

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.4618 of 2009

ORDER:

Heard the learned Counsel for the petitioner and the learned Assistant Solicitor General for the respondent.

The case of the petitioner is that he joined as BSF Constable in the year 1999 and he was posted in the State of Jammu and Kashmir on 05.01.2002. He applied for leave on 02.05.2005 for 15 days in order to visit his native place in Nizamabad District. But, he could not report for duty after expiry of the leave as he fell sick and was under treatment. In the meanwhile, the respondent issued a show cause notice dated 24.09.2005 granting 30 days time for submission of explanation. The said show cause notice was stated to have been received by the petitioner on 10.10.2005. However, when an order of dismissal from service was passed on 20.10.2005 without waiting for the explanation, he filed W.P.No.18995 of 2006. This Court allowed the said Writ Petition on 05.03.2007 by setting aside the order of dismissal dated 20.10.2005. After receipt of the order, the petitioner submitted a representation on 09.04.2007 requesting the respondent to reinstate him into service. When the said order was not complied with, the petitioner filed C.C.No.571 of 2007. On receipt of the notice in the said Contempt Case, the respondent sent a telegram on 30.07.2007 to the petitioner to join the duty. Accordingly, he reported for duty on 06.08.2007 and the Contempt Case was closed. At the time of rejoining duty he was subjected to medical examination and he was found fit. Now he is continuing in service. However, when no salary was paid, the present Writ Petition was filed for payment of salary from May 2005 to August 2007.

There is no dispute with regard to the above facts and now the point for consideration is whether the petitioner is entitled for the salary from the date of termination on 20.10.2005 to 05.08.2007, during which period he did not discharge the duties.

There is no dispute that this Court set aside the order of dismissal from service as a result of which, he is deemed to have continued in service. This position of law is laid down in **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta**¹ and **Union of India v. Madhusudan Prasad**² and in view of the settled law, it is needless to observe that the petitioner is entitled for the payment of salary during the period from the date of dismissal to the date of reinstatement.

The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

21.07.2017
vs

¹ (1999) 3 SCC 60

² (2004) 1 SCC 43