



W.A No. 2826 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-09-2025

CORAM

THE HON'BLE MR JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

W.A No. 2826 of 2025

AND

CMP.No. 22938 of 2025

1.The Government of Tamil Nadu
Principle Secretary to Government,
Home Department,
Fort St.George, Chennai-600009.

2.The Director General of Police,
Tamil Nadu,
Mylapore, Chennai-04.

3.The Joint Commissioner of Police,
East Zone, Egmore,
Chennai-600008.

..Appellants

Vs

P.Sampaul

..Respondent



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Writ Appeal is filed under Clause 15 of Letter Patent to set aside the order dated 05.03.2024 passed in W.P.No. 31664 of 2012.

For Appellants: Mr.M.Suresh Kumar, AAG

Asst. by Mr.Yogesh Kannadasan, Spl.GP

For Respondent : Mr.S.Manoj.

JUDGMENT

(Made by ***HEMANT CHANDANGOUDAR, J.***)

This intra Court appeal assails the order dated 05.03.2024 passed in W.P.31664 of 2012. By the said order, the order passed by the appellant dismissing the respondent/writ petitioner from service was set aside and a direction was issued to reinstate with continuity of service and other attendant service benefits but without back wages during the non employment period.

2. The respondent/writ petitioner while working in the Nungambakkam Police Station was declared as deserted on 24.08.2006 for having remained unauthorisedly absent for 21 days and the same was confirmed on 19.09.2006. Subsequently, disciplinary proceedings under Rule 3(b) of the Tamil Nadu



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Police Subordinate Services (Discipline & Appeal) Rules 1955 were initiated by issuing a charge memo dated 13.03.2007 and the said charge stood proved and the disciplinary authority after receiving further response passed an order of dismissal vide order dated 03.05.2007. The mercy and petition and appeal were also dismissed. Taking exception to the same, the writ petitioner has filed the writ petition and the learned the learned single judge after hearing the parties either side, passed the impugned order. Challenging the same, the State has filed the present writ appeal.

3. Mr.M.Suresh Kumar, learned Additional Advocate General submitted that the writ petitioner is a habitual offender having been imposed penalty for similar charge on 10 occasions, and therefore, the impugned order passed by the learned Single Judge is not sustainable, more particularly the charge against the writ petitioner was proved, therefore the impugned order passed by the learned Single Judge is not legally sustainable and liable to be set aside.



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4. In response, Mr. S. Manoj, learned counsel for the respondent submitted that the allegation against the writ petitioner is that he had remained unauthoritsedly absent for 21 days and taking into the same and also the circular dated 06.12.2007, the learned Single Judge rightly passed the impugned order and the same does not warrants any interference.

5. Arguments of the learned counsel for the parties and the materials placed on record have been duly considred.

6. Admittedly, the charge against the writ petitioner/respondent was proved and the writ petitioner has not established the unauthorised absence was bonafide or genuine. The learned Single Judge referred the Circular dated 06.12.2007 which stipulates that when a Head Constable Police is declared as deserted, a notice is to be issued directing the delinquent to appear for the enquiry before the Superintendent of Police within two months. Further, when he appears, the Superintendent of police should keep in mind; whether the absence is on valid grounds and the period of absence is covered by a valid certificate; If the Superintendent of Police is not satisfied, the delinquent should



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not be taken for duty if on the other hand, if the Superintendent of Police is satisfied, the delinquent can be taken for duty. The learned Single Judge in paragraph 11 has observed that when the Circular memorandum of the Director General of Police clearly indicates that the punishment of dismissal/removal from service or compulsory retirement should not be imposed on the delinquent for the charges of the desertion and the punishment imposed itself is disproportionate to the charge as held by the Supreme Court.

7. Having observed that the charge against the writ petitioner was proved, however the charge against the petitioner does not warrant dismissal /removal from service or compulsory retirement, the learned Single Judge was not justified in setting aside the order penalty in its entirety instead of modifying the order . the appellant has placed on record the department sheet of the writ petitioner indicating that earlier ten penalties were imposed on the writ petitioner for the similar charge including removal from service which was subsequently, modified in an appeal among other penalties.



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8. In the present instance, although the charge has been proved, the punishment of dismissal is disproportionate to the gravity of the charge. Therefore, it would be appropriate to modify the punishment. However, the learned Single Judge, while passing the impugned order, did not consider modifying the punishment. To that extent, the impugned order requires interference.

9. Ordinarily, where the punishment imposed is found to be disproportionate to the gravity of the charge, the matter is remitted to the disciplinary authority to reconsider and impose a punishment proportionate to the misconduct proved. However, in the present case, having regard to the peculiar facts and circumstances, and further taking into account that, for similar charges, the disciplinary authority has imposed lesser punishments, it would be just and proper for this Court to itself impose an appropriate punishment, in substitution of the order of dismissal.



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10. Accordingly, the writ appeal is ***allowed in part***. The impugned order passed by the learned Single Judge in W.P.31664 of 2012 dated 05.03.2024 is modified as follows;

1. The order of dismissal passed by the respondents is modified by permitting the appellants to stoppage of two increments with cumulative effect for two years.
2. The respondent/writ petitioner shall be reinstated into service with effect from the date of order of dismissal with continuity of service and other attendant service benefits. However, with the stoppage of two increments with cumulative effect for a period of two years and shall not be entitled for back wages during the non employment period.
3. The appellants are directed to pass necessary orders within a period of three months from the date of receipt of a copy of this order.



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4. In the event that the Respondent/Writ Petitioner engages in similar misconduct in the future, the appellants shall be at liberty to impose appropriate punishment without being influenced by this order.

5. Consequently, connected Miscellaneous Petitions are closed. No costs.

(R.S.K. J.,) (H.C. J.,)

19.09.2025

Index : Yes / No

Internet : Yes/No

Neutral Citation : Yes / No

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