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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2025

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos. 23781 of 2016 and 17336 of 2019

and

W.M.P(MD)No. 13829 of 2019

W.P.(MD)No. 23781 of 2016

R.Premkumar

... Petitioner

- Vs. -

1. The Director General of Police,
Tamilnadu,
Chennai.

2. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

3. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondents



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a ***Writ of Certiorari***, calling for the records relating to the proceedings R.Dis.No.52308/AP 2(1)/2014 dated 19.08.2016 on the file of the 1st Respondent herein confirming the order passed by the 2nd Respondent in his proceedings C.No.C4/AP.77/2012 dated 06.03.2013, thereby confirming the order passed by the 3rd Respondent in his proceedings, dated 19.10.2012 and to quash the same and consequently to quash the order passed by the 3rd Respondent in his proceedings dated 19.10.2012 and consequently to quash the order of the 3rd Respondent in his proceedings C.No.A3/29187/2015 dated .11.2015 and consequently directing the Respondents to upgrade the Petitioner as Head Constable from 16.04.2012 in par with his juniors.

[Prayer was amended as per Order of this Court, dated 06.01.2017]

W.P.(MD)No. 17336 of 2019

R.Premkumar

... Petitioner

- Vs. -

1. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.



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2. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a ***Writ of Certiorarified Mandamus***, calling for the records relating to the proceedings of the 2nd respondent in C.No.A3/29187/2015, D.O.1474/2015 dated .11.2015 and to quash the same and to direct the respondents to promote the petitioner as Head Constable on and from 01.04.2012 in par with his juniors within a time frame as may be fixed by this Court.

In both the Writ Petitions :

For Petitioner : M/s.P. Jessi Jeeva Priya

For Respondents : Mr.M. Sarangan,
Additional Government Pleader

COMMON ORDER

Since the facts and issue involved in both the writ petitions are same, hence the Common Order is passed. During the pendency of these writ petitions, the prayer was amended.



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2. The brief facts as stated in the affidavit are that the petitioner was enlisted as Grade II Police Constable on 15.04.1997 in Thoothukudi District. On 10.06.2008, he proceeded on four days of casual leave, granted by the Inspector of Police, Maniyachi Police Station. Due to unavoidable circumstances, he could not return on 14.06.2008, hence extended his casual leave for a further period of five days, from 14.06.2008 to 18.06.2008, through a telegram. During this period, he visited R.S. Mangalam, where he suddenly fell ill and received treatment at the Government Hospital, Devipattinam. The Medical Officer, after providing treatment, advised bed rest from 19.06.2008 to 18.07.2008.

3. In the meantime, the petitioner was arrayed as the 9th accused (A9) in a murder case for the alleged incident on 26.04.2008 registered by Srivaikundam Police in Crime No.127 of 2008, under Sections 147 and 302 IPC. After two months it was alleged that the petitioner conspired with others to murder one Suyambu @ Suyambulingam son of Sankarakani Nadar and the petitioner was suspended from service on 19.07.2008. A charge memo in



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P.R.No.58/2008 was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955. Since the petitioner was under medical treatment, hence the petitioner submitted Medical Certificates for the period from 19.07.2008 to 13.11.2008 and dispatched to Maniyachi Police Station by post. Since the charge in both the criminal case and departmental proceedings was identical, he filed W.P.(MD) No.11670 of 2008 and by an order dated 15.12.2008, the 1st charge relating to criminal case was deferred by an order dated 15.12.2008. The other two charges were split and continued.

4. The Enquiry Officer in P.R. No.58/2008 had issued a memo through a messenger to appear for enquiry on 29.09.2008. Although the petitioner had provided his leave address before leaving the Head Quarters on 10.06.2008 along with Medical Certificate, the messenger visited the petitioner's permanent address on 15.09.2008 and affixed the memo on the door of the house but the petitioner was not available. The respondent had not served the notice personally as stated in PSO 82(2) of Volume-I. Further, there was no mention or indication in



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the said memo that the petitioner would be declared a deserter if he failed to appear within 21 days from 29.09.2008. In the charge memo it has been clearly stated if the petitioner failed to appear, oral enquiry would be held exparte. But the enquiry officer instead of conducting the oral enquiry exparte, sent a report on which the Superintendent of Police issued an order dated 24.10.2008 striking off the petitioner as deserter, which is against the Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules 1955 and Rule 32 of Tamil Nadu Subordinate Police Officers Conduct Rules 1964. In this regard the petitioner had appealed to the Director General of Police, Chennai on 12.01.2009 with a request to cancel the order of desertion but ended in vain.

5. In the meanwhile, the petitioner requested the Enquiry Officer to furnish certain additional relevant documents vide representation dated 11.02.2009, but the respondents failed to furnish and the Enquiry Officer had hurriedly concluded the oral enquiry. On conclusion of the oral enquiry the petitioner submitted a written explanation stating the charge itself is not



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maintainable but the same was not considered and proved minute was drawn. On receipt of the copy of the minute, the petitioner submitted a representation dated 11.10.2012, wherein it was pointed out the relevant rules and the lacunas and also requested to grant personal hearing. But the respondents declined to consider the written submissions and also declined to grant personal hearing and also not disputed the Medical Certificates.

6. In the meanwhile, the petitioner was acquitted in the criminal case and the departmental proceedings related to that charge were dropped vide order dated 20.09.2012. However for the other charges the 3rd respondent, by order dated 09.12.2012, imposed the punishment of postponement of the next increment for one year with cumulative effect in P.R. No.58/2008 under Rule 3(b). The petitioner preferred an appeal before the 2nd respondent and the appeal was rejected vide order dated 06.03.2013. Aggrieved over, the petitioner had preferred an appeal to the 1st respondent, since the same was not considered, the petitioner had preferred W.P.(MD)No.11287 of 2015. Further against the order of the 2nd



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respondent dated 06.03.2013 the petitioner had preferred review petition before the 1st respondent and the same was rejected vide the impugned order dated 19.08.2016. In P.R. No.93/2008, the petitioner was treated as a deserter for not attending the enquiry, the petitioner had accepted that punishment and it was not challenged.

7. Heard Ms.P.Jessi Jeeva Priya the Learned Counsel appearing for the petitioner and Mr.M. Sarangan, the Learned Additional Government Pleader appearing for the respondents and perused the material documents available on records.

8. Presently, the petitioner challenges only the punishment in P.R. No.58/2008. In this case, the punishment imposed was the postponement of the next increment for one year with cumulative effect.



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9. The contention of the petitioner is that since the criminal case was dropped and the related departmental proceedings were dismissed, the punishment in P.R. No.58/2008 is unjustified. However, the respondents submitted that the charge in P.R. No.58/2008 pertains to the petitioner's absence from duty without prior permission and the same is nothing to do with the criminal case. Therefore this plea of the petitioner is rejected.

10. The next contention of the petitioner is that he initially he availed leave for three days from 10.06.2008 to 13.06.2008 and while taking leave he handed over the note book to the station writer. Further the petitioner extended the leave by sending telegrams on 14.06.2008, 16.06.2008 and 17.06.2008 for five more days from 14.06.2008 to 18.06.2008. Thereafter, the petitioner health was suddenly deteriorated wherein he fainted and admitted in government hospital and for this period he had submitted leave letter along with duly signed Medical Certificate for the leave from 19.06.2008 to 18.07.2008. It is seen that the petitioner had continued medical treatment from 19.06.2008 to 13.11.2008 by



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submitting leave letter with medical certificate extending leave periodically from 19.07.2008 to 31.08.2008, from 01.09.2008 to 15.10.2008 and from 16.10.2008 to 13.11.2008. This fact has not been denied by the Enquiry Officer. Curiously the respondents have not rejected the leave sought for by the petitioner. Therefore, this Court is of the considered opinion that the petitioner claim ought to be considered.

11. Further when the petitioner is absent from 19.06.2008 to 13.11.2008 which is supported by medical records, then the respondents cannot reject the medical leave. As per Fundamental Rules if the government servant has produced medical records to prove his absence, then the same ought to be treated as medical leave. In such circumstances the respondents cannot deny the medical leave on the ground that prior permission was not obtained.

12. Considering all the above facts, this Court is of the considered opinion that the punishment imposed under Rule 3(b) of the Tamil Nadu Police



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Subordinate Service (Discipline & Appeal) Rules, 1955, deserves to be interfered with. Accordingly the punishment is set aside.

13. Regarding promotion, when the punishment is set aside, then the petitioner is entitled to promotion. Therefore, the respondents shall consider the petitioner's promotion. The respondents are directed to fix the petitioner's seniority immediately before his next junior and grant all consequential promotions along with monetary benefits payable to the petitioner.

14. With these directions, these writ petitions are allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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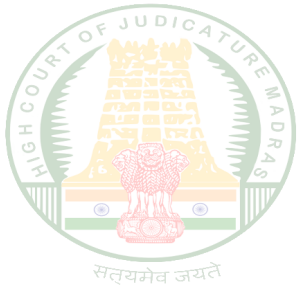
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Tamilnadu,
Chennai.
2. The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.
3. The Superintendent of Police,
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Thoothukudi.



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S.SRIMATHY, J

KSA

Common Order made in
W.P.(MD)Nos. 23781 of 2016 and
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