the back wages and all attendant benefits on and from 05.10.2016.

2.In the affidavit filed in support of the writ petition, it had been stated that the writ petitioner had been appointed on 15.02.2013 as a Gr-II Police Constable through Tamil Nadu Police Uniformed Services Recruitment Board. After training, he was posted in Tamil Nadu Special Police IV Battalion, Kovaipudur, Coimbatore District. Owing to matrimonial dispute, he was absent for duty between 31.05.2016 and 21.06.2016. He was treated



as a deserter and an order dated 22.06.2016 was passed by the 3rd respondent. He was not permitted to join duty. The 3rd respondent confirmed the order of the desertion by further order dated 29.07.2016 and issued a charge memo on 06.09.2016. The 3rd respondent, Assistant Commandant – II, Tamil Nadu Special Police – IV Battalion, had been appointed to conduct an enquiry. A report was submitted that the charges were proved. Thereafter, the 3rd respondent had passed an order on 05.10.2016 removing the petitioner from service.

3.The petitioner, then gave a mercy petition before the 2nd respondent to modify the punishment into compulsory retirement. Thereafter, a further petition was given to the 1st respondent, who refused to consider the same and it was rejected by way of an order dated 14.12.2022.

4.The petitioner contends that, when he was on duty at Devala Police Station, he had received a telephone message that his wife and daughter were missing. Owing to extreme depression and frustration, he had left the police station searching for his wife and daughter. It is stated that it was under those circumstances that he had availed the leave and was not in a



position to explain the circumstances by giving a formal leave letter.

WEB COPY

5.A counter affidavit had been filed on behalf of the respondents wherein, they had stated that proper procedure had been followed during the course of the enquiry and nine exhibits were marked and two witnesses were examined. The petitioner did not produce any exhibits or witnesses. The petitioner also did not cross-examine the witnesses produced on behalf of the prosecution. The petitioner had given only an explanation on conclusion of the enquiry. It had also been stated that the petitioner had been absent five time earlier and punishments had been imposed even on earlier occasion. It is thus contended that he is an habitual deserter and therefore, the 3rd respondent had imposed maximum punishment of removal from service. It had been further contended that, however, the 2nd respondent had examined the entire issue and modified the said punishment into one of compulsory retirement, which had been affirmed by the 1st respondent. It had thus been stated that the writ petition has no merits and it should be dismissed.

6.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

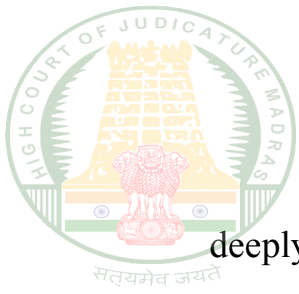


WEB COPY

7.This is a case where the writ petitioner, Gr-II Police Constable had joined the Tamil Nadu Special Police and unfortunately, during the course of his service had not applied his mind for the service and for the uniform, which he wore, but rather, took every opportunity to take leave without informing the authorities.

8.In the impugned order, while justifying the modification of the punishment from removal of service to compulsory retirement, the 2nd respondent had stated that the petitioner had deserted the force on five earlier occasions and that therefore he was an habitual deserter. The fact that the petitioner had actually gone on leave has been admitted by the petitioner. The fact that he had not informed the authorities before going on leave had also been admitted by him. He had given an explanation, that he received message, that his wife and daughter were missing that therefore he had rush to home.

9.But however, it could not have taken much time to seek formal permission to go on leave. He must realize that being a uniformed personnel, if he goes on leave without informing the superior officer his absent would

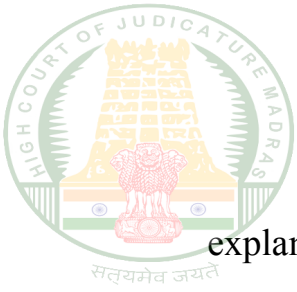


deeply cut into normal functioning of the respondent police force.

WEB COPY

10.The learned counsel for the petitioner, however, placed reliance on the circular of the 2nd respondent / Director General of Police in Rc.No.235355/AP-IV(2)/2007 dated 06.12.2007, wherein it had been opined that for desertion, removal or dismissal from service of compulsory retirement should not be normally given. It had also been observed that any other punishment can be imposed.

11.But however, one factor that had played on the mind of the 2nd respondent was that the petitioner had been absent on five earlier occasions. If that be the case, either the 3rd respondent / Disciplinary Authority or the 2nd respondent, who examined the mercy petition should have given the petitioner reasonable opportunity of stating the circumstances under which he had absented himself not only on this particular occasion, but on the earlier occasions. If the punishment is imposed on that particular ground namely, that the petitioner was absent on five earlier occasions, then, equally an opportunity should have been given to the petitioner to explain the reasons surrounding, why he had been absent on the earlier occasions. This



explanation has to be given to the 2nd and 3rd respondents.

WEB COPY

12.The learned Additional Government Pleader placed reliance on the judgment of the Division Bench of this Court in *W.A.Nos.1454 of 2022 and 2046 of 2019 dated 20.08.2024, the Commandant and two others. Vs. P.Palaniswamy*. The Division Bench had examined an earlier judgment, wherein it was found that if an uniformed personnel has the habit of taking unauthorized absence, then an order of compulsory retirement could be passed.

13.But however, the circular of the 2nd respondent itself gives guidelines, as to why such an order of extreme punishment could not be granted.

14.The petitioner had not been granted opportunity before the final punishment was passed. That opportunity should have been given to the petitioner herein. I hold that the matter has to be remanded back to the 2nd respondent for fresh consideration of the mercy petition submitted by the petitioner. Accordingly, the matter is remanded back to the 2nd respondent



for fresh examination, after putting the petitioner on notice and after getting his explanation for not only absence in the instance case, but the absence for the earlier occasions, since there has been a mention of the earlier absences by the petitioner. A direction is given to the 2nd respondent to dispose of the mercy petition within a period of three months from the date of receipt of a copy of this order.

15. With the above observations, this Writ Petition stands disposed of.

No costs.

10.03.2025

smv

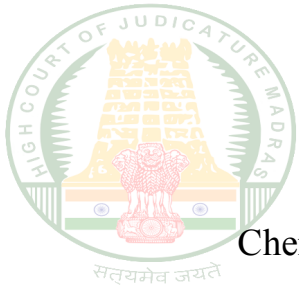
Index: Yes/No

Internet: Yes/No

To

1. The Additional Chief Secretary
Government of Tamil Nadu,
Home (Police Department),
Secretariat,
Chennai – 600 009.

2. The Director General of Police,
Kamarajar Salai,
Mylapore,



Chennai – 600 004.

WEB COPY

3. The Commandant,
Tamil Nadu Special Police IV Battalion,
Kovaipudur,
Coimbatore - 42.

C.V.KARTHIKEYAN,J.

smv



WEB COPY

10



W.P.No.2131 of 2024

10.03.2025