



WEB COPY



W.P.No.39927 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.39927 of 2024
and W.M.P.No.43241 of 2024

Thambidurai

... Petitioner

-Vs-

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

2. The Deputy Inspector General of Police,
Salem Range, Salem.

3. The Superintendent of Police,
Dharmapuri District.

4. The Additional Chief Secretary to Government,
Home Police(VI) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

(R4 impleaded as per the
order dated 13.11.2025 made
in W.M.P.No.11022 of 2025
in W.P.No.39927 of 2024)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in connection with the impugned order issued by the respondents in 1-4 in Rc.No.4174664/AP.2(2)/2023 dated 09.05.2023, C.No.B2/207/4170/



W.P.No.39927 of 2024

2022 Appeal No.39/B2/2022 dated 02.12.2022 and PR.No.H.1/21/2022 Sec. u/3(b) dated 30.09.2022 and Letter (D) No.1233/Pol.VI/2023 dated 17.10.2024 respectively and quash the same and further direct the respondents to reinstate the petitioner into service. (*Prayer amended as per the order dated 13.11.2025 made in W.M.P.No.11023 of 2025 in W.P.No.39927 of 2024*)

For Petitioner : Mr.R.Abdur Rahman
For M/s. Dhineshkumar Associates

For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the orders dated 30.09.2022, 02.12.2022, 09.05.2023 & 17.10.2024 passed by the respondents thereby removing the petitioner from service and also the confirmed by the appellate authority.

2. The petitioner was appointed as Grade II Police Constable in the year 2006. While he was working in battalion force, he was transferred to Hogenakkal Police Station and he was relieved from the force on 13.10.2021. However, he was unable to report the duty due to his illness. Therefore he was declared as deserter on 21.02.2022. Subsequently, he was served with charge memo under Rule 3(b) of the Tamilnadu Police Subordinate Service



W.P.No.39927 of 2024

(Disciplinary and Appeal) Rules and he was awarded with punishment of stoppage of increment for a period of two years without cumulative effect by an order dated 09.05.2022. Even then, the petitioner could not able to join duty, since he felt in sick. Therefore, the petitioner was served with another charge memo dated 18.07.2022. The petitioner had submitted his explanation explaining his family problem and also health ailments. However, the enquiry officer concluded the enquiry that all the charges were proved and the third respondent passed final order thereby imposed punishment of removal of service on 30.09.2022. Aggrieved by the same, the petitioner preferred an appeal before second respondent and the same was also dismissed by an order dated 02.12.2022. The said order was also challenged by way of review before the first respondent and the same was also rejected by an order dated 09.05.2023. Subsequently, the petitioner filed mercy petition and the same was also rejected. Hence, the petitioner filed the present Writ Petition with the above prayer.

3. Heard, the learned counsel appearing appearing on either side and perused the materials placed before this Court.



W.P.No.39927 of 2024

4. The charge of desertion does not carry for capital punishment as per the circular issued by the Director General of Police dated 06.12.2007. In the said circular, it was stated that while disposing the review or mercy petition of the subordinate police personnel, the Superintendents of Police are still in the habit of awarding 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. The said circular was issued on the dictum laid down by the Hon'ble Supreme Court of India in several cases. Therefore, the punishment imposed on the petitioner is disproportionate to the charges.

5. On the issue of disproportionality of a punishment is concerned, the same has been dealt in various decisions of this Court, as well as the Hon'ble Supreme Court, to the effect that the ultimate punishment requires to be in conformity with the gravity of the charges. In one such decision of a learned Single Judge of this Court, in the case of ***R.Jayakumar Vs. The Deputy Commissioner of Police and another*** passed in W.P.No.26072 of 2004, dated **08.08.2008**, the High Court had placed reliance on three decisions of the Hon'ble Supreme Court and interfered with the punishment



W.P.No.39927 of 2024

of dismissal for the period of unauthorised absence of 21 days and directed the delinquent therein to be reinstated into services without the benefits of pay for the period of absence. The relevant portion of the order reads as follows:

“11. Next point to be considered is proportionality of punishment. For the absence of 21 days, Petitioner was awarded punishment of dismissal from service. Placing reliance upon AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma); (1996) 7 SCC 634 (Malkiat Singh v. State of Punjab and others); (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) and (2006) 4 MLJ 1008 (J.Patric v. Government of Tamil Nadu, rep. by its Secretary, Home (Pol.VI) Department, Chennai and others), learned counsel for the Petitioner contended that in cases where the punishment imposed is disproportionate to the charge, court can set aside the same or modify the punishment based on the facts and circumstances of the case.

12. On the other hand, learned Government Advocate would submit that as far as the Petitioner is concerned, it was not an isolated case of desertion for 21 days. But he was in the habit of deserting habitually and therefore, punishment of dismissal from service came to be passed.

13. According to the Petitioner, he was unwell and hospitalised and his family members could not inform the higher officials about his ill-ness and his absence was not deliberate. Charges framed for absence for 21 days.



W.P.No.39927 of 2024

14. In AIR 1996 SC 484:1995 (6) SCC 634

(B.C.Chaturvedi v. Union of India and others), the Hon'ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various Judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment.

15. In this aspect, Hon'ble Supreme Court has laid down the law as follows:

“..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either



WEB COPY



W.P.No.39927 of 2024

directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

16. In AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma), Government Servant over stayed the leave period subsequent to the order of rejection of application for explanation of leave. Observing that there was no wilful intention to flout the order that the punishment of dismissal merely on the ground of over-staying leave period was held to be harsh and disproportionate and the Supreme Court has ordered reinstatement with all monetary and service benefits granted with liberty to visit minor punishment.

17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing of the order by the Court. In the present case, Petitioner was absent for 21 days. It is one of the clear instance where the punishment of dismissal from service is disproportionate to the charge.

18. In the result, the impugned Orders are set aside and this Writ petition is allowed. Petitioner is ordered to be reinstated into service within a period of eight weeks from the



W.P.No.39927 of 2024

date of receipt of copy of this order. Absence period and the period after dismissal are directed to be taken as “leave on loss of pay”. However, the said period shall be taken into account for continuity of service and other benefits.”

Therefore, the punishment of removal from service should not be imposed on the delinquent for the charge of desertion and it is deemed to be disproportionate to the charges. Further, the charge of unauthorised absence cannot be left unnoticed, particularly when the petitioner had also indulged in instances of unauthorised absence.

6. In view of the above discussions, the order of dismissal passed by the respondents 1 to 3 and also confirmed by the fourth respondent cannot be sustained and are liable to be quashed. According, the impugned orders dated 30.09.2022, 02.12.2022, 09.05.2023 & 17.10.2024 passed by the respondents are hereby quashed. The respondents are directed to reinstate the petitioner into service with continuity of service and other service benefits except the monetary benefits, for the period on which the petitioner had undergone punishment, within a period of two weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner is not entitled for any monetary benefits for the period in which he was absent till reinstatement into service.



W.P.No.39927 of 2024

WEB COPY

7. With the above directions, the Writ Petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

13.11.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

rts

To

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.
2. The Deputy Inspector General of Police,
Salem Range, Salem.
3. The Superintendent of Police,
Dharmapuri District.
4. The Additional Chief Secretary to Government,
Home Police(VI) Department,
Secretariat, Fort St. George,
Chennai – 600 009.



WEB COPY



W.P.No.39927 of 2024

G.K.ILANTHIRAIYAN. J,

rts

W.P.No.39927 of 2024
and W.M.P.No.43241 of 2024

13.11.2025