



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

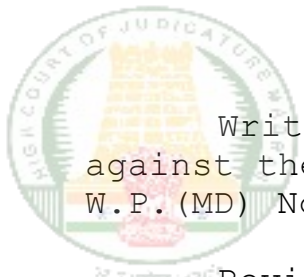
W.A.(MD) No.101 of 2017
and
W.M.P.(MD) .No.1000 of 2017

1. Union of India
rep.by its Secretary to Government
Ministry of Home Affairs, New Delhi
2. The Director General
Central Industrial Security Force
Head Quarters, CGO Complex,
Lodhi Road, New Delhi-3
3. The Inspector General
Training Sector
Central Industrial Security Force
National Industrial Security Academy
Hakimpet, Hyderabad-78
4. The Deputy Inspector General
Central Industrial Security Force
South Zone, Head Quarters
Besant Nagar, Chennai-90
5. The Principal
Central Industrial Security Force
Regional Training Center
Suraksha Campus, Arakonam
Vellore District, Tamil Nadu-631 152
6. The Group Commandant
Central Industrial Security Force
Group Head Quarters
Saket, New Delhi-110 017
7. The Commandant
Central Industrial Security Force Unit
Regional Training Center
Suraksha Campus
Arakkonam, Vellore District
Tamilnadu-631 152

... Appellants

-vs-

... Respondent



Writ Appeal filed under Clause 15 of Letters Patent Act, against the orders passed in Review Petition (MD) No.30 of 2016 in W.P.(MD) No.817 of 2012, dated 07.11.2016.

Review Petition No.30 of 2016 is filed under section 114 of CPC praying to review the order in Writ Petition by setting aside the order passed in W.P.(MD) No.817 of 2012 dated 2-4-2013 and hear the same on merits.

Prayer in WP(MD). 817/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records relating to the termination order passed by the 7th Respondent in his order No.V-15014/CISF/RTC(A)/Disc/Termination/2012/658, dated 09-01-2012 and quash the same and to direct the Respondents to take the petitioner in to the strength of CISF as SI/Executive and complete the basic training for remaining 10 weeks with seniority and to pay all monetary benefits.

For Appellants	:	Mr.G.R.Swaminathan Addl. Solicitor General for Mr.K.R.Laxman
For Respondent	:	Mr.R.Thiyagarajan Party-in-Person

J U D G M E N T

[Judgment of the Court by **T.S.SIVAGNANAM, J.**]

Heard Mr.G.R.Swaminathan, learned Additional Solicitor General appearing for Mr.K.R.Laxman, learned counsel on record for the appellants and Mr.R.Thiyagarajan - respondent appearing in person and carefully perused the materials placed on record.

2. This Writ Appeal is directed against the order, dated 07.11.2016, made in Rev.Petn.(MD) No.30 of 2016 in W.P.(MD) No.817 of 2012, by the learned Single Judge.

3. The appellants are before this Court on a very limited point contending that the review petition has been allowed, order passed against the respondent / writ petitioner has been set aside and the Review Court has exceeded its jurisdiction, while considering the review petition against the order passed in the writ petition.

4. The following facts would be relevant for the disposal of this writ appeal:

4.1. The respondent / petitioner filed a writ petition, in W.P.(MD) No.817 of 2012, challenging the order of termination, dated 09.01.2012, passed by the seventh appellant / seventh respondent and to direct the appellants



/ respondents to take him into the strength of C.I.S.F. as S.I. / Executive and to permit him to complete the basic training for the remaining ten weeks with seniority and to pay all monetary benefits due to him.

4.2. The writ petition was heard by the Writ Court, in which a stand was taken by the appellants / respondents that there is an alternative remedy available to the respondent / writ petitioner under Rule 26(1) of C.I.S.F.Rules and he can prefer appeal as against his termination order. This stand was taken in the counter affidavit of the appellants / respondents and apart from this preliminary objection, the counter affidavit had also dealt with the merits of the matter.

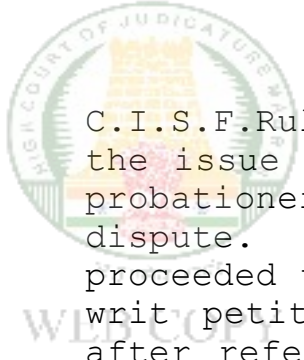
4.3. The learned Single Judge, after hearing both sides, recorded in Paragraph No.4 of the order, dated 02.04.2013, that the learned counsel for the respondent / writ petitioner submitted that the respondent / writ petitioner may be permitted to avail the remedy provided under Rule 26(1) of C.I.S.F.Rules and the writ petition could be disposed of accordingly. In the light of the said concession, the writ petition was disposed of by directing the respondent / writ petitioner to approach the third appellant / third respondent under Rule 26(1) of C.I.S.F.Rules.

4.4. The respondent / writ petitioner, thereafter, changed his counsel and preferred a writ appeal, in W.A. (MD) No.426 of 2013. The Honourable First Bench, while considering the appeal held that it is completely misconceived as the impugned order is predicated on the own plea of the respondent / appellant / original petitioner that he should be relegated to the remedy under Rule 26(1) of C.I.S.F. Rules. The respondent / appellant, thus, cannot plead in appeal that such remedy is actually not available to him. If it is so, the respondent / appellant has to move the learned Single Judge.

5. Armed with the said liberty, the respondent / writ petitioner filed a review petition, in Rev.Petn.(MD) No.30 of 2016, and he discharged his second counsel and chose to appear in person. Thus, the Review Court was to consider as to whether the provisions of Rule 26(1) of C.I.S.F.Rules apply to the case on hand and whether the respondent / writ petitioner should be relegated to avail the alternative remedy as provided under Rule 26(1) of C.I.S.F.Rules or he should be allowed to contest the matter on merits before the Writ Court.

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6. The Review Court, while considering the review petition, came to the conclusion that the provisions of Rule 26(1) of



C.I.S.F.Rules would not be attracted to the case on hand, because the issue regarding whether the respondent / writ petitioner is a probationer or he is a person in regular employment itself is in dispute. Having made such an observation, the Review Court proceeded to deal with the merits of the claim of the respondent / writ petitioner that the order of termination is stigmatic and after referring to certain decisions, by order, dated 07.11.2016, allowed the review petition and set aside the termination order, dated 09.01.2012 of the seventh appellant / seventh respondent.

7. The settled legal principle is that review petition is not an appeal in disguise. The Court, while exercising review jurisdiction, cannot rehear the matter, but interfere with only when there is an error apparent on the face of the record. Thus, if the Review Court was of the view that the provisions of Rule 26 (1) of C.I.S.F.Rules are not attracted, then order to that effect should have been passed and the writ petition should have been restored to the file to be heard on merits. However, the Review Court exceeded its jurisdiction and proceeded to interfere with the order of termination on merits. Thus, we are of the clear view that the Review Court had proceeded to deal with the merits of the matter, it was not entitled to do, since such an issue was never adjudicated by the Writ Court and therefore, the Review Court could not at the first instance undertake such exercise. Thus, on this technical ground, we are inclined to interfere with the order passed in the review petition.

8. Having come to such a conclusion, the next step that has to be followed is to allow the respondent / writ petitioner to contest the writ petition on merits.

9. We find that counter affidavit has been filed in the writ petition on 01.04.2012, in which not only a preliminary objection was raised with regard to maintainability of the writ petition, but also merits of the case as canvassed by the writ petitioner has also been dealt with. Thus, the writ petition itself can be listed for disposal at an early date.

10. For all the above reasons, the writ appeal is allowed and the order, dated 07.11.2016, made in Rev.Petn.(MD) No.30 of 2016, is set aside and the writ petition, in W.P.(MD) No.817 of 2012 is restored to file of the this Court to be heard and decided by the appropriate Bench. It is made clear that the writ petitioner as well as the respondents are entitled to canvass all points available to them before the Writ Court. Since the writ petition is of the year 2012 and the writ petitioner is out of employment since then, we request the learned Single Judge to give priority to the writ petition and dispose of the same in accordance with law at the earliest. Registry is directed to list the writ petition, in W.P.(MD) No.817 of 2012 for directions before the appropriate



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Bench on 17.04.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

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Sub Assistant Registrar

+1 cc to Mr.K.R.Laxman, Advocate, SR.No.50180

+1 cc to Mr.R.Thiyagarajan, Advocate, SR.No. 50830

**W.A. (MD) No.101 of 2017 and
W.M.P. (MD) .No.1000 of 2017
05.04.2017**

krk/skn

MKV-RSK-SAR 3/12.4.2017/5P-3C