

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.12.2016

Delivered on : 16.12.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and

The Honourable Mr.Justice V.PARTHIBAN

W.A. No.130 of 2015 and
MP No.1 of 2015

1. Union of India,
rep. by the Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Director General,
Central Industrial Security Force,
Block No.13, CGOS Complex,
Lodhi Road, New Delhi-110 003.

3. The Deputy Inspector General(Personnel),
CISF Head Quarters, Block No.13,
CGO's Complex,
Lodhi Road, New Delhi-110 003.

4. The Deputy Inspector General
Central Industrial Security Force,
South Zone, Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.

... Appellants

vs.

Sri M.Dakshinamurthy

...Respondent

Writ Appeal is filed under Clause 15 of the Letters Patent,
against the order dated 01.10.2012 made in W.P.No.1557 of 2011
by the learned single Judge of this Court.

Petition filed Under Article 226 of the Constitution of
India praying for the issue of a Writ of Certiorarified Mandamus
calling for the records relating to Order No.E-15014/1/2007/pers.
II/1460 dated 17.07.2009 issued by the 3rd Respondent quash the
same and direct the Respondents to confirm his services in the
post of Assistant Commandant from the date of his original

promotion to the said post with all consequential benefits including refixation of his pension on the basis of the pay he would have notionally drawn in the said post by payment of all arrears of pay pension and other allowances and benefits with interest at 12% per annum for the period of delay.

For Appellants : Mr. G.Rajagopal,
Addl.Solicitor General of India for
Mr.K.Gunasekar
For Respondent : Mr.P.V.S.Giridhar for
M/s.Giridhar & Sai Associates

JUDGMENT

(Judgment of the Court was delivered by
V.PARTHIBAN, J.)

This Writ Appeal has been filed by the Union of India, challenging the order of the learned single Judge dated 01.10.2012 passed in W.P.No.1557 of 2011, allowing the writ petition filed by the respondent herein.

2. In the Writ Petition, the prayer sought for by the respondent herein, is as follows:

"To issue Writ of Certiorarified Mandamus, to call for the records relating to the Order No.E-15014/1/2007/pers.II/1460 dated 17.07.2009 issued by the 3rd respondent quash the same and direct the respondents to confirm petitioner's services in the post of Assistant Commandant from the date of his original promotion to the said post with all consequential benefits including re-fixation of his pension on the basis of the pay that would have notionally drawn in the said post by payment of all arrears of pay pension and other allowances and benefits with interest at 12% per annum for the period of delay."

3. According to the respondent, he entered service in the Central Industrial Security Force as a Assistant Sub Inspector on 22.9.1977 and later he was promoted as Sub Inspector on 28.6.1982 and further promoted as Inspector/EXE on 10.3.1988. Thereafter, he was once again promoted to the rank of Assistant Commandant/EXE with effect from 20.4.2005 and was placed under probation in the CISF Unit, Chennai.

4. The grievance of the respondent was that in spite of his due performance and discharge of duties, his probation was not declared as per his original appointment, as Assistant Commandant/EXE, but it was extended by six months on four successive occasions from 2007. Finally he was reverted to the post of Inspector/EXE vide order dated 17.7.2009 on the ground that his services were found to be 'not satisfactory'. Aggrieved by the said order of reversion, it appears that the respondent has made a representation on 30.9.2009 and no action was forth coming in response to the representation. In the circumstances, the respondent sought voluntary retirement, after serving notice dated 26.8.2009 and after having been reverted to the rank of Inspector/EXE and the same was accepted by order dated 18.9.2009 and consequently, he was relieved with effect from 1.10.2009. On being relieved in the lower rank, the respondent was also granted pensionary benefits applicable to the post last held by the respondent.

5. After having voluntarily retired, the first respondent approached this Court by way of Writ Petition, assailing the order of reversion dated 17.7.2009 with consequential reliefs mentioned above.

6. Resisting the writ petition, a detailed counter affidavit has been filed on behalf of the appellants herein.

7. The learned Judge, after adverting to the contentions raised on either side, allowed the writ petition vide order dated 01.10.2012, setting aside the impugned order of reversion and consequently, directing the appellants herein to confirm the services of the respondent in the post of Assistant Commandant from the date of his original promotion, dated 20.5.2005 with all consequential benefits including re-fixation of his pay and pension and also payment of arrears of pension, etc.

8. Challenging the order of the learned Judge, the appellants have come forward with the present appeal.

9. Heard Shri G.Rajagopal, learned Additional Solicitor General of India, appearing for the appellants and Shri P.V.SGiridhar, learned counsel appearing for the respondent.

10. Apart from reiterating the submissions put forth before the learned Judge, the learned Additional Solicitor General has strenuously contended that whether it was open to the respondent/writ petitioner to assail the order of reversion having been relieved from service and whether such relief could be granted to him after his retirement?

11. It could be seen from the order passed by the learned single Judge that in fact, there was no basis at all for the conclusion of Screening Committee that the performance of the respondent was unsatisfactory in view of the admitted fact that the annual confidential report for the relevant years of the Officers concerned, had been consistently good and no material was placed before the Screening Committee to come to a different conclusion contrary to the views of the Reporting and Reviewing Officers. The learned Judge extracted the entire annual confidential report (ACR) for the period from 1.4.2009 to 28.7.2009, which demonstrated that there were no adverse entries in respect of the respondent's performance and from the ACR, it could be seen that several positive remarks were reported by the Reporting Officers as well as Reviewing Officers. In such view of the matter, the decision of the Screening Committee which extended the probation every time for four occasions which eventually resulted in reversion of the respondent, was not supported by any material and was also not explained satisfactorily by the appellants herein, to the Court.

12. Before the learned single Judge, number of decisions were cited on behalf of the respondent and each one of the decisions, was thoroughly discussed by the learned single Judge and following the ratio laid down in those decisions, the learned Judge had adverted to the facts of the case and finally held it in favour of the respondent. The learned Judge, after due appreciation and examination of the legal issues and the factual matrix of the case, has finally come to the following conclusion, which is found in para 34 of the order, which is extracted hereunder:

"34. I do not know on what basis the Screening Committee concluded that his performance was unsatisfactory. If at all anyone of the petitioner to have his probation declared, it is only the reporting officer or the reviewing officer. These officers could not have taken contradictory views, one for the purpose of ACR and another for the purpose of Screening Committee. If they had done so, it would only be unfair and arbitrary. If the Screening Committee had arrived at their conclusion on the basis of any other material, then such material is in conflict with the views of the reporting and reviewing officers. No such material is also placed before me. Therefore, it is clear that the impugned order is legally unsustainable and cannot stand in the light of the Annual Confidential Report of the petitioner. Hence, the petitioner is entitled to the reliefs as prayed for."

13. As regards the contention of the learned Additional Solicitor General that it was not open to the respondent to challenge the order of reversion after being relieved from service, it is to be noted that the order of the reversion ultimately resulted in adverse impact on the retirement benefits payable to the respondent and also on continuous payment of monthly pension. Therefore, the respondent's right to challenge the reversion order cannot be curtailed or negatived only because of the reason that he had retired before challenging the reversion order.

14. Even otherwise, the issue of reversion casts a stigma on the career of the Officer concerned and such stigma needed to be removed from the records of the respondent and that right cannot be extinguished by mere fact of his retirement. Therefore, this Court is of the view that the said contention of the learned Additional Solicitor General cannot be accepted and therefore, the same is rejected and consequently, the respondent is entitled to the relief as sought for.

15. As regards the other submissions made on behalf of either side, as narrated above, the learned Judge has thoroughly considered every aspect of the issue raised in the Writ Petition and rightly held in favour of the respondent. The learned counsel appearing for the respondent circulated a compilation of decisions.

16. As far as the compilation of decisions are concerned, as could be seen from the order, the learned Judge has dealt with the said decisions and it would be a matter of repetition if the same are dealt with once again in this appeal, particularly, in view of the fact that we are in entire agreement with the conclusions reached by the learned Judge. Written submissions filed on behalf of the respondent are also taken note of.

17. In view of what is stated above, we do not find any merits in the Writ Appeal in order to interfere with the order of the learned Judge.

Accordingly, the Writ Appeal fails and it is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Union of India,
Ministry of Home Affairs,
New Delhi.

2. The Director General,
Central Industrial Security Force,
(Ministry of Home Affairs)
Block 13, CGOS Complex,
Lodhi Road, New Delhi-110 003.

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4. The Deputy Inspector General
Central Industry Security Force,
South Zone, Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.

+1cc to M/S.K.GunaSekar, Advocate Sr.73863

W.A.No.130 of 2015

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srg 12/01/2017

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