

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CONT.P.No.1564/2016

J.Prabhakaran

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Petitioner

Versus

1.Mr.S.Elango

Deputy Inspector General of Police
Group Centre, CRPF
Avadi, Chennai 600 065.

2.Mr.K.Durga Prasad

Director General of Police
Central Reserve Police Force
CGO Complex, Lodhi Road
New Delhi 110 003.

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Respondents

Contempt petition filed under section 11 of the
Contempt of Courts Act, 1971, to punish the respondents for
disobeying the orders of this Court dated 03.09.2015 passed
in MP.No.2/2015 in WP.No.27642/2015.

For Petitioner : Mr.N.Vijayakumar
For Respondents : Dr.D.Simon, CGSC

ORDER

The petitioner has filed WP.No.27642/2015 to quash the
order of transfer dated 02.07.2015 passed by the 1st
respondent with a consequential direction, directing the

respondents not to transfer him in the light of Clause 5[iii] and [viii] of the Standing Order No.01/2014.

2 The writ petition came up for admission on 03.09.2015 and vide interim order passed on the very same day in MP.No.2/2015, this Court, after recording reasons and also having found that the petitioner is suffering injury on his right shoulder and at present, taking treatment at Rajiv Gandhi Government Hospital, Chennai and further that the Deputy Inspector General of Police, CRPF, GC, Avadi, also made a recommendation on 25.04.2015, for the retention of the petitioner in Avadi, has granted an interim order of status quo prevailing as on 03.09.2015 till 09.10.2015.

3 The writ petition as well as the miscellaneous petition were listed on 19.11.2015 and on that day, Dr.D.Simon, learned Central Government Standing Counsel appearing for the respondents prayed for time for filing counter and taking note of the same, this Court has extended the interim order of Status Quo until further orders.

4 The petitioner herein came forward to file the present contempt petition alleging that the 1st respondent issued an order of amendment to the order dated 02.07.2015 stating that the petitioner has been relieved from duty on

04.07.2015. it is contended that as per Rules, such an order cannot be issued when a personnel is injured or bedridden. It is further averred that though he has produced the Certificate of Fitness to join duty issued by Dr.Purushothaman, the Joining Report was refused to be accepted and he has signed the Attendance Register admittedly till 09.10.2015. The petitioner would also contend that on the ground of the alleged absence, Departmental action has also been initiated.

5 The contempt petition was entertained and the petitioner expressed the grievance that he has not been paid with salary from the alleged reliefment from duty till he joined the duty at Chhattisgarh and therefore, prayed for appropriate orders.

6 On behalf of the respondents, the Deputy Inspector General of Police, Group Centre, CRPF, Avadi, Chennai-65, has filed counter affidavit stating that since the petitioner has completed the normal tenure of 3 years and 5 months at the present place, a transfer order through a Message dated 16.04.2015 was issued and as per the Standing Order 2/2014, all the transferees are to be relieved to the units where they have been posted to within 20 days from the date of receipt of the transfer order and the petitioner has submitted an application requesting for 45 days Earned Leave and it was considered and vide

communication dated 05.07.2015, the petitioner was directed to proceed on leave after reporting at Unit Headquarter, Chhattisgarh and it was also communicated to the petitioner on 07.07.2015. But, on account of the personal request of the petitioner, he was relieved from duty on 02.07.2015 instead of 04.07.2015 and despite that, he did not join. It is further averred that since the petitioner was relieved on transfer on 02.07.2015, whereas the interim order of status quo granted by this Court on 03.09.2015 was received only on 18.09.2015, there is no willful disobedience and violation of the interim orders and prays for quashment of the contempt petition.

7 The very same official has also filed an additional counter affidavit stating that as per proviso to FR 17[1], an officer who is absent from duty without any authority, shall not be entitled to any pay and allowances during the period of such absence and accordingly, the petitioner is not entitled to salary for the period of his absence.

8 The learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents filed in support of the writ petition and would submit that in the Attendance Register maintained by CRPF, Avadi, in the normal course of business, the petitioner had signed the same on 01.09.2015, 02.09.2015 and from 05.09.2015 to

09.09.2015 and the interim order of status quo was granted by this Court on 03.09.2015 after recording reasons and once again, when the matter came up for hearing on 19.11.2015, the learned Standing counsel appearing for the respondents only took time to file counter and therefore, this Court has extended the interim order of status quo until further orders and nothing prevented the learned Standing counsel for the respondents to make a submission as to the alleged reliefment of the petitioner on 02.07.2015 and therefore, would contend that the counter affidavits filed by the respondents taking such a stand as well as non-payment of salary without culmination of disciplinary proceedings, per se amounts to willful disobedience of the orders passed by this Court and prays for appropriate orders.

9 Per contra, Dr.D.Simon, learned Central Government Standing Counsel appearing for the respondents has drawn the attention of this Court to the counter affidavit as well as the additional counter affidavit and the typed set of documents and would submit that admittedly, the petitioner has completed 3 years and odd service in CRPF, Avadi and he was posted to Chhattisgarh and he was relieved from duty on 02.07.2015 whereas the interim order of status quo came to be passed only on 03.09.2015, and it was received only on 18.09.2015. Therefore, there is no willful disobedience or violation of

the interim orders passed by this Court and prays for closure of this contempt petition.

10 This Court has carefully considered the rival submissions and also perused the materials placed before it.

11 A perusal of the Attendance Register maintained by CRPF, Avadi, in the normal course of business, annexed to the main typed set of papers would disclose that the petitioner had signed the said Register for the month of October 2015, i.e., on 1st, 2nd, 5th, 6th, 7th, 8th and 9th October, 2015. The petitioner, challenging the order of transfer, has moved this Court and this Court, after recording the reasons, has granted an interim order of Status Quo on 03.09.2015. The said writ petition along with the miscellaneous petition were listed once again on 19.11.2015 and on that day, the learned Standing counsel appearing for the respondents took time for filing counter and therefore, this Court has extended the interim order of Status Quo until further orders. If the petitioner was really relieved on 02.07.2015, as alleged by the respondents in the counter affidavit, nothing prevented them from giving instructions accordingly to the learned Standing counsel and when the matter was listed on 19.11.2015, only time was sought to file the counter and therefore, this Court has extended the interim order until further orders.

12 It is also brought to the knowledge of this Court that the petitioner, apprehending arrest on account of the alleged desertion of duty, has also filed CrI.OP.No.17558/2016 seeking Anticipatory bail and he was granted anticipatory bail on 06.10.2016 and it is relevant to extract paragraphs No.3 and 4:-

"3 The learned Assistant Solicitor General would submit that on 16.04.2015, transfer order was issued to the petitioner and he was relieved on 02.07.2015. But, the petitioner challenging the transfer order, filed WP.No.27642/2015 and obtained status quo only on 19.11.2015. Once the petitioner was relieved, he is not entitled to stay at Chennai since the petitioner has not reported duty till 17.03.2016, warrant of arrest has been issued as per section 10[n] of CRPF Act. Hence, he prays for dismissal of the petition.

4 Considering the rival submissions made by both sides and also perusing the typed set of papers, it reveals that the petitioner was working as Assistant Sub Inspector at CRPF, Avadi, Chennai. It is an admitted fact that the petitioner got transfer order to Chatisgarh. A perusal of the transfer order finds place in page No.3 of the typed set of papers reveals that the petitioner was ordered to be relieved on

02.07.2015 in stead of 04.07.2015. The sick report register filed in page No.4 shows that the petitioner has sustained fracture and he was in the hospital on 03.07.2015. Then, he was referred to the hospital for further treatment. Fitness Certificate also issued, which shows that the petitioner is able to join duty on 30.09.2015. On a perusal of the office order dated July 2015 which is enclosed in page 3 of the typed set of papers would show that the date of relief is amended to read as 02.07.2016 [AN] in stead of 04.07.2015 [AN] due to administrative reasons. Admittedly, the petitioner fell sick and the sick report register shows that from 03.07.2015 he was taking treatment and he was declared fit to join duty only on 30.09.2015. So, the petitioner was unfit to join duty from 03.07.2015 to 29.09.2015. Therefore, the argument advanced by the learned ASG that the petitioner was relieved on 02.07.2015 is unsustainable. Further, the petitioner is ready to join duty on the transferred place. Since warrant of arrest has been issued, the petitioner apprehending arrest at the hands of the respondent police, has come forward with this petition seeking anticipatory bail. Under such circumstances, I am inclined to grant anticipatory bail to the petitioner."

13 A perusal of the said order would also disclose that the learned Assistant Solicitor General appearing for the respondents 3 and 4 in the said Criminal Original petition took a stand as if the interim order of status quo was granted only on 19.11.2015. But the said stand is factually incorrect for the reason that this Court has granted interim order of status quo on 03.09.2015 itself and it was extended until further orders on 19.11.2015.

14 It is also brought to the knowledge of this Court that the office of the Commandant, 150 Battalion, CRPF, Dornapal, Sukma, Chhattisgarh, has issued the Office Order in No.J.II.01/2016-150-EC-II during March 2018, alleging that the petitioner did not report duty and remained absence on his own, with effect from 13.07.2015 to 03.11.2016 for a period of 480 days and the said period regularised as LEAVE WITHOUT PAY in accordance with FR-108.

15 The learned Central Government Standing counsel appearing for the respondents has drawn the attention of this Court to the Office Memorandum dated 28.03.2013 issued by the Government of India, Ministry of Personnel, P.G. & Pensions [Department of Personnel and Training] vide Reference No.13026/3/2012-Estt [Leave] and would submit that as per proviso to FR 17[1], an officer who is absent from duty without any authority, shall not be entitled to any pay and allowances during the period of such absence.

It is to be pointed out at this juncture, non-payment of salary and rather, treating the period of absence as leave without pay, has visited the petitioner with grave civil consequences. This Court is of the *prima facie* view that a fair opportunity ought to have been granted to the petitioner to explain his stand and the proceedings of the Commandant, 150 Battalion, CRPF, Dornapal, Surma, Chhattisgarh dated March 2018 in No.J.II.01/2016-150-EC-II, does not disclose that such an opportunity was given.

16 Be that as it may, this Court, in exercise of the Contempt Jurisdiction cannot go into the vires of the said order and therefore, the petitioner is at liberty to work out his remedy in accordance with law.

17 This Court, in the light of the reasons assigned above, is of the considered view that the stand taken by the respondents in their counter affidavit and the additional counter affidavit, is not supported by any tenable materials. However, taking into consideration of the fact that the petitioner has joined the transferred post at Chhattisgarh, this Court is not in a position to pass any further orders.

18 Therefore, the contempt petition is closed with the above observations.

SD/
ASSISTANT REGISTRAR (COMM.CASES)

AP

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

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PM/CO/16/08/2018

To

1.The Deputy Inspector General of Police
Group Centre, CRPF
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2.The Director General of Police
Central Reserve Police Force
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One CC to Mr.D.Simon, Central Government Standing
Counsel, SR.9413

One CC to Mr.N.Vijaykumar, Advocate, SR.9238

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