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W.A.No.1059 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2025

PRONOUNCED ON : 30.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A. No. 1059 of 2023

and

C.M.P. No. 10600 of 2023

1.The Deputy Commissioner of Police,
Greater Chennai, In-charge A.R.,
Chennai City Police, Chennai – 8.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai – 8.

3.The Director General of Police,
Chennai – 4.

4.The Secretary to Government,
Home (Pol.V) Department,
Fort St.George, Chennai – 9.

... Appellants

Vs.

Kamalakannan,
S/o.Rama Gounder,



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Formerly Head Constable 15207
Chennai City Police
Narasingapuram, Poovarasankuppam,
Villupuram Taluk.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P. No. 14901 of 2014 dated 07.04.2022.

For Appellant : Mr. P. Kumaresan, Additional Advocate
General assisted by Mr. Venkateswaran,
Special Government Pleader.

For Respondent : Mr. Venkataramani, Senior Counsel for
Mr. M. Muthappan.

J U D G M E N T
(Delivered by Dr. A.D. Maria clete, J)

Heard.

2.This writ appeal is preferred by the State of Tamil Nadu and three other officials of the Police Department, assailing the order dated 07.04.2022 passed by the learned Single Judge in W.P. No. 14901 of 2014. By the said order, the learned Judge allowed the writ petition filed by the respondent and quashed the order of compulsory retirement dated 01.04.2014. The learned Judge further directed that

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the respondent be reinstated in service with effect from the date of the original punishment order dated 26.03.1999, and be treated as if he had not been dismissed from service, with continuity of service and all attendant benefits. However, it was clarified that the respondent shall not be entitled to any back wages for the period of non-employment. The said direction was to be complied with within two weeks from the date of receipt of the order.

3.The records reveal that the respondent was initially appointed as Grade II Police Constable in the Tamil Nadu Special Police, Second Battalion, Avadi, on 16.03.1994. After completing four years of service, he was transferred to the Armed Reserve, Chennai City, on 03.08.1998. During his tenure in the Tamil Nadu Special Police, the respondent had deserted duty on five separate occasions. However, on each of those instances, he was shown leniency and was reinstated in service with the imposition of only minor penalties. Following his transfer to the Armed Reserve, Chennai, he again absented himself from duty—this being the sixth instance of desertion within a span of five years.



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4.The respondent failed to report for duty with effect from 18.07.1998 and remained absent without any prior permission or intimation. Though the respondent contended that he had submitted a medical leave application through registered post, which was allegedly refused by the appellants, there is no material to substantiate this claim. His unauthorised absence was treated as desertion from duty, and a charge memo dated 24.11.1998 was issued to him. A departmental enquiry was conducted, and the enquiry minutes were recorded on 06.01.1999. Thereafter, remarks were invited from the respondent on 14.01.1999. Subsequently, by order dated 26.03.1999, the respondent was removed from service with effect from the date of his desertion. The first appellant, being the competent disciplinary authority, passed the following order: –

“Two witness have been examined and three exhibits have been filed on behalf of prosecution. The very fact that no explanation was given by the delinquent amounts to admission of delinquency. The charge is proved on the strength of documentary evidence. I, therefor, concur with the proved minute drawn by the Enquiry Officer and thereby awarded the punishment of removal from the date of desertion.”

5.The respondent preferred an appeal dated 01.06.1999 before the second appellant challenging the order of removal from service. The appeal was



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considered and ultimately dismissed. In paragraph 3 of the appellate order dated

17.06.1999, the second appellant assigned the following reasons for rejecting the

appeal:—

“The appellant has not put forth any convincing reason in his appeal. From the perusal of the PR file together with the connected records it has been clearly proved beyond any shadow of doubt that he deserted the force without any prior intimation or leave sanction from the competent authority. Within just 5 years of service he has earned 5 punishments to his credit (except the current one) and was on LWP for more than 400 days. He is also involved in Villupuram Taluk PS Cr.Nos.18/99 u/s 170, 294 & 506 (ii) IPC and 19/99 u/s 170 IPC. If such kind of elements are allowed to continue in the force it will not only affect the image of the police but will also promote indiscipline and indecent behaviour among the men. He was rightly removed from service. Hence his appeal is rejected.”

6.After a lapse of four years, the respondent submitted a mercy petition dated 08.12.2003 before the third appellant seeking reconsideration of the punishment. Upon consideration, the third appellant, by order dated 13.07.2004, modified the penalty of removal from service into one of compulsory retirement.

The operative portion of the said order reads as follows:—

“His appeal petition against the punishment was rejected by the Commissioner of Police, Chennai City in orders 3rd cited.



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He has now submitted a Mercy Petition Dated 8-12-2009 to cancel the punishment imposed on him. This Petition is treated as a mercy petition and orders are passed u/s 15 A(1)(ii) of TNPSS (D&A) Rules, 1955.

I have gone through the petition and connected records. The charge stands proved. The punishment is modified to one of compulsory retirement.”

7.The respondent thereafter submitted a mercy petition to the Hon’ble Chief Minister of Tamil Nadu, which was forwarded to the fourth appellant for consideration. The fourth appellant, by G.O.2D.No.577, Home (Pol.V) Department, dated 21.12.2005, dismissed the said petition. Aggrieved by the rejection, the respondent filed W.P. No. 886 of 2007 before this Court. The writ petition was allowed on a limited ground. The learned Judge observed that the disciplinary and appellate authorities, being fact-finding bodies, are vested with the exclusive power to assess evidence and impose punishment commensurate with the gravity of the misconduct. While exercising such discretion, the punishment should reflect the seriousness of the offence committed. However, if the punishment imposed by the disciplinary or appellate authority is found to be disproportionate or shocks the conscience of the Court, it is open to the High Court to mould the relief accordingly—either by directing reconsideration of the



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penalty or, to shorten the litigation it may itself in exceptional and rare circumstances, by substituting the punishment with reasons duly recorded. On that basis, the learned Judge issued the following direction while disposing of W.P. No. 886 of 2007 by order dated 10.04.2012: —

“Considering the above settled decisions of this Court as well as the Honourable Supreme Court, which was also followed by me in the order dated 15.06.2011 made in WP.No.16415 o 2009, the impugned orders passed by the respondents are set aside, the matter is remanded back to the fourth respondent to consider the said issue of proportionality of the punishment alone in the light of the additional affidavit filed by the petitioner on 10.04.2011 and pass orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled for any back wages for the period during which was out of employment.”

8.Pursuant to the order of remand, the fourth appellant–Government reconsidered the matter and, by G.O.(2D) No. 98, Home (Pol.V) Department, dated 01.04.2014, rejected the respondent’s request, affirming the earlier punishment imposed. In paragraphs 4 and 5 of the said order, the fourth appellant assigned the following reasons for declining to interfere with the penalty:

“4.The Government carefully examined the above orders of the court. On examination, it is pointed out that the Supreme Court of India, in its judgement, in SCC 560 AIR 2004, SC 2131, has viewed that



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“Punishment of dismissal / removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for Police Service”

In the instant case, the petitioner has joined the Police Department on 16.03.1994 and he deserted the Department on 18.07.1998 (6th time). He has put hardly 4 years of service. Within the span of four years, he often deserted the said service for 6 times and for which the following punishments have been imposed on him.

Sl. No	PR No.	Nature of delinquency	Punishment awarded	Awarded by
1.	45/94	Without getting any permission and information he absented from duty on 20.10.1994 at 16 hrs and returned on 24.10.1994 at 11PM	Deferred Black Mark for 6 months	Assistant Commandant TSP IInd Battalion, dated 21.04.1995
2.	22/95	Without getting any permission he absented from duty on 05.05.1995 at 9.30 A.M. and returned on 06.05.1995 at 9.40AM	Black Mark	Assistant Commandant TSP IInd Battalion, dated 17.10.1995
3.	26/95	Without getting any permission and information he absented from duty for more than 21 days from 18.02.1995	Reduction in pay by one stage for one year which shall not operate his future increment.	Commandant TSP IInd Battalion, dated 21.03.1996



4.	06/96	Without getting any permission and information he absented from duty and more than 21 days from 01.09.1995	Reduction in pay by one stage for one year which shall operate his future increment.	Commandant TSP IInd Battalion, dated 16.04.1996
5.	51/96	Without getting any permission and information he absented from duty for more than 21 days from 22.07.1996	Reduction in pay by two stages for two years which shall operate his future increment	Commandant TSP IInd Battalion, dated 19.12.1996
6.	277/98	Without getting any permission and information he absented from duty more than 21 days from 18.07.1998	Removal from service. On mercy petition the punishment was modified that of "Compulsory Retirement" by the Director General of Police	Deputy Commissioner of Police, Head Quarters, Armed Reserve, Chennai Police

In the police force, the police personnel do their duty without any reprehensible conduct and not deserted the force. But the petitioner went on desertion at 6 times within a short period of 4 years and he was also on loss of pay for 470 days. Having humanitarian consideration, he was allowed to join duty on previous occasions with minor punishments. But, the petitioner has not changed his



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attitude and again and again he has deserted the Police Force. Desertion from the Police Force is a serious misconduct. It will affect the image of the Police and also promote indiscipline among the Police Personnel. Therefore, as per the views of the Supreme Court of India, in SCC560 AIR 2004, SC 2131, this kind of continued misconduct of the individual is not acceptable and he is unfit for police service.

5.The Government carefully examined the issue in the light of the orders of the Hon'ble High Court of Madras second read above. In view of the reasons stated at para 4 above the Government have decided to impose the punishment of "Compulsory Retirement" on Thiru.R.Kamalakaran, Ex.Police Constable 15207, Chennai City. Accordingly, the Government hereby impose the punishment of "Compulsory Retirement" on Thiru.R.Kamalakaran, Ex.Police Constable 15207, Chennai City."

9.Undeterred by the rejection of his request for reinstatement, and challenging the order passed by the Government (4th appellant), the respondent once again approached this Court by filing W.P. No. 14901 of 2014. In that writ petition, he placed reliance on two Division Bench decisions in Writ Appeal No. 58 of 2011 dated 27.01.2011 and Writ Appeal No. 1608 of 2011 dated 26.02.2013, and contended that in comparable cases involving desertion from service, interference had been made where the punishment of dismissal was found to be excessive. In response, the 1st appellant filed a detailed counter affidavit. In respect



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of the case of one R. Ramesh, cited by the respondent in paragraph 14(f) of the

affidavit, the following clarification was offered: —

“In the case of Thiru R.Ramesh cited by the Petitioner, the appellant has explained the reasons for his absence with proof and hence it was accepted. But in the case of the Petitioner herein he has not produced any document or evidence to prove his illness before the competent authority or before the Oral Enquiry Officer at the time of enquiry. He has simply stated that I have sent Medical certificate along with Medical leave application, which is not acceptable in the absence of any document evidence. Hence, it is to be construed that the absence of the petitioner is willful.”

10.In relation to the respondent's contention that he had submitted a leave application seeking seven days' leave commencing from 11.07.1998, the following response was given in paragraph 14(a) of the counter affidavit:

“The contention of the Petitioner that he has sent Medical Certificate along with Medical leave application to the Inspector of Police, Chennai City Armed Reserve, Chennai and that the registered letter was returned with an entry as “Refused to receive the same” are all an after thoughts. If it is true, the Petitioner herein would have produced the evidences before the Oral enquiry Officer during the Oral enquiry and defended his case. But he has not produced any defense documents and list of



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defense witnesses. Hence, the plea of the Petitioner is false and motivated.”

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11. With respect to the enquiry conducted against the respondent, it was further averred in paragraph 14(b) of the counter affidavit that the respondent did not choose to cross-examine any of the witnesses examined during the enquiry.

The relevant portion reads as follows:—

“The Charge Memo dated 24.11.1998 was issued by the Deputy Commissioner of Police, Armed Reserve, Chennai City (Disciplinary authority). The Asst. Commissioner of Police, Armed Reserve I, Chennai City has been nominated as Oral Enquiry Officer in the P.R. against the Petitioner and not the Sub-Inspr. Of Police, A.R. 1 Chennai City as mentioned by the Petitioner. The Enquiry Officer in the P.R. against the Petitioner, has given all reasonable opportunities to the Petitioner to defend his case. The Petitioner has not even cross examined the P.Ws. to elicit any favourable point.”

12. Despite the respondent's case having been rejected twice by the 4th appellant—Government, and on the second occasion after remand with detailed reasons assigned for upholding the penalty, the learned Single Judge was nevertheless persuaded to accept the respondent's contentions. Consequently, the writ petition filed by him in W.P. No. 14901 of 2014 was allowed by order dated 07.04.2022, which is now under challenge in this writ appeal. In doing so, the



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learned Single Judge placed reliance on the decision in *R. Jayakumar v. Deputy Commissioner of Police* in W.P. No. 26072 of 2004 dated 08.08.2008, wherein an instance of unauthorised absence for 21 days was considered and the delinquent police official was directed to be reinstated, albeit without back wages.

13. The learned Judge also placed reliance on two decisions of the Hon'ble Supreme Court, namely, (1) **Union of India v. Giri Raj Sharma** [AIR 1994 SC 215 = (1994) Supp (3) SCC 755], and (2) **Syed Zaheer Hussain v. Union of India** [(1999) 9 SCC 86], in support of the respondent's case. Based on these authorities, the learned Judge allowed the writ petition filed by the respondent. The findings and directions rendered in paragraphs 5 to 9 of the impugned order, which is now under challenge in this appeal, are as follows: —

“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.

6. However, the charge of unauthorized absence cannot be left unnoticed, particularly, when it is brought to the notice of this Court that



the petitioner had earlier indulged in instances of unauthorized absence.

By taking into account the [ratio laid down in](#) the aforesaid decision, this Court is of the view that if the petitioner's wages for the period of his absence is withheld, without affecting the continuity of his service, as well as other service benefits, the ends of justice could be secured.

7. In normal circumstances, this Court would remit back the matter to the Disciplinary Authority for passing fresh orders to reduce punishment. However, in the instant case, when such an option was extended by this Court and directed the fourth respondent to impose a lesser punishment, the same was disobeyed and the original modified punishment of compulsory retirement was reiterated, in total disregard to the order of this Court. In these circumstances, this Court is of the view that remanding the matter back to the fourth respondent for imposing a lesser punishment, would be a futile exercise and hence, this Court would be justified in ordering for a lesser punishment by invoking its powers under [Article 226](#) of the Constitution of India.

8. In the light of the above observations, the impugned order of punishment dated 01.04.2014, imposing compulsory retirement on petitioner, is quashed. Consequently, there shall be a direction to the respondents herein, to pass appropriate orders, reinstating the petitioner back into service from the date of the original punishment i.e. from 26.03.1999 onwards, as if the petitioner was never dismissed from his services, together with continuity of service and other attendant service benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the petitioner shall not be entitled for the back wages during his period of non-employment.

9. With the above directions, this Writ Petition stands allowed”



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14. We are, however, unable to concur with the reasoning adopted by the learned Single Judge in the judgment under appeal. It appears that there is an increasing tendency to interfere in matters relating to unauthorised absence of police constables and to examine the proportionality of the disciplinary action imposed, often overlooking the fact that the police force is a disciplined service where a higher degree of adherence to duty and conduct is expected. As regards the two decisions relied upon by the learned Single Judge, it is essential to appreciate the full context and specific factual matrix in which those judgments were delivered, before applying them to the present case.

15. In the case of **Union of India v. Giriraj Sharma** [AIR 1994 SC 215 = 1994 Supp (3) SCC 755], the decision is brief, and the relevant factual background along with the direction issued by the Hon'ble Supreme Court is contained in paragraph 2, which reads as follows: —

“Mr. Jain the learned Counsel for the appellant Union of India contended that the interpretation placed on [Section 11\(1\)](#) of the Central Reserve Police Force Act, 1949 (hereinafter called 'the Act') is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of dismissal. In support of his contention he invited our attention to a decision of the Rajasthan High Court reported in AIR 1965 Raj 140. He also relied



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on certain other decisions but it is sufficient to state that according to him the learned Judges of the High Court had committed an error in interpreting the said Sub-section. In our opinion it is not necessary for us to construe Sub-section (1) of [Section 11](#) of the Act in the backdrop of the facts of the present case. Assuming Mr. Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the incumbent having overstayed the period of leave by 12 days. **The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been contravened in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order,** but the circumstances force him to do so. In that view of the matter the learned Counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for We agree with this submission. (Emphasis added)

16. In the aforesaid case, the government servant in question was an electrician and not a police constable. Moreover, the Hon'ble Supreme Court, taking note of the specific factual circumstances, observed that an unintentional absence of 12 days ought not to attract a harsh penalty and that it was open to the



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disciplinary authority to consider imposing a minor punishment. Notably, the case pertained to an overstay of sanctioned leave and not unauthorised absence or desertion. Further, there was no prior history of similar misconduct on the part of the employee in that case.

17.The ratio laid down in **Giriraj Sharma** was subsequently distinguished by the Hon'ble Supreme Court in the case of **Union of India v. Datta Linga Toshatwad**, reported in (2005) 13 SCC 709. In that decision, the Supreme Court specifically declined to follow the earlier view in the context of unauthorised absence and held as follows:—

"8. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16.6.1997 and never reported for duty thereafter. Instead he filed a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed.

We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who



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overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged.

18. In **Syed Zaheer Hussain v. Union of India**, reported in (1999) 9 SCC 86, the factual background and the direction issued by the Hon'ble Supreme Court are briefly set out in paragraphs 3 and 4 of the judgment, which read as follows:—

“3. The short question is whether the appellant who was working as Sorting Assistant under the Respondents' organization could have been dismissed from service only because he was alleged to be unauthorizedly absent from 9-1-1985 to 15-1-1985. When he tried to resume his duties thereafter, he was placed under suspension on 16-1-1985 and after a departmental enquiry, was dismissed from service. He went to the Tribunal. The Tribunal took the view that the punishment meted out to the appellant was grossly disproportionate but could not interfere in exercise of its jurisdiction. That is how the appellant is before us on grant of special leave.

4. **In our view, in the facts and circumstances of the case, the punishment of dismissal from service is too harsh** and on the contrary it is required to be substituted by appropriate lesser punishment. Learned Counsel for the respondents after instructions has



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stated that appropriate lesser punishment may be awarded by this Court. It will be acceptable to the respondents. In our view, ends of justice will be served if we set aside the order of dismissal of the appellant and instead direct reinstatement of the appellant in service with continuity and with all other benefits save and except withdrawing 50 per cent of back wages from the date of dismissal i.e. 11-10-1988 till today. In our view, this punishment which will involve substantial monetary loss to the appellant will meet the ends of justice and will be a sufficient corrective measure for the appellant. The request of learned Counsel for the respondents that two future increments may also be withheld without cumulative effect does not appear to us to be justified on the peculiar facts and circumstances of the case. In our view, the aforesaid monetary loss to the appellant will meet the ends of justice so that he may be careful in future. It is ordered accordingly.” (emphasis added)

19.The decision in **Syed Zaheer Hussain** did not pertain to the police department; the individual in that case was employed as a Sorting Assistant in the Postal Department. The Hon’ble Supreme Court, having regard to the special circumstances of that case, granted limited relief. At best, the decision constitutes a case-specific dispensation and cannot be treated as a binding precedent to be uniformly applied in all cases of unauthorised absence, irrespective of the nature of the post or the department involved. It is also well settled that directions issued by the Supreme Court in the exercise of its powers under Article 142 of the

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Constitution do not confer a precedent-binding effect on High Courts functioning under Article 226.

20. When the Union of India sought to distinguish the earlier decisions in **Giriraj Sharma** and **Syed Zaheer Hussain** (both cited supra), the Hon'ble Supreme Court clarified that the relief granted in those cases was in the exercise of its discretionary powers under Article 142 of the Constitution. This position was reaffirmed in **Eastern Coalfields Ltd. v. Ajit Mondal**, reported in 2023 LiveLaw (SC) 209, wherein the Court held as follows: —

“Though the learned counsel for the appellants tried to distinguish the two decisions relied upon by the Division Bench in the impugned order, namely, (1) [Union of India and Others vs. Giriraj Sharma](#) [1994 Supp (3) SCC 755], and (2) *Syed Zaheer Hussain vs. Union of India and Others* [(1999) 9 SCC 86], on the ground that in these cases, the period of absence was very very less, we do not think that the principle can be tested on the strength of the number of days of absence.

The test of proportionality has to be seen in a larger context. The larger context in the present case is that admittedly from 1975 the respondent no.1 had an unblemished record of service. Therefore, we are of the view that the Division Bench of the High Court was correct in its approach in applying the test of proportionality. Hence, in normal circumstances, we must dismiss the appeal and confirm the impugned order. But then the same may give rise to one more round



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of litigation with the disciplinary authority passing a fresh order and the same coming under challenge in another round of litigation.

The respondent was a poor line mazdoor and superannuated more than a decade ago. Therefore, we would like to exercise our power conferred under [Article 142](#) of the Constitution and substitute the penalty of dismissal of service by a lesser penalty.”

(Emphasis added)

21. In any case, the decision in **Jayakumar’s case** (cited supra), relied upon by the learned Single Judge, draws support primarily from the two aforementioned Supreme Court decisions. In that matter, relief was granted to police personnel who was found to have remained absent for 20 days. However, it was noted that the disciplinary authority had considered his prior record without affording due process. That judgment, rendered by a Single Bench, is based on the peculiar facts of that case and cannot be regarded as laying down a binding precedent to be applied uniformly in all cases involving desertion of duty by police personnel.

22. As rightly contended by the appellants, the order passed by the learned Single Judge is clearly unsustainable and runs contrary to several binding precedents of the Hon’ble Supreme Court. In **Shri Bhagwan Lal Arya v.**



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Commissioner of Police, Delhi, reported in (2004) 4 SCC 560, the Supreme

WEB COURT held as follows: —

“..they had sanctioned leave without pay for the period from 7.10.1994 to 15.12.1994, the period of alleged unauthorised absence. The High Court has failed to appreciate and evaluate this aspect of the matter. The High Court also did not appreciate that after issuing sanction for leave for the period in question, the employee's legitimate expectation would be that no stern action would be taken against him with respect to the alleged act of misconduct which by no stretch of imagination can be considered act of gross misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service. **It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate.** We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires of Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of not only he but his entire family totally



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dependant on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside. (Emphasis added)

23.It is unclear how the learned Judge, despite referring to the above decision, arrived at a conclusion that is entirely contrary to the ratio laid down therein.

24.The learned Additional Advocate General, while advancing submissions on the grounds of appeal, also referred to three other decisions of the Hon'ble Supreme Court pertaining to unauthorised absence by police personnel and the disciplinary action upheld therein. The first of these is **Government of Andhra Pradesh & Others v. Mohd. Taher Ali**, reported in (2007) 8 SCC 656, wherein the Supreme Court held as follows: —

“...in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. In our opinion there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the chargesheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police



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force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of disciplined force is sufficient to justify his compulsory retirement.”

25.The second decision referred to is **Om Prakash v. State of Punjab**, reported in (2011) 14 SCC 682, which involved a case of unauthorised absence by a police constable. In that context, the Hon’ble Supreme Court held as follows: —

“9. It was also sought to be contended that he produced a medical certificate in support of his contention that he was medically unfit to work. However, it is established from the records and the report of the Inquiry Officer that no such medical certificate was produced by the appellant before the Inquiry Officer during the departmental proceeding.

10. The next contention that is raised is that the period of absence of the appellant having been regularised, the aforesaid charge of unauthorised absence would fall through and, therefore, the order of punishment is required to be set aside and quashed. We are unable to accept the aforesaid contention as period of the unauthorised absence was not condoned by the authority but the same was simply shown as regularised for the purpose of maintaining a correct record.

11. A similar issue came to be raised in this Court several times. In the case of State of M.P. Vs. Harihar Gopal 1969 SLR 274(SC), this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the enquiry



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officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to the delinquent officer and for regularising his absence from duty. This Court in the said decision held that it could not be accepted that the authority after terminating the employment of the delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that he was to be deemed not to have remained absent from duty without leave duly granted.

13. There is yet one more factor which stands against the appellant herein. It is indicated from the counter affidavit filed by the respondents 1 to 4 that the appellant had also been punished earlier to the aforesaid incident also with a punishment for leave without pay for total of 527 days on different occasions in service as per details below:-

13.11.1965 to 05.01.1996 - 54 days 25.07.1973 to 28.07.1973 - 4 days
04.10.1977 to 12.01.1978 - 120 days 13.01.1978 to 09.05.1978 - 118 days
25.10.1979 to 31.10.1979 - 6 days 10.02.1981 to 14.08.1981 - 185 days
13.10.1984 to 22.11.1984 - 40 days

14. Therefore, it is established that the appellant was a habitual absentee without leave and, therefore, he does not deserve any sympathy from this Court.”

26.In Chennai Metropolitan Water Supply and Sewerage Board v. T.T.

Murali Babu, reported in (2014) 4 SCC 108, the Hon’ble Supreme Court



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considered a case involving prolonged unauthorised absence by an employee of a statutory board. The Court held that such an individual was not entitled to any relief and further expressed its disapproval of the High Court's interference in granting relief in such circumstances. The relevant portion of the judgment reads as follows: —

“Learned counsel for the respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of “habitual absenteeism” is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.”

27. In **Government of India v. George Philip**, reported in (2006) 13 SCC 1, the Hon'ble Supreme Court dealt with a case involving unauthorised absence by a government servant. While upholding the penalty of compulsory retirement, the Court invoked the fundamental duties enshrined under Article 51A of the

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Constitution and declined to grant any relief. The relevant portion of the judgment

reads as follows:—

“We are, therefore, of the opinion that in the facts and circumstances of the case, the punishment of compulsory retirement imposed upon the respondent cannot be held to be disproportionate, much less shockingly disproportionate, and there was absolutely no ground on which the Tribunal or the High Court could interfere with the order passed by the appellants.

In a case involving overstay of leave and absence from duty, granting six months' time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. Article 51A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution has the tendency to negate or destroy the same.”

28. In **State of Punjab v. Sukhwinder Singh**, reported in (2005) 5 SCC 569, the Hon'ble Supreme Court upheld the termination of a probationary police constable on the ground of unauthorised absence, even in the absence of a formal enquiry. The Court held as follows:—

“In the present case neither any formal departmental inquiry nor any preliminary fact finding inquiry had been held and a simple order of



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discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon the misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh and others etc. vs. State of Punjab and another (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules.”



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29. In **State of Meghalaya & Others v. Mecken Sing N. Marak**, reported in (2008) 7 SCC 580, the Hon'ble Supreme Court cautioned against judicial interference with penalties imposed on delinquent police personnel and underscored the paramount importance of maintaining discipline within the force. The Court also expressed its disapproval of High Courts granting relief in such matters without due deference to the disciplinary framework. The relevant portion of the judgment reads as follows:—

“The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under [Article 226](#), do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust



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where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands. The respondent belonged to a disciplined force. He was supposed to carry out instructions given to him by his superior. Not only he flouted the instructions but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited. The proved charges clearly established that the respondent, who was a police officer failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the exchequer and society. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted.”



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30. In the present case, it is an admitted position that the respondent had absented himself from duty for a considerable duration and had been penalised on five prior occasions for unauthorised absence, including the instance presently under consideration. Pursuant to the remand by this Court, the 4th appellant duly reconsidered the matter and assigned detailed reasons for rejecting the respondent's request. It is also relevant to note that the appellate authority had, on an earlier occasion, shown leniency by modifying the penalty of removal from service to one of compulsory retirement. In such circumstances, no further interference is warranted by this Court. Counsel appearing in such matters ought to exercise caution in relying upon precedents, even of the Hon'ble Supreme Court, especially where the ratio of those decisions has been clarified or distinguished in subsequent judgments.

31. Accordingly, Writ Appeal No. 1059 of 2023 is allowed, and the order passed in W.P. No. 14901 of 2014 is set aside. Consequently, W.P. No. 14901 of 2014 will stand dismissed. However, there shall be no order as to costs.

(R.S.K., J) (A.D.M.C., J)
30.04.2025



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Index : Yes/No

Neutral Citation: Yes / No

Speaking Order / Non-speaking Order

To

1.The Deputy Commissioner of Police,
Greater Chennai, In-charge A.R.,
Chennai City Police, Chennai – 8.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai – 8.

3.The Director General of Police,
Chennai – 4.

4.The Secretary to Government,
Home (Pol.V) Department,
Fort St.George, Chennai – 9.

5.The Section Officer,
VR Section,
High Court of Madras,
Chennai.



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**R.SURESH KUMAR, J
and
DR. A.D. MARIA CLETE, J**

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Pre-Delivery Judgment made in
W.A. No. 1059 of 2023
and
C.M.P. No. 10600 of 2023

30.04.2025