

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 29-01-2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.39513 OF 2016 & 4550 OF 2018

D.Latha

...Petitioner in both W.Ps.

-vs-

- 1.The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodhi Road,
New Delhi-110 003.
 - 2.The Inspector General of Police,
(Training), Training Directorate, CRPF,
Sector-I, R.K.Puram,
New Delhi.
 3. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad-500 033.
 4. The Deputy Inspector General of Police
Central Training College CRPF,
Coimbatore District - 17.
Tamil Nadu State.
- ...Respondents in W.P.No.39513/2016

1. The Director General of Police,
Directorate General, CRPF,
CGO Complex, Lodhi Road,
New Delhi-110 003.
2. The Inspector General of Police,
(Training), Training Directorate, CRPF,
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Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony,

Gayathri Hills,
Hyderabad-500 033.

4. The Deputy Inspector General of Police
Central Training College CRPF,
Coimbatore District - 17.
Tamil Nadu State.

5. The Commandant,
O/o.IGP, Principal Central Training College,CRPF,
Coimbatore-17. ...Respondents in W.P.No.4550/2018

W.P.No.39513 of 2016 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to consider and pass order on the petitioner's application, dated 17.10.2016, seeking permission to retire from service under VRS Scheme on medical ground.

W.P.No.4550 of 2018 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the order passed by the 5th respondent in Proceeding No.P.VIII-03/2017-EC-1, dated 02.11.2017, and quash the same.

For Petitioner
in both W.Ps. : Mr.M.Elango

For Respondents
in W.P.No.39513/2016: Mrs.N.K.Nithilavani,
Central Govt.Standing Counsel.

For Respondents
in W.P.No.4550/2018: Mr.K.Srinivasa Murthy,
Central Govt.Standing Counsel.

ORDER

W.P.No.39513 of 2017 has been filed for issuance of a writ of mandamus, directing the respondents to consider the representation made by the petitioner, seeking for Voluntary Retirement, on medical grounds.

2. W.P.No.4550 of 2018 has been filed, challenging the order of dismissal, passed by the fifth respondent.

3. The petitioner joined Central Reserve Police Force (CRPF) in the year 1995 as a Constable. In the year 2009, she sustained an injury in her right ankle and was undergoing treatment. The treatment continued for a long time. The petitioner felt that she could no more continue in service in

view of her medical condition and, therefore, she gave an application on 17.10.2016 to the fourth respondent, seeking for permission to retire under Voluntary Retirement Scheme (VRS).

4. According to the petitioner, she is entitled to apply for VRS as per Rule 43 (d) (i) of the Central Reserve Police Force Rules, 1955, in short, 'the Rules'. In the meantime, disciplinary proceedings were initiated against her by the fifth respondent on 21.11.2016. The respondents were not able to serve notice on the petitioner and, therefore, the inquiry was conducted ex-parte. Ultimately, disciplinary proceedings ended with a punishment of dismissal of the petitioner from service by the proceedings of the fifth respondent, dated 02.11.2017.

5. Learned counsel for the petitioner submitted that the fifth respondent lacked jurisdiction to pass the order of dismissal, since the voluntary retirement, that was submitted by the petitioner, is deemed to take effect on the expiry of three months (Notice Period) as per Rule 43 (vi) of the Rules. The learned counsel submitted that after the petitioner has legally retired from service, no order of dismissal can be passed by the respondents subsequently. The learned counsel further submitted that the order of dismissal passed by the fifth respondent is non-est in the eye of law and, consequently, a direction must be issued to the fifth respondent to pass appropriate orders, accepting the voluntary retirement of the petitioner and paying the attendant benefits thereof.

6. The respondents have filed a Counter Affidavit in both the Writ Petitions. In the counter affidavit filed in W.P.No.39513 of 2016, a specific stand has been taken to the effect that on receipt of notice for voluntary retirement from the petitioner, the petitioner was informed by a letter, dated 24.10.2016, that the notice had not been sent as per the requirement and, therefore, the notice given by the petitioner could not be treated as a notice for voluntary retirement. A further stand has been taken in the counter filed in W.P.No.4550 of 2018 to the effect that the petitioner was on unauthorised absence and the disciplinary proceedings were initiated on 21.11.2016 and, therefore, there is no question of the deemed acceptance of the VRS application, submitted by the petitioner.

7. Mr.K.Srinivasa Murthy, learned Central Government Standing Counsel, appearing on behalf of the respondents, submitted that the petitioner had filed an appeal before the Deputy Inspector General of Police (DIGP) and the same was also rejected by an order, dated 06.03.2018. The learned Standing Counsel further submitted that in view of the said development, this Court cannot go into the merits of the claim made by the

petitioner in W.P.No.4550 of 2018. According to him, the petitioner also has an alternative remedy of filing a revision before the next superior authority, namely, Inspector General of Police, but the petitioner did not exhaust the said remedy too. Accordingly, the learned Standing Counsel sought for dismissal of the Writ Petitions.

8. This Court has carefully considered the submissions made on either side and the material available on record.

9. It is clear from the facts that have been narrated supra that the petitioner will not be entitled to succeed on the ground of deemed acceptance of her voluntary retirement. The petitioner had submitted her voluntary retirement notice on 17.10.2016. It has been specifically stated in the counter filed by the respondents that the petitioner was informed by the letter, dated 24.10.2016, that the notice did not fulfil the requirements and, therefore, the same could not be treated as notice for voluntary retirement. Even otherwise, the three month period came to an end on 16.01.2017. Even taking an extreme case, the deemed provision would start operating only from that date and, by then, disciplinary proceedings were initiated by the fifth respondent on 21.11.2016. The moment the disciplinary proceedings were initiated, it must be construed that the VRS application, that was submitted by the petitioner, had not been accepted by the respondents. That apart, when disciplinary proceedings were initiated on the ground of unauthorised absence, there was no question of deploying the deemed provision in favour of the petitioner. This Court is, therefore, not in acceptance with the submission made by the learned counsel for the petitioner to the effect that the petitioner is deemed to have retired from service on 16.01.2017.

10. In so far as the Writ Petition challenging the order of dismissal passed by the fifth respondent is concerned, this Court is not inclined to go into the merits of the case, since the petitioner has parallelly filed an appeal before the Deputy Inspector General of Police on 30.11.2017 and, after inquiry, the said appeal was also dismissed by the DIGP, by his proceedings, dated 06.03.2018. In view of the said development, this Court need not go into the findings of the fifth respondent once again, since they have been confirmed in appeal.

11. The petitioner, having chosen to file a Writ Petition before this Court challenging the order of dismissal passed by the fifth respondent, ought not to have parallelly proceeded with the appeal before the authority concerned. Having suffered the order of dismissal at the hands of the appellate authority, nothing survives in W.P.No.4550 of 2018 for adjudication. Therefore, W.P.No.4550 of 2018 stands dismissed.

12. The petitioner had been given a remedy of filing a revision before the next superior authority as per the orders passed in the appeal by the DIGP, dated 06.03.2018. However, a time limit was prescribed in the said order. In view of the pendency of these Writ Petitions, the petitioner was not in a position to file any revision petition before the next superior authority in time. The petitioner was bonafidely pursuing her remedy before this Court and, therefore, the time spent before this Court must be taken into consideration for the purpose of limitation. Accordingly, W.P.No.39513 of 2016 is also dismissed.

13. Even though both the Writ Petitions have been dismissed, liberty is given to the petitioner to file a revision petition before the next superior authority, namely, Inspector General of Police (IGP). The said revision shall be filed within a period of two weeks from the date of receipt of a copy of this order. In the event of filing of revision petition by the petitioner, the same shall be entertained by the revisional authority, namely, IGP and it shall not be rejected on the ground of limitation, but shall be considered on merits and appropriate orders passed therein. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

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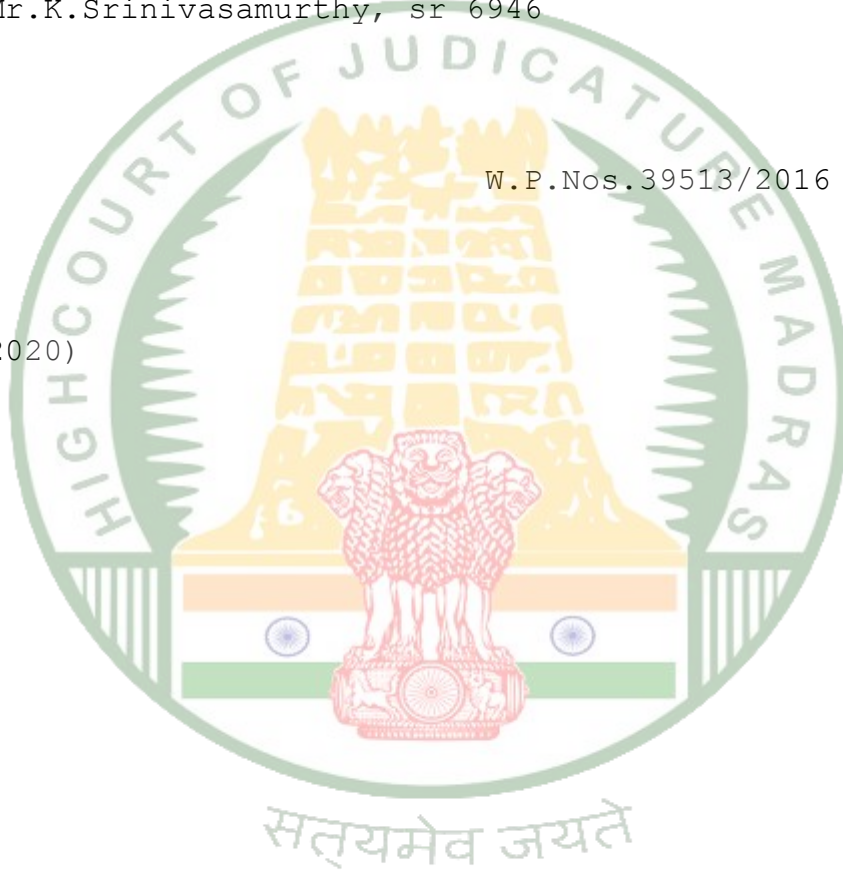
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O/o.IGP, Principal Central Training College,CRPF,
Coimbatore-17.

+2 Ccs to Mr.M.Elango, advocate sr 6988 & 6989
+1 CC to Ms.N.K. Nithilavani, CGSC sr 6977
+1 CC to Mr.K.Srinivasamurthy, sr 6946

W.P.Nos.39513/2016 & 4550/2018

GJ(CO)
SP(05/02/2020)



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