

(2011) 07 MAD CK 0376

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 919 of 2006

V.S. Jinnah

APPELLANT

Vs

The Deputy Commissioner of  
Police (NR) and The Director  
General of Police

RESPONDENT

**Date of Decision:** July 18, 2011

**Acts Referred:**

- Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 2

**Hon'ble Judges:** Vinod K. Sharma, J

**Bench:** Single Bench

**Advocate:** K. Velliswamy, for the Appellant; D. Muruganandam, Addl. Govt. Pleader, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner has invoked the extraordinary writ jurisdiction of this Court with a prayer for issuance of a writ in the nature of Certiorari to quash the impugned order, dated 20.07.1990 as confirmed by Respondent No. 2 in his proceedings, dated 13.03.2005.

2. The Petitioner joined the service as Constable on 05.05.1982 in Tamil Nadu Special Police, VIth Battalion, Chennai. On 31.08.1987, the Petitioner was transferred to IXth Battalion of Tamil Nadu Special Police, Manimutharu, Tirunelveli District and subsequently, the Petitioner joined duty at Madurai City on 10.01.1994. The Petitioner applied for three days leave on 16.03.1997, but, failed to join duty on expiry of the leave period.

3. The case of the Petitioner is that he could not join duty on expiry of leave period, due to sickness. As the Petitioner absented himself from duty for more than 21 days, disciplinary proceedings were initiated against him by treating the absence from duty as a misconduct.

4. The Petitioner did not join the enquiry proceedings. Therefore, ex-parte proceedings were held against the Petitioner, the Enquiry Officer found the Petitioner guilty of charge. The competent authority by accepting the report of the Enquiry Officer ordered removal from service.

5. The Petitioner did not avail his statutory remedy of appeal or revision against the order of punishment. In the affidavit, it is wrongly stated that the Petitioner filed an appeal against the impugned order. The learned Counsel for the Petitioner states that it was a mercy petition filed by the Petitioner which was rejected by the Director General of Police on 13.03.2005.

6. The learned Counsel for the Petitioner challenged the impugned order of removal from service on the ground that his absence from duty for 21 days was on account of illness of the Petitioner, and the authorities were wrong in imposing a harsh punishment of removal from service.

7. In support of this contention, the learned Counsel for the Petitioner placed reliance on a judgement of the Honourable Supreme Court in the case of Shri Bhawan Lal Arya. v. Commissioner of Police, Delhi and Ors. reported in 2004 (5) SBR 345. The Honourable Supreme Court in the said case considered Rule 8 and 10 of the Delhi Police(punishment and Appeal) Rules, 1980 and recorded a finding that absence from duty could not be termed as a grave misconduct or continuing misconduct so as to attract the punishment of removal from service.

8. The service of the Petitioner, is covered under the Tamil Nadu Sub-ordinate Services(Discipline and Appeal) Rules. There is No. such rule which bars the punishment of removal, except on grave act of misconduct as stipulated under Rule 8 and 10 of the Delhi Police Rules.

9. The learned Counsel for the Petitioner, thereafter placed reliance on Tamil Police Subordinate Service(Discipline and Appeal)Rules, 1955 to contend that under Rule 2 the penalties can be imposed for good and sufficient reason. The word good and sufficient reason would relate to with the grave misconduct, thus the judgement of the Honourable Supreme Court is fully applicable to the facts of the present case.

10. On consideration, I find No. merit in the contention raised by the learned Counsel for the Petitioner. Absence from duty is a grave misconduct for a member of a disciplined force. The Honourable Supreme Court in the case of Tusser D. Bhat. v. State of Gujarat (2009) 2 SCC 678, has been pleased to lay down that absence from duty without proper intimation for a member of disciplined is grave offence warranting removal from service. It is not in dispute that the Petitioner was absent

from duty for a period of 21 days. The Petitioner did not even choose to appear before the Enquiry Officer to give explanation for his absence. In the ex-parte enquiry conducted, by the Enquiry Officer found him guilty of the charge. The Petitioner thereafter accepted the order of removal and did not take any steps to file any statutory appeal or revision.

11. It was after number of years that the Petitioner filed a mercy petition before the Director General of Police which was rejected on 13.03.2005. In absence of availing remedies of statutory appeal and revision, the Petitioner is not entitled to invoke the writ jurisdiction of this Court, after number of years, by imposing the order passed on the mercy petition which is not a statutory remedy.

12. Even otherwise, No. case is made out on merits. As already held, the Petitioner was found guilty of grave misconduct by the Enquiry Officer, and the punishment awarded by the Punishing Authority in the year 1999.

13. Finding No. merits, the Writ Petition is ordered to be dismissed. However, there shall be No. order as to costs.