

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.25038 OF 2005

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring (i) proceedings No.V-15014/CISF/VSP/MAJ-2/CJ/04/9468, dated 13.9.2004 issued by the Commandant, CISF, Visakhapatnam, (ii) the proceedings No.V-11014/87/04/L&R(SZ)/2884, dated 13.5.2005 to the extent of imposing the punishment of reduction of pay by three stages for period of two years with cumulative effect; (iii) proceedings No.V-15014/CISF/VSP/MAJ-2/CJ/04/6755, dated 17.6.2005 issued treating the suspension period from 21.1.2004 to 20.4.2004 as dies-non, as illegal and arbitrary, and consequently, to direct the respondents to release the increments due to the petitioner and to treat the suspension period from 21.1.2004 to 20.4.2004 as on duty for all purposes.

2. Heard Smt. K. Udaya Sri, learned Counsel for the petitioner and Sri K. Lakshman, Assistant Solicitor General for the respondents.

3. It is the case of the petitioner that he joined on 15.7.1986 as constable in CISF at Paradeep in Orissa State and thereafter, he worked in many places and in the year 2003, he was transferred to Visakhapatnam Steel Plant, Visakhapatnam.

On 19.1.2004, while he was working at B.C. Gate out-way bridge in "B" Shift at about 19.00 hours, the Inspectors viz., K. Srinivasan and S.P. Rajendran came there and frisked him and found a coin of Rs.5/-. Except that, nothing was recovered from him. However, without any basis, the petitioner was suspended on 21.1.2004 and thereafter, a memo dated 13.3.2004 was issued to him alleging that he gained Rs.15/- illegally, for which he submitted his explanation. Being not satisfied with the same, enquiry was initiated. After completing the enquiry, the disciplinary authority vide order dated 13.9.2004 imposed punishment on the petitioner reducing his pay to a lower stage from Rs.3,965/- to Rs.3,200/- in the time scale of pay for a period of five years with immediate effect. Aggrieved by the same, the petitioner preferred appeal and the appellate authority vide order dated 13.5.2005 reduced the punishment imposed by the disciplinary authority to that of reduction of pay for two years with cumulative effect. Thereafter, a show cause notice was issued to the petitioner as to why the suspension period from 21.1.2004 to 20.4.2004 shall not be treated as dies-non for all purposes. The petitioner submitted his explanation. However, the authorities passed final order treating the period from 21.1.2004 to 20.4.2004 as dies non. Aggrieved by the same, the petitioner filed appeal and the same is pending. At this stage, the petitioner filed this writ petition.

4. Learned Assistant Solicitor General appearing for the respondents contended that the disciplinary authority has rightly imposed punishment for the proven misconduct in the enquiry and the appellate authority has taken a lenient view and reduced the punishment imposed by the disciplinary authority, and therefore, no further interference is called for.

5. This Court having considered the rival submissions made by the parties and the material available on record, is of the view that the disciplinary authority had imposed the punishment of reduction of pay of the petitioner to the lower stage from Rs.3,965/- to Rs.3,200/- in the time scale of pay for a period of five years, for the proven misconduct, and the appellate authority had taken a lenient view and reduced the punishment to that of reduction of pay for two years with cumulative effect. The petitioner has not pointed out any illegality in the procedure adopted by the authorities while inflicting the punishment on the petitioner. Therefore, this Court cannot consider the case of the petitioner by applying proportionality theory i.e., **Wednesbury** principle because the appellate authority had already taken a lenient view.

6. Further, the appeal preferred by the petitioner against the order passed by the authorities treating the suspension period from 21.1.2004 to 20.4.2004 as dies-non, is pending. In the circumstances, this Court is of the view that ends of justice

would be met, if the respondents concerned are directed to dispose of the appeal preferred by the petitioner in respect of treating the period of suspension from 21.1.2004 to 20.4.2004 as dies-non, as expeditiously as possible.

7. Accordingly, the Writ Petition is disposed of directing the respondents concerned to dispose of the appeal preferred by the petitioner in respect of treating the period of suspension of the petitioner from 21.1.2004 to 20.4.2004 as dies-non, as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd November, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.25038 OF 2005



23/11/2018

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