

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 5364 of 2006 (L)

PETITIONER(S):

1. **JOY JAMES (DIED)**
HC/DVR NO.014070024,
C.I.S.F. (RESIGNED DUE TO COERCION AND FORCE)
C.I.S.F. UNIT, OIL (DULIAJAN), DULIAJAN P.O.,
DIBRUGARH DISTRICT, ASSAM
RESIDING AT PULLUKKATTIL HOUSE, RAJAGIRI ROAD
RAILWAY LANE, KALAMASSERY P.O.- 683104
ERNAKULAM DISTRICT, KERALA STATE
REPRESENTED BY LEGAL REPRESENTATIVES
2. **KOCHURANI T.J. @ DIGNA**
W/O. LATE JOY JAMES, AGED 35 YEARS
RESIDING AT ANTHIKKAD, ELOOR EAST
UDYOGAMANDAL P.O., ERNAKULAM.
3. **JAMES JOY,**
AGED 10 ½ YEARS,
S/O. LATE JOY JAMES.
4. **JOHN JOY,**
AGED 7 ½ YEARS, S/O. LATE JOY JAMES
(PETITIONERS 3 & 4 ARE MINORS AND REPRESENTED BY THEIR MOTHER
KOCHURANI, THE 2ND PETITIONER)

BY ADV. SMT.LATHA PRABHAKARAN

RESPONDENT(S) :

1. **THE DIRECTOR GENERAL OF C.I.S.F.,**
DIRECTORATE GENERAL OF C.I.S.F.
C.I.S.F. HEADQUARTERS, MINISTRY OF HOME AFFAIRS
C.G.O.COMPLEX, LODHI ROAD, NEW DELHI.

(Contd...)

2. THE DEPUTY INSPECTOR GENERAL (INTELLIGENCE),
OFFICE OF THE DEPUTY INSPECTOR GENERAL OF C.I.S.F.,
MINISTRY OF HOME AFFAIRS, C.F.O. COMPLEX
LODHI ROAD, NEW DELHI.
3. THE INSPECTOR GENERAL OF C.I.S.F.,
NORTH EASTERN SECTOR, KOLKOTHA, WEST BENGAL.
4. THE DEPUTY INSPECTOR GENERAL OF C.I.S.F.
C.I.S.F. UNIT, OIL (DULIAJAN), DULIAJAN P.O.,
DIBRUGARH DISTRICT, ASSAM.
5. THE COMMANDANT,
C.I.S.F. UNIT, OIL (DULIAJAN), DULIAJAN P.O.,
DIBRUGARH DISTRICT, ASSAM.
6. R.P.MISRA, THE COMMANDANT,
C.I.S.F.UNIT, OIL (DULIAJAN), DULIAJAN P.O.,
DIBRUGARH DISTRICT, ASSAM.
7. C.V.S. RAO, INSPECTOR,
C.I.S.F. UNIT, OIL (DULIAJAN), DULIAJAN P.O.,
DIBRUGARH DISTRICT, ASSAM.
8. THE UNION OF INDIA
REPRESENTED BY UNDER SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI.

R1 TO R8 BY ADV. SRI.T.SANJAY, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...3/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE MEMORANDUM OF CHARGES DATED 12.7.2005 ISSUED BY THE COMMANDANT, CISF UNIT.
- EXT.P2 COPY OF THE RESIGNATION LETTER OBTAINED FROM THE PETITIONER DATED 14-7-2005.
- EXT.P3 COPY OF THE LETTER DATED 21-7-2005 ISSUED BY THE CISF UNIT, OIL DULIAJAN.
- EXT.P4 COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DATED 22-7-2005.
- EXT.P5 COPY OF THE ORDER DATED 30-7-2005 PASSED BY THE RESPONDENTS.
- EXT.P6 COPY OF THE CLEARANCE CERTIFICATE DATED 30-7-2005 SIGNED BY THE PETITIONER ON 1-8-2005.
- EXT.P7 COPY OF THE FINAL ORDER DATED 2-8-2005 PASSED BY THE RESPONDENTS.
- EXT.P8 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 9-8-2005 WITH REGISTRATION SLIP.
- EXT.P9 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WRIT PETITION NO. 30542/2005 DATED 2-11-2005.
- EXT.P10 COPY OF THE COVERING LETTER SUBMITTED BY THE PETITIONER DATED 23-11-2005 WITH JUDGMENT.
- EXT.P11 COPY OF THE POSTAL COVER SENT FROM 1ST RESPONDENT'S OFFICE DATED 5-11-2005 WITH ORDER DATED 4-10-2005.

(Contd...)

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EXT.P12 COPY OF THE TELEGRAM ISSUED TO THE PETITIONER DATED
10-12-2005 FROM THE 1ST RESPONDENT'S OFFICE.

EXT.P13 COPY OF THE GATE PASS DATED 19-12-2005.

EXT.P14 COPY OF THE ORDER PASSED BY THE ADDITIONAL DEPUTY
INSPECTOR GENERAL, OIL DULIAJAN DATED 17-1-2006.

EXT.P15 COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF
MADRAS DATED 1-12-1995 IN WP NO. 8851/1989.

RESPONDENT'S EXHIBITS :

EXT.R1 : COPY OF THE STATEMENT OF SI/EXE ANIL KUMAR DT. 20-6-2005.

EXT.R2 COPY OF THE STATEMENT OF CONSTABLE P.S. DEORI DT. NIL.

EXT.R3 COPY OF THE STATEMENT OF THE PETITIONER DT. NIL.

//TRUE COPY//

P.S. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J.

W.P.(C) No.5364 of 2006

Dated this the 9th day of March, 2015

JUDGMENT

One Joy James was a driver with Central Industrial Security Force (C.I.S.F). He was engaged in an insurgency area in Assam. He filed this writ petition challenging clearance from the service after accepting his resignation letter. This writ petition is filed in the year 2006 and pending writ petition, he met with an unfortunate accident, resulted in death. This writ petition is now being prosecuted by the widow and minor children.

2. Admittedly, Joy James had not put in qualifying service for pension, now therefore, challenge would survive only to claim for dying in harness by the legal heirs of Joy James. The above claim is depend upon the challenge made by Joy James against his clearance from service, stating that he never had resigned from the service.

3. Ext.P2 is the alleged resignation letter executed by Joy James. He had narrated the facts and circumstances

under which Ext.P2 happened to be executed. According to him, the Sub Inspector had detected that one of the Constables namely, Devari was sleeping while in duty. Joy James was asked to give a statement as a witness. He refused to do so, as he had not witnessed sleeping by the above said Devari. Thereafter, Joy James availed leave from 21.06.2005 to 13.07.2005 to take back his family to Kerala. Joy James rejoined duty on 14.07.2005 in the forenoon. Joy James submitted that on 14.07.2005, the Commandant called him to his room and handed over a memorandum of articles of charges, alleging that Joy James had given false statement to the Principal Enquiry Officer, Mr. C.V.S.Rao, stating that the said Constable was alert during night check. Joy James denied giving such a statement. There were some verbal exchange of words by Joy James with the Commandant. Joy James's case was that he was put under close arrest under the guard of two personnel to prevent him from going outside. Joy James was thereafter asked to give a resignation letter, it is submitted that otherwise Joy James was threatened with death and such death could be termed as death

in an encounter with insurgents of ULFA. Joy James stated that his resignation was given under the circumstance of illegal detention. Joy James relied on Ext.P4 dated 22.07.2005, seeking an opportunity of personal hearing by the disciplinary authority. He has also relied on Ext.P5 proceedings of the disciplinary authority dated 30.07.2005. It is his case that if he had any intention to resign the service, necessarily, this would have reflected in Exts.P5 and P6. Joy James also relied on Ext.P6 clearance certificate and pointed out discrepancies in the date of signature and counter signature. Therefore, it is submitted that all these documents clearly establish that Joy James never resigned from the service, on the other hand, he was forced to resign from the service in the given circumstances.

4. The petitioners also point out the procedure for acceptance of resignation of C.I.S.F personnel. It is submitted that they will be called to the Orderly Room and reasons will have to be explained for resignation before the Commandant.

5. In the counter affidavit filed before this Court, the Establishment have denied the petitioner's allegation. The

learned Central Government Counsel points out paragraphs 9 and 10 of the counter affidavit and submits that Joy James had voluntarily resigned from the service.

6. In view of the fact that there is no scope for intervention for reinstatement, as Joy James is no more, the only relief that could be availed by the writ petitioners is for seeking employment under dying in harness scheme for engaging any of the legal heirs of Joy James, in case this Court accepts challenge in regard to acceptance of resignation. I am of the view that untrammelled by any of the findings against Joy James, taking note of the peculiar circumstances in which the said family landed on account of the untimely death, a compassionate and humanitarian approach need to be taken in this matter. The two children of the deceased Joy James are minor and the family is finding it difficult to eke out their livelihood.

7. Therefore, without going to the merits of the issues, this writ petition is disposed of by directing the petitioner to make a detailed representation before the 1st Respondent. This shall be done within a period of three weeks from today. Thereafter, the

1st Respondent, after adverting to the penurious circumstances of the petitioners, shall take an appropriate decision in the matter within a further period of three months. All the issues in this writ petition are left open.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE,
JUDGE.

//true copy//

P.S. to Judge

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