

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 170 of 2013

&

M.P. No. 1 of 2013

1. The Inspector General of
North Bengal Frontier,
Border Security Force,
Frontier Head Quarters,
BSF North Bengal,
Kadamtala Post,
Darjeeling District,
West Bengal.
 2. The Commandant,
47th Battalion,
BSF Maheshpur Rajganj,
West Bengal.
 3. The Assistant Commandant,
Frontier Head Quarters,
BSF North Bengal,
Frontier of Kadamtala Post,
Darjeeling District,
West Bengal.
PIN 784 011.
- ..Appellants/Respondents

सत्यमेव जयते
Vs.

Mr.D. Nethaji ..Respondent/Petitioner

Prayer: Writ Appeal against the order dated 08.11.2011 passed in W.P. No. 15265 of 2010. This Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 3rd respondent dated 14.09.2007 confirming the order of the 2nd respondent dated 09.04.2007 and quash the same and to direct the respondents to reinstate the petitioner in srvice as a constable No.986336948.

For Appellants :: Mr.Venkataswamy Babu
SPC for Govt. Of India
For Respondent :: Mr.G. Jeremiah

J U D G M E N T

(Judgment of the Court was delivered by K.K. SASIDHARAN,J.)

The respondent challenged the order dated 09.04.2007 on the file of the 2nd appellant and the related order passed by the 3rd appellant dated 14.09.2007 before the Writ Court in W.P. No. 15265 of 2010. The learned Single Judge, while confirming the order of dismissal, directed the appellants to treat the respondent as a dismissed employee, who had put in 10 years of service and grant him all necessary benefits. Feeling aggrieved by the said order, the appellants have come up with this intra-court appeal.

2. We have heard the learned Senior Panel counsel for the appellants and the learned counsel for the respondent.

3. There is no dispute that the respondent was dismissed from service pursuant to an enquiry conducted by the appellants. The respondent challenged the said order before the Writ Court in W.P. No. 15265 of 2010.

4. The issue before the learned Single Judge was whether the appellants were correct in dismissing the respondent from service on account of the alleged misconduct attributed against him. The learned Single Judge confirmed the order of dismissal, but however, by way of equity, a direction was issued to the appellants to treat the respondent as having being completed 10 years of service so as to make him eligible for pension and other benefits.

5. It is the case of the appellants that the respondent had put in only 7 years of service and as such he is not eligible for pension. It is not the case of the respondent that he had completed 10 years of service so as to make him eligible for pension. When it is made out that the respondent had put in only 7 years of total service, the learned Single Judge was not correct in directing the appellants to treat him as an employee, who had completed 10 years of service and pay him all the retirement benefits.

6. We are therefore of the view that the impugned order deserves to be set aside. Accordingly, the order dated 08.11.2011 is set aside. The writ petition in W.P. No. 15265 of 2010 is dismissed.

7. In the upshot, we allow the intra-court appeal. No costs. Connected M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

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+1cc to Mr.Venkataswamy Babu, Advocate SR.No.20239

SR(CO)
GMY(12/04/2019)

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