

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.2.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.307 of 2018
and
C.M.P.No.2474 of 2018

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. The Inspector General,
Training Sector,
Central Industrial Security Force,
National Industrial Security Academy,
Hakimpet, Hyderabad 600 078.
4. The Deputy Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Besant Nagar, Chennai 600 090.
5. The Principal,
Central Industrial Security Force,
Regional Training Centre,
Suraksha Campus,
Arakkonam Vellore District,
Tamil Nadu 631 152.
6. The Ground Commandant,
Central Industrial Security Force,
Group Head Quarters, Saket,
New Delhi 110 017.

7. The Commandant,
Central Industrial Security Force Unit,
Regional Training Centre,
Suraksha Campus, Arakkonam, Vellore District,
Tamil Nadu 631 152.

... Appellants/Respondents

Versus

R.Thiyagarajan

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.9.2017 passed in W.P.(MD) No.817 of 2012 on the file of this court.

W.P.(MD) No.817/12 dated 20/09/2017: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari 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 into 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.Venkataswamy Babu
R.Thiyagarajan

For respondent : Party in person.

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellants and the respondent, who appeared in person.

2. It appears that the respondent herein was appointed as Sub Inspector of Police in CISF on 11.11.2011, after conducting limited Departmental Competitive Examination, however, while he was on probation, he was discharged from service on 9.1.2012. The same has been challenged before the learned Single Judge by the respondent. The learned Single Judge allowed the writ petition and set aside the order of discharge. Hence, this appeal is filed by the Union of India.

3. According to the learned counsel appearing for the Union of India, Rule 25(2) of the CISF Rules, 2001 provides for issuance of one months notice prior to discharge of service of a

probationer and it has been followed, but, despite that, the learned Single Judge has allowed the writ petition.

4. Para 25(2) of CISF Rules reads thus:-

"If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him or terminated the services from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department, as the case may be."

5. On perusal of the above Rule, it provides for termination during the period of probation by issuance of one month's notice or one month's pay in lieu of such notice or reverting him to the rank from which he was promoted or repatriated to his parent department, as the case may be. The mode of selection provided is direct recruitment and by promotion or from deputation from other Department and if it is a case of direct recruitment, what is provided is discharge simplicitor if the probationer is deemed to be fit and satisfactory during the period of probation.

6. What is pertinent to note is that the learned Single Judge has observed in the order as under:-

"11. In the instant case, although the petitioner's services came to be terminated during the period of probation, yet, the counter affidavit contains several allegations against the petitioner, which formed the basis of issuance of the impugned order of termination and the order passed by the authority without giving any opportunity to the petitioner is therefore per se unreasonable, arbitrary and the same suffers from colourable exercise of power. Moreover, it has to be seen that terminating the services of the petitioner, who was merely a promotee from the earlier rank of Constable is contrary to the Rules and the said action on the part of the authority concerned discloses the vindictive mind set and therefore, this Court can safely infer that the termination is founded on malafide intention and cannot be sustained in law."

7. It appears that though a lot of allegations were made against the writ petitioner including insubordination, the writ

petitioner had been discharged from service without any opportunity to disprove the same. In such a situation, what is provided is either he should be reverted back when he was selected from a lower rank that too after giving him sufficient opportunity to disprove the allegations. Instead, his service had been straightway discharged without giving any reasons. In such circumstances, the learned Single Judge has taken the view that the procedure adopted by the appellants is against the principles of natural justice and as such, the learned Single Judge had set aside the impugned order. On perusal of the reasoning given by the learned Single Judge to arrive at such a conclusion, we find no illegality or infirmity with the order passed by the learned Single Judge. However, without expressing any opinion or comment about the order impugned in the writ petition, we confirm the order passed by the learned Single Judge. The writ appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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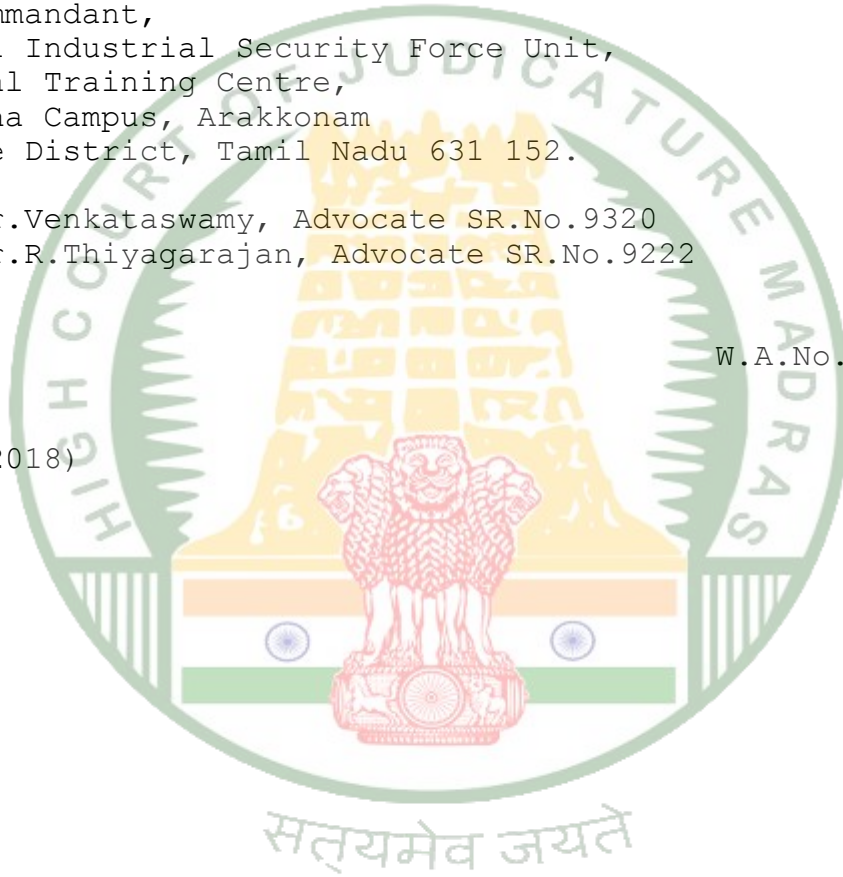
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+1cc to Mr.Venkataswamy, Advocate SR.No.9320
+1cc to Mr.R.Thiyagarajan, Advocate SR.No.9222

W.A.No.307 of 2018

AD(CO)
GN(22/02/2018)



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