

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.6403 of 2013

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief/ s:

“..to issue Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.3 in passing removal order vide proc.No.V-15014/CISF/VSSC/DISC/2012/4243, dated 05-06-2012 which is confirmed by the 2nd respondent vide Proc.No.V-11014/CISF/DOS/Appeal-KKA/2012/2339, dated 21-08-2012 which is also confirmed by the 1st respondent vide Proc.No.V-15014/L&R/SS/Rev/KKA/2012-440, dated 30-11-2012 is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits like arrears of salary, seniority, promotion, etc. and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri J.M. Naidu*, learned counsel appearing for the petitioner, and of *Ms. S. Siva Kumari*, learned counsel for the Central Government appearing for the respondents.

3. The case of the petitioner, in brief, is this:

He hails from a poor family. As he had no sources of livelihood and due to financial problems, he could not prosecute his studies, though he is interested in pursuing further studies. He failed in Chemistry subject of Intermediate course in the year 1996. After his due selection by the respondent authorities, he was appointed as C.I.S.F Constable/ sweeper, on 14.09.1997. He completed his Intermediate course by successfully appearing for the said subject. Having decided to prosecute his higher studies with the permission of the Department, he applied for permission to study Graduation

course and obtained degree in Bachelor of Commerce from Kakatiya University in the year 2009. He had applied for permission for studying B.Ed and MBA through Osmania University. 3rd respondent *vide* letter, dated 15.06.2011, permitted the petitioner to study MBA. However, the petitioner has not joined MBA course as he was not issued Transfer Certificate by Lalitha College of Education as he has not completed his B.Ed course as on 2010-2011 due to lack of attendance and as he was readmitted into the same college for the academic year 2011-2012. The Principal, Lalitha College of Education, *vide* letter, dated 22.02.2013, had certified that the petitioner was prosecuting his B.Ed education from October, 2011 to 29.05.2012. The petitioner was compelled to attend classes to have attendance of 85% as per letter, dated 09.09.2010, of the said college. As he was compelled to attend college, he submitted a representation, dated 29.01.2011, by fax, to the Director General of CISF, New Delhi, requesting to transfer him from VSSC, Thumba, to Hyderabad to enable him to perform his duties while prosecuting higher education. He also made a representation, dated 11.02.2011, through proper channel to the Director General, CISF headquarters for his transfer on the ground of education. As he sent a fax message to the Director General ventilating his grievances, the Assistant Commandant of CISF unit, Thumba, issued charge memorandum, dated 09.04.2011. In spite of the petitioner explaining his difficulties and making his submissions, the said Commandant *vide* order, dated 28.04.2011, imposed punishment of 'withholding of one increment for a period of one year which will not have effect of postponing his future increments of pay.' The said order was issued without considering the petitioner's submissions. The petitioner submitted an appeal before the 3rd respondent. His appeal was rejected by an order, dated 30.06.2011. The petitioner's revision was rejected by the 2nd respondent by an order, dated 22.08.2011. Therefore, the petitioner submitted to the 1st respondent, a further revision petition, dated 29.09.2011. The 3rd respondent granted 13

days Earned Leave (from 19.10.2011 to 31.10.2011) to the petitioner, and directed the petitioner to report to duty, on 02.11.2011. On his return to Hyderabad, he came to know about the insistence of 85% attendance by the college authorities for permission to sit for B.Ed examination. In the meanwhile, his elder brother died, on 11.12.2011, in harness. Therefore, and for attending the last ceremonies of his brother, petitioner was compelled to remain in Hyderabad. Though the petitioner requested the Assistant Commandant, VSSC, Thumba, and also the Personal Assistant of the 3rd respondent for extension of leave stating the above true circumstances, they have replied stating that leave will be extended after resuming duty and on making proper application. Having believed the versions of the subordinates of the 3rd respondent, the petitioner stayed at Hyderabad. When he received call up letters, he explained the circumstances and his difficulties; and, he talked to the Assistant Commandant and the Personal Assistant of the 3rd respondent over cell phone and explained the difficulties. He was served with call up letter through 4th respondent through Constable-Arvind who is under the control of the 4th respondent. The petitioner also informed him about his difficulties and he stated that he will convey the same to the 3rd respondent. The 3rd respondent issued a charge sheet, dated 03.01.2012, alleging that the petitioner has committed misconduct of unauthorised absence from 02.11.2011 to 03.01.2012. And, R.K. Singh, Assistant Commandant, was appointed as enquiry officer. He conducted enquiry in a perfunctory manner and submitted a report, dated 02.05.2012, stating that the charge is proved. The said report was supplied to the petitioner by the 3rd respondent *vide* proceedings, dated 07.05.2012. Petitioner submitted his detailed explanation, dated 28.02.2012, and explained his difficulties and furnished reasons for his absence during the period covered by the charge. Without considering the same, the 3rd respondent, *vide* proceedings, dated 05.06.2012, imposed punishment of removal. The said proceedings were served on the petitioner *vide* Unit Service

Order, dated 06.06.2012, of the 4th respondent. Aggrieved of the removal order passed by the 3rd respondent, the petitioner preferred an appeal, dated 25.06.2012, before the 2nd respondent. Without considering the grounds of appeal, the 2nd respondent rejected the appeal, *vide* proceedings, dated 21.08.2012. The said proceeding has been served on the petitioner *vide* proceedings, dated 29.08.2012, of the 4th respondent. Aggrieved thereof, the petitioner preferred revision petitions, dated 17.09.2012 and 26.10.2012, to the 1st respondent. Without considering the grounds in the revisions, the 1st respondent rejected the same, *vide* proceedings, dated 30.11.2012. The said proceedings were served upon the petitioner *vide* proceedings, dated 13.12.2012, of the 4th respondent. The petitioner is eligible for provident fund with account number 973210312. His contributions were deducted from his salary and were remitted to his PF account. The office of the 3rd respondent has given annual statement of GPF account for the year 2010-2011 stating the balance in the account as Rs.2,05,170/- . He made a representation, dated 27.08.2012, for release of Gratuity. The actions of the 3rd respondent in passing the removal order, of the 2nd respondent in dismissing the appeal and of the 1st respondent in dismissing the revision of the petitioner are illegal, arbitrary and violative of the Articles of the Constitution of India. The same are liable to be set aside. Hence, the writ petition is filed.

4. The Senior Commandant and the Commandant filed a counter and a additional counter on behalf of the respondents. The relevant contents of the same, in brief, are as under:

The writ petition is not maintainable since the entire cause of action occurred in CISF unit, VSSC, Thumbra, which is within the territorial jurisdiction of High Court of Kerala. The role of the 4th respondent-Deputy Commandant, CISF Unit, NRSC Balanagar, Hyderabad, is limited to serving the official correspondence on the petitioner since his Unit is in the proximity of the residential address of the petitioner. Earlier, the petitioner was sanctioned 18

days Earned Leave (EL) from 26.07.2010 to 15.08.2010 on the ground of 'domestic problem'. He was supposed to rejoin duty on 16.08.2010 FN. But, he failed to report to duty and instead requested for 30 days extension on the ground of higher education for attending B.Ed counselling. His said request was not acceded to on the ground that the petitioner did not obtain prior permission for the said higher studies from the department. After overstaying leave from 16.08.2010 to 28.10.2010 (i.e., for 74 days), he reported to duty, on 29.10.2010, at his own will. Accordingly, his case was dealt with under major disciplinary proceedings under Rule 36 of CISF Rules, 2001; and, after conducting full fledged departmental enquiry and giving all reasonable opportunity to the petitioner to defend the case, the disciplinary authority *vide* Commandant/ VSSC(T) Final Order, dated 21.01.2011, awarded punishment of 'reduction of pay by one stage for a period of one year which will have the effect of postponing his future increments of pay'. These facts have not been disclosed by the petitioner in the writ petition. The petitioner has indulged in a series of acts of indiscipline. During the short span of his service, he has been awarded 2 major punishments and 6 minor punishments for various misconducts; and, most of them are for overstaying the leave sanctioned. The petitioner was posted out from CISF unit, IG [Mint], Hyderabad, on regular posting to CISF unit, VSSC, Thumba, and was relieved from the IG [Mint] Unit of Hyderabad, on 30.06.2010. The petitioner reported to the CISF Unit, VSSC, Thumba, on 13.07.2010. Meanwhile, he submitted several applications for cancellation of his said posting. And, during joining time, he met IG/ SS, Chennai, on 02.07.2010, and DIG/ DOS, Bangalore Headquarters, on 07.07.2010, for cancellation of posting orders on ground of higher education. And, his requests were not considered as he had served in the State of Andhra Pradesh, Hyderabad Belt, for nine years including four years service in CISF Unit, IG (Mint), Hyderabad. He was sanctioned 13 days Earned Leave from 19.10.2011 to 31.10.2011 and was supposed to rejoin duty on 02.11.2011 (FN). But, he

failed to report to duty and remained absent to duties and Unit lines unauthorisedly and without any permission from the competent authority; and, he did not respond to four call up notices sent to his address. Accordingly, his case was dealt with under major disciplinary proceedings U/ R 36 of CISF Rules, 2001, and charge memorandum was issued with two Articles of Charge. After giving all reasonable opportunity to defend the case and after holding full fledged departmental enquiry, he was found to have wilfully over stayed the sanctioned leave and remained absent from duties and unit lines from 02.11.2011 onwards without any permission from the competent authority and further failed to respond to four call up notices sent to his leave address and that he has thus committed acts of gross misconduct & indiscipline, and indulged in dereliction of duties and violation of the lawful orders of the superiors. In the enquiry, it was also found that his conduct was incorrigible and that he has been awarded one major and six minor punishments for various misconducts and acts of indiscipline in the past and failed to reform himself. Hence, punishment of removal from service was awarded and was eventually confirmed. Since the petitioner was struck off from the strength of CISF unit, VSSC, Thumbra, as well as CISF with effect from 06.06.2012 (FN), as per the existing procedure, all the final payments which were due to him including GPF are required to be paid. Therefore, all the forms with regard to final payment were sent through speed post to his residential address *vide* office letter, dated 17.08.2012. But, the petitioner refused to resubmit the duly filled in forms for processing. Though the petitioner submitted an application, on 27.08.2012, for permission to withdraw Rs.80,000/- from his GPF, he was informed that he has been removed from service with effect from 06.06.2012 and that part withdrawal or advance can only be considered while in service; and, he was directed to sign GPF final payment forms. He had served in his home State for almost 13 years continuously for three consecutive tenures including in his own town, Hyderabad, for four years. As per existing policy,

one has to serve in home zone which includes other States within the zone. Hence, he was posted out to CISF Unit, VSCC, Thumba, Kerala. Infact, he reported at the said unit, on 13.07.2010. The grounds urged by the petitioner do not hold good. He applied for permission for completing B.Com through correspondence and the same has been granted by an office memo, dated 07.03.2008. He was granted permission to appear for MBA entrance test by order, dated 18.03.2009. He submitted application, dated 20.11.2010, for permission to attend regular classes in B.Ed at Hyderabad and the same was rejected by office memo, dated 25.11.2010. Permission for higher studies viz., MBA through distance education scheme was sought by application, dated 03.06.2011. The same was considered by the competent authority by memo dated 15.06.2011. By a subsequent memo, dated 29.07.2011, it is clarified that permission for MBA was only through distance education. The said memo was acknowledged by him on the same day. Any enrolled member of the Force who intends to pursue higher studies should obtain prior permission from the competent authority. But, the petitioner did not obtain permission for studying B.Ed and did not even intimate the reasons for not obtaining permission from the competent authority at any stage. Without permission from the competent authority, he joined B.Ed course at Hyderabad and later submitted an application, dated 20.11.2010, seeking permission to attend regular classes. As it was practically impossible for him to attend regular classes in Hyderabad in view of his posting in the unit at Kerala, his request was rejected by memo, dated 25.11.2010. He did not deliberately obtain permission from the competent authority for his higher studies. Since permission was not sought and accorded to join B.Ed course at Hyderabad, the department is unconcerned about fulfilment of 85%attendance for pursuing the said course. No application for extension of leave was submitted. The petitioner tendered resignation from service vide application, dated 24.10.2011. The competent authority endorsed on the same that it will be

considered on the petitioner rejoining duty; and, he was directed to report back to the unit immediately. The plea that his brother died, cannot be sustained since by that time he was overstaying the leave (OSL) for 40 days. The said allegation is invented to cover up his misconduct. The petitioner made correspondence with FHQRs, New Delhi, directly through fax violating the norms of following the proper channel. For such misconduct he was charged and a punishment of 'withholding of one increment for a period of one year which will not have the effect of postponing his future increments of pay' was awarded *vide* final order, dated 28.04.2011. He was paid final payment of Provident Fund of Rs.2,24,631/- . His representation, dated 28.04.2013, for payment of Earned Leave salary was received in the office on 27.08.2013. Since the matter is sub-judice no order was passed and the petitioner was informed accordingly. Petitioner filed application before this Court seeking direction for release of Earned Leave salary. Pending disposal of the writ petition, this Court directed to consider and release Earned Leave salary as per rules. The petitioner was informed that he is not entitled for Earned Leave Salary as per rules in view of his removal from service. The grounds urged are untenable and the writ petition is devoid of merit and is liable for dismissal.

5. Both the learned counsel advanced arguments in line with the pleadings of the parties.

6. At the outset, it is pertinent to note that the respondents first contended that this Court is not having jurisdiction to entertain this writ petition. Their submissions in support of the said contention are as follows: -
'The petitioner was appointed as CISF constable and was posted in the zone, the territory of which extends to the States within the zone. After he served for sufficiently long time in Andhra Pradesh, he was transferred to Kerala. He got relieved from CISF Unit, IG Mint, Hyderabad, and joined in CISF Unit, VSSC, Thumba, Kerala, which is within the territorial jurisdiction of High Court of Kerala. Having joined the said post and having applied for Earned Leave, he

did not report back to duty and unauthorisedly and deliberately absented from attending to his duties in the said unit at Thumba, Kerala. Hence, after following the due procedure, a disciplinary enquiry was commenced and was conducted by an officer of the said Unit of Kerala. On his report, the disciplinary authority, that is, Commandant, CISF, Thumba, passed the order for removal of the petitioner. The same was confirmed by the appellate authority and the revisional authority. Therefore, the petitioner, if so advised, ought to have filed the writ petition in the High Court of Kerala and not in this Court.' The only submission of the writ petitioner is that the notices during the course of disciplinary enquiry were served upon him at his residential address at Hyderabad and, therefore, this Court is having jurisdiction. As rightly contended, merely because the petitioner was residing in Andhra Pradesh and the notices related to enquiry were served upon him at his place of residence in Hyderabad, the said fact will not clothe this Court with the jurisdiction. This view of this Court draws support from that ratio in the decision of the Supreme Court in Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors. [(1994) 4 SCC 711]. In that view of the matter, this Court finds that this Court is not having jurisdiction and that on that ground alone this Writ Petition is liable for dismissal.

7. However, both the learned counsel made submissions on the merits of the matter also and invited an order on merits of the matter as well. Hence, I shall now proceed to deal with the matter on merits as well, as desired by the learned counsel for both the sides.

8. Learned counsel for the petitioner contended as follows: -

Even though permission was granted for prosecuting higher studies, the petitioner was not given an opportunity to prosecute his higher studies. Absence due to unavoidable circumstances is not misconduct that too in the lowest class of employees like sweepers. Though the petitioner explained his

difficulties and requested the respondents to transfer him to Hyderabad in order to prosecute higher studies, his representation has not been considered and disposed of. Making representation to the highest authority ventilating his grievances and requesting for his transfer and posting at a unit in Hyderabad is not misconduct. The conduct of the petitioner in making representation to the Director General while the revision petition with regard to imposition of punishment by the lower authorities is pending before him cannot be treated as misconduct as specified in the 2nd charge; and, the same cannot be taken into consideration for imposing punishment. The petitioner is entitled to withdraw his GPF amount which is his personal amount. The punishment imposed is disproportionate to the charges.

8.1 Learned counsel for the petitioner alternatively contended that in the event this Court is not inclined to accept the contention of the petitioner that the articles of charge are not proved, the punishment of removal from service, which is harsh and disproportionate, may be set aside and the matter may be remitted to the competent authority to impose a lesser/minor punishment, which may be proportional to the proved articles of charges.

9. Learned counsel for the respondents while supporting the report of the Disciplinary Authority and the orders of the respondents 1 to 3 has drawn the attention of the Court to various factual aspects, the contents of the material documents placed before the enquiry officer and the reasons assigned in the orders impugned and contended that the orders are sustainable and submitted that the punishment of removal from service imposed upon the petitioner is just and appropriate and not disproportionate to the gravity of the charges, in the facts and circumstances of the case.

10. I have given earnest consideration to the facts and submissions.

11. The point for consideration is –

‘Whether the petitioner made out valid and sufficient grounds for setting aside the orders of the respondents 1 to 3 and for ordering reinstatement into service as prayed for?’

11.1 POINT:

11.2 The facts necessary for consideration, in brief, are as follows:

The petitioner, who joined service in CISF in the post of Sweeper, on 14.09.1997, had served almost for 13 years in his home State, Andhra Pradesh, continuously for three consecutive tenures. He also has served in his home town, Hyderabad, for four years at CISF unit, IG Mint, Hyderabad. As per policy an employee has to serve in home zone which includes other States within the zone. He was, hence, posted out of the said CISF unit, IG Mint, Hyderabad, to CISF Unit, VSSC, Thumba, Kerala, and was relieved on 30.06.2010 from the CISF unit, IG (Mint), Hyderabad. He reported to duty at the said unit at Kerala, on 13.07.2010. As per admitted facts and articles of charge, the 3rd respondent sanctioned 13 days Earned Leave (from 19.10.2011 to 31.10.2011) to the petitioner and directed the petitioner to report to duty on 02.11.2011; though he was supposed to join duty on the said date, he failed to do so; and, he overstayed the sanctioned leave and remained absent from duties and unit lines, from 02.11.2011 onwards without any permission from the competent authority and failed to respond to four call up notices sent to his leave address. Therefore, he was charged by stating that he committed acts of gross misconduct, indiscipline, dereliction of duties and violation of the lawful orders of the superiors. Adverting to this aspect, it is to be noted that the petitioner is not disputing that he overstayed the sanctioned leave and absented from attending to duties at the CISF Unit, VSSC, Thumba, Kerala. He was permitted, on his requests, to study B.Com and MBA through distance education. He

obtained degree in Bachelor of Commerce in the year 2009. He did not join MBA course. However, admittedly he did not obtain permission for pursuing B.Ed regular course at Hyderabad. He submitted application, dated 20.11.2010, for permission to attend regular B.Ed classes; and, the same was rejected by office memo, dated 25.11.2010. As noted, the 3rd respondent *vide* letter, dated 15.06.2011, gave permission to the petitioner to study MBA. However, according to the petitioner, he has not joined MBA course as he was not issued Transfer Certificate by Lalitha College of Education as he has not completed his B.Ed course as on 2010-2011 due to lack of attendance and as he was readmitted into the same college for the academic year 2011-2012. The petitioner admits that the Principal, Lalitha College of Education, *vide* letter, dated 22.02.2013, certified that the petitioner was prosecuting his B.Ed education from October, 2011 to 29.05.2012 and submits that he was compelled to attend classes to have attendance of 85% as per letter, dated 09.09.2010, of the said college. Thus, without obtaining further leave and without seeking extension of leave and by over staying the leave period, he was attending to regular B.Ed classes even though permission was not sought and was not sanctioned for studying the said course, which is a regular course. According to him, as he was compelled to attend the college, he submitted a representation, dated 29.01.2011, by fax, to the Director General of CISF, New Delhi, requesting to transfer him from VSSC, Thumba, to Hyderabad to enable him to perform his duties while prosecuting higher education and that in the meanwhile, all of a sudden his elder brother died in harness, on 11.12.2011, and, therefore, he was compelled to remain in Hyderabad for attending to his ceremonies. The petitioner very well knows that he has to obtain prior permission for prosecuting higher studies. In-fact, he sought permission earlier for studying B.Com and MBA through distance education. He is also aware that it is not practically possible for him to attend regular B.Ed classes in Hyderabad in view of his posting in the unit at Kerala. He also knew that his request was

rejected by memo, dated 25.11.2010. Nonetheless, he having attended some B.Ed classes preferred to attend further B.Ed classes to make up the short fall of the percentage of attendance and overstayed the sanctioned leave and remained absent to duties till the conclusion of the departmental enquiry and his removal from service. He did not even answer the call up notices. No application for extension of leave was submitted. The petitioner admittedly tendered resignation from service vide application, dated 24.10.2011, and the competent authority endorsed on the same that it will be considered on the petitioner rejoining duty; and, he was directed to report back to the unit immediately. The explanation that he could not attend to duty at the Unit of Kerala State and that he had to over stay the period of leave for attending the B.Ed classes to make up 85% attendance clearly lays bare that his failure to attend to duty is wilful and deliberate. Further, his conduct in directly contacting the higher officials and in corresponding with them directly for his transfer from the Unit at Kerala to Hyderabad to enable him to study B.Ed is not only a clear violation of the norm of following the proper channel but also indicates that he was determined to study B.Ed by continuing to stay in Hyderabad instead of reporting to duty. For the said violation, he was charged and punished suitably. His further plea that his brother died, on 11.12.2011, and, therefore, he could not report back to duty needs no countenance as he was required to report back to duty by 02.11.2011 and as by that time he had continuously overstayed the leave sanctioned for 40 days. Therefore, it is evident from the record that he deliberately failed to attend to his duties at CISF Unit, VSOC, Thumba, Kerala, and had not answered the call up notices and instead insisted for his transfer to any of the Units in Hyderabad to enable him to prosecute B.Ed regular course, though admittedly no permission was granted to him to study B.Ed and it was practically impossible for him to attend regular classes in Hyderabad in view of his posting in the unit at Kerala. His said conduct fully justifies the finding recorded by the disciplinary authority.

11.3 It is pertinent to note that the other charge related to his incorrigible attitude and his failure to reform himself. It is borne out by the record that one major and six minor punishments were awarded to him for various misconducts and acts of indiscipline on his part. It is not only established during the course of enquiry but it is also undisputed that the petitioner was awarded the following major and six minor punishments:

MAJOR PUNISHMENT:

i) "Reduction of pay by one stage from Rs.7130/- to Rs.6860/- in the pay Band of Rs.5200-20200/- (Grade Pay Rs.2,000/-) for a period of one year with effect from the date of issue of this order. It is further directed that he will not earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay" for 74 days OSL from 16.08.2010 to 28.10.2010 vide CISF Unit VSSC, Thumba U.S.O Part.II No.80/2011 dated 10.02.2011. (PW2-exhibit-8)

MINOR PUNISHMENTS:

i) CENSURE for negligence in his duties on 28.01.02 and on 29.01.02 vide CISF Unit SCCL Bellampalli U.S.O Part.II No.337/2002 dated 19.06.2002 (PW-2/Exhibit-9)

ii) Four days pay fine for 10 days OSL from 29.04.2002 to 08.05.2002 (10 days) vide CISF Unit SCCL Bellampalli U.S.O Part.II No.467/2002 dated 21.08.2002 (PW-2/Exhibit-10)

iii) Fine equal to seven days pay for desertion from the unit lines from 26.08.02 to 28.8.02 (03 days) vide CISF Unit SCCL, SRP Area Final Order No.V-15014/CISF/SCCL/SRP/Disc/02-4121 dated 25.09.2002 (PW-2/Exhibit-11)

iv) Withholding of one increment for a period of one year without cumulative effect which will not have the effect of postponing his future increments for 21 days OSL from

10.11.03 to 30.11.03 vide CISF Unit SCCL, Bellampalli, U.S.O Part.II No.711/2003 dated 24.12.2003(PW-2/Exhibit-12)

v) Pay fine to an amount equivalent to his two days pay for absence of Friday parade on 05.02.2010 vide IG/Mint, Hyderabad U.S.O Part.II No.73/2010 dated 28.04.2010(PW-2/Exhibit-13)

vi) Withholding of one increment for a period of one year which will not have the effect of postponing his future increment of pay for submission of application through Fax violating through proper channel Norms vide CISF Unit VSSC, Thumba U.S.O Part-II No.237/2011 dated 10.5.2011(PW-2/Exhibit-14)."

A bare perusal of the above punishments awarded to him would make it apparent that the petitioner's attitude is incorrigible and that he did not reform himself despite punishments awarded to him in the past.

11.4 It is apt to note that the petitioner did not deliberately avail the opportunities provided to him during the departmental enquiry and, therefore, the enquiring authority was obliged to pass the order based on the evidence made available and the record produced before the said authority. The copy of the enquiry report was duly served upon the petitioner directing him to submit his representation, if any, on the findings of the enquiry officer. The petitioner did not submit any representation within the time allowed to him. Therefore, and for the reasons recorded, the disciplinary authority awarded punishment of removal from service from the date of the order viz., 05.06.2012. The petitioner's appeal and revision were dismissed by the appellate and revisional authorities vide their detailed reasoned orders respectively, dated 21.08.2012 and 30.11.2012.

11.5 Having thus carefully gone through the record and scrutinised the facts, evidence & submissions, this Court finds that the grounds urged and the contentions advanced by the writ petitioner are without any merit.

Accordingly, this Court finds that the contention of the petitioner that the articles of charge are not proved is liable for rejection. The said contention is accordingly rejected.

11.6 Dealing with the alternate contention that the punishment of removal from service is disproportionate and that the punishment may be set aside and the matter may be remitted to the competent authority for imposing a punishment which may be proportional to the charges held proved, it is to be noted that the service is a Central Civil Service related to Industrial Security Force. The two charges levelled and held proved are of serious nature in the facts and circumstances of the case. The petitioner who served in various units of the State of Andhra Pradesh for almost 13 years including 4 years in his home city, Hyderabad, was posted out to the CISF unit, VSCC, Thumba, in Kerala, as per the policy. Having got himself relieved from the Hyderabad Unit and having reported to duty at the new place of posting, the petitioner applied for and got sanctioned Earned Leave for 13 days and later failed to report back to duty and overstayed the leave and failed to deliberately report back to duty despite call up notices and relied upon grounds which are unacceptable. He further indulged in acts of indiscipline and despoiled the discipline of the Force. He was supposed to return from leave and report back to duty by 02.11.2011. Having failed to do so, he absented from attending to duties at the Unit in the State of Kerala from that date and did not even seek extension of leave or respond to the call up notices and thus, failed to show any interest to protect his job and continuously & unauthorisedly absented from attending to duties till his removal from service and thus literally abandoned the employment. Further, his past conduct is also incorrigible as is evident from the second article of charge which was held proved. He even tendered resignation by an application, dated 24.10.2011. Transfer is an incident of service. The petitioner, having got relieved himself from the home State and having reported to duty at the place of posting in Kerala, applied for Earned

Leave and failed to report back to duty on untenable grounds viz., he has to pursue his B.Ed regular course though it is impracticable to pursue such a course in view of his posting in the State of Kerala and deliberately overstayed the leave sanctioned and remained unauthorisedly absent from duty till his removal from service. In the decision in *Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu*¹, the Supreme Court reiterated the legal position in *State of Punjab v. P.L. Singla* [(2008) 8 SCC 469], wherein it was held as follows:

‘Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/ explanation for the absence.’

The contention that the petitioner was a constable/ sweeper and is a low class employee also cannot be countenanced in the facts and circumstances of the matter as it is well settled that sympathy syndrome has no place in matters of this nature. Further, the final payment of Provident Fund of Rs.2,24,631/- was made, accepted and utilized by the petitioner. Therefore, the said fact of payment and acceptance of the said terminal benefit, by means of a bilateral act attracts the principle enshrined in the doctrine of estoppel or waiver. As the terminal benefits are paid and are accepted, the rule of estoppel/ waiver would operate. On the above analysis, this Court finds that the punishment of removal from service is appropriate in the facts and circumstances of the case and that the petitioner is not entitled to reinstatement into service.

¹ (2014) 4 Supreme Court Cases 108

11.7. Before parting, it is necessary to deal with the scope and ambit of the jurisdiction of this Court in a matter of this nature. Therefore, it is trite to refer to the decision in *Union of India v. P. Gunasekaran*² wherein the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
 - (b) the enquiry is held according to the procedure prescribed in that behalf;
 - (c) there is violation of the principles of natural justice in conducting the proceedings;
 - (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
 - (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
 - (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
 - (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
 - (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
 - (i) the finding of fact is based on no evidence.
- Under Article 226/227 of the Constitution of India, the High Court shall not:
- (i). re-appreciate the evidence;
 - (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
 - (iii). go into the adequacy of the evidence;
 - (iv). go into the reliability of the evidence;
 - (v). interfere, if there be some legal evidence on which findings can be based.
 - (vi). correct the error of fact however grave it may appear to be;
 - (vii). go into the proportionality of punishment unless it shocks its conscience.

In the light of the above legal position and the facts peculiar to the case, which are already adverted to supra, merits and demerits of the rival contentions needed no exhaustive examination in this matter. However, this Court examined the matter, in detail. On such careful examination of the matter, in

² (2015) 2 SCC 610

detail, this Court finds that the findings in the departmental enquiry, which are based on adequate and admissible material evidence, are just and fair conclusions and such well reasoned findings do not warrant interference. The point is accordingly answered against the petitioner.

12. For the reasons afore-stated and on the above analysis, this Court finds that the writ petition being devoid of merit is liable to be dismissed.

13. In the result, the Writ Petition is dismissed. The respondent authorities shall now pay to the petitioner other terminal benefits, if any, due and payable as per Rules and procedures.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

15.06.2018
Vjl



M. SEETHARAMA MURTI, J