

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937**

**WA.No. 2107 of 2015**  
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**AGAINST THE JUDGMENT IN W.P.(C).NO.23410 OF 2013, DATED 08-10-2013**  
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**APPELLANT(S)/PETITIONER :**  
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**JAMES.M.M,  
EX-CONSTABLE, NO.89009151, MANGALATHUCHIRA HOUSE,  
AVALOOKUNNU P.O., PUNNAMADA WARD, ALAPPUZHA DISTRICT,  
KERALA- 688 006.**

**BY ADV. SRI.P.J.JOSEPH**

**RESPONDENT(S)/RESPONDENTS :**  
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- 1. UNION OF INDIA,  
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,  
NORTH BLOCK, NEW DELHI.**
- 2. DIRECTOR GENERAL,  
BORDER SECURITY FORCE, BSF FORCE HQS,  
C.G.O.COMPLEX, 10TH BLOCK, LODHI ROAD P.O.,  
NEW DELHI- 3.**
- 3. INSPECTOR GENERAL,  
BORDER SECURITY FORCE, HUMHAMA, SRINAGAR,  
JAMMU AND KASHMIR.**
- 4. THE COMMANDANT,  
109 BATTALION B.S.F, BARAMULLA,  
JAMMU AND KASHMIR.**

**BY ADV.SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL  
BY ADV. SRI.T.V.VINU, CGC**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-09-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

**ASHOK BHUSHAN, CJ**

**&**

**A.M.SHAFFIQUE, J.**

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W.A.No.2107 of 2015

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Dated this the 25<sup>th</sup> day of September 2015

**J U D G M E N T**

**Shaffique, J**

The petitioner in W.P.C.No.23410 of 2013 has filed this writ appeal challenging the judgment dated 08/10/2013 by which the learned Single Judge, while dismissing the claim of the petitioner, observed that Ext.P4 if it is received and pending has to be considered with regard to the claim for compassionate allowance.

2. The short facts involved in the writ petition would disclose that the petitioner joined the Border Security Force as a Constable on 01/03/1989. He was deputed to the Ministry of External Affairs as a Security Guard in November 1997 and posted at various Indian Embassies. According to him, while he was serving at the Consulate General of India, Birmingham in the United Kingdom, he was relieved from his duties from the C.G.I,Birmingham with effect from 12/08/2004. He was permitted to avail 30 days leave from the date of disembarkation at the specified airport in India. Petitioner did not report for duty and

remained absent from 12/08/2004. He submitted a representation on 23/05/2012 before the 2<sup>nd</sup> respondent requesting for permission to join duty. But the same was not considered and therefore the petitioner had approached this Court by filing the writ petition. He also sought for a direction to command the respondents to sanction compassionate allowance in accordance with Rule 41 of the Central Civil Service (Pension) Rules and to release all other pensionary benefits, including the GPF amount.

3. The learned Single Judge, after elaborately considering the factual aspects involved in the matter, formed an opinion that since the petitioner was unauthorisedly absent, he is not entitled for re-instatement. However, it was observed that his representation Ext.P4 seeking for compassionate allowance may be considered, if it is not already disposed of. It is submitted by the learned counsel for the appellant that the order Ext.P3 had been passed without giving the appellant an opportunity to substantiate his grievance in the matter.

4. Referring to Ext.P3 order dated 10/08/2013, the learned ASGI submits that though repeated letters had been sent

to the petitioner in the address given to the Department, he could not be served. It is further submitted that show cause notice was issued on 08/09/2005 and he was dismissed from service with effect from 13/10/2005.

5. Having regard to the fact that the order of dismissal had become final, the respondent was justified in rejecting the claim of the petitioner for re-instatement in service.

6. Having heard either side and having perused the judgment of the learned Single Judge, we do not find any error in the judgment of the learned Single Judge warranting interference at the appellate stage. Hence this writ appeal is dismissed.

(sd/-)  
**(ASHOK BHUSHAN, CHIEF JUSTICE)**

(sd/-)  
**(A.M.SHAFFIQUE, JUDGE)**

jsr/26/09/2015



