

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.29183 of 2011 and
M.P.Nos.2 & 3 of 2011

S.John Christopher

...Petitioner

Vs.

1. The Inspector General of WS,
CISF, Western Zone Headquarters,
CISF Complex, Sector-35 Kharghar,
Navi, Mumbai-10.

2. Central Industrial Security Force (CISF),
Chennai Port Trust Chennai-600 001,
Tamil Nadu.

3. The Senior Commandant,
CISF, Ministry of Home Affairs,
1st R.B.Barwaha,
Kargone, Madhya Pradesh

....Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 3rd respondent No.E30013/CISF/1st/RB/ Prob/Doc/2011-1452, dated 29.06.2011, quash the same and consequently, direct the respondents to permit the petitioner to join duty.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.K.Srinivasamurthy, SPC

ORDER

This Writ Petition has been filed by the petitioner, praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the orders of the 3rd respondent No.E30013/CISF/1st/RB/ Prob/Doc/2011-1452, dated 29.06.2011, quash the same and consequently, direct the respondents to permit the petitioner to join duty.

2. The petitioner was appointed as Constable in the Central Industrial Security Force on 18.5.2010. His training in the Force had commenced from 31.05.2010. At the time when he joined

the Force, the petitioner submitted attestation form by filling up all the details including the certificate of character. On completion of the training, the petitioner was appointed in the Force on probation for a period of two years from the date of his appointment. While he was working in the Force, suddenly an order was issued by the third respondent on 29.6.2011, terminating his services from the Force in pursuance of the provisions of the Central Security Force Rules, 2001 as mentioned in the order. According to the said order, the petitioner had furnished false/incorrect information in the attestation form at the time of his appointment as it was later found that he was involved in a criminal case registered in Crime No.374/2009 for the offences punishable under Sections 147, 148, 294(b), 324 and 506(ii) IPC on the file of Kulasekaram Police Station and he was arrayed as 10th accused in C.C.No.106/10 and he was fined Rs.1200/- as penalty by the learned Judicial Magistrate Court, Padmanabhapuram vide judgment dated 22.03.2010.

3. As against the order of the termination, the petitioner submitted a detailed representation to the first respondent on 4.7.2011. The first respondent vide order dated 19.08.2011 rejected the appeal that no interference with the termination order was called for. Against the order of termination passed by the 3rd respondent dated 29.6.2011, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner would submit that the petitioner, while filling up the attestation form, had inadvertently filled up Column No.12 negatively stating that he was not involved in any crime and that he has not been prosecuted nor has been fined nor convicted etc. in respect of the questions as found in Clauses (a) to (f) to Column No.12 while, in fact, the petitioner was found convicted and directed to pay a penalty of Rs.1200/- by the jurisdictional Magistrate.

5. The learned counsel appearing for the petitioner would submit that since the petitioner was not conversant in Hindi language, he had filled up the form as guided by one of his colleagues and committed the mistake unintentionally. In fact, the learned counsel would submit that as Annexure (iv) to the attestation form, a certificate of character was enclosed in which, it was clearly mentioned about the case and conviction of the petitioner in the case mentioned in the termination order. Therefore, there was no intention or motive on the part of the petitioner to commit any fraud or misrepresentation in order to earn appointment in the Force.

6. The learned counsel would also rely on a decision of the Hon'ble Supreme Court reported in "(2016) 8 SCC 471 (Avtar Singh

versus Union of India and others)" wherein, the learned counsel would draw the attention of this Court to the relevant portion of the order, wherein the Hon'ble Supreme Court, in respect of suppression or false information being furnished by the potential candidate in selection, has summarized their conclusion in para 38, wherein, particularly, he would draw reference to paragraph 38.4 and 38.4.1 which are extracted hereunder:

"38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted.

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse."

7. The learned counsel would also rely on a decision of the Hon'ble Supreme Court reported in "(2011) 4 MLJ 1006 (SC) (Commissioner of Police and others versus Sandeep Kumar)" , wherein, it has been held as under:

"Cancellation of candidature on ground of minor indiscretions committed by youth is illegal and such minor misdeeds have to be condoned rather than brand them as criminals for the rest of their lives."

8. Therefore, the learned counsel would submit that the petitioner after all was convicted and directed to pay Rs.1200/- and he was only arrayed as 10th accused in the criminal case. In fact, the learned counsel would also draw the attention of this Court to the judgment of the Criminal Court where no overt act of violence was attributed to the petitioner herein in a private dispute which ended in framing of the criminal case, which unfortunately led to conviction and this matter was also admittedly revealed by the petitioner in Annexure (iv) to attestation form at the time of appointment. Therefore, the question of giving false information or suppression of fact did not arise in this case. In any case, the learned counsel would submit that a minor discretion during his young age cannot result in snatching away of his valuable employment as member of the Force, particularly when the petitioner was convicted and only directed to pay a fine of Rs.1200/-, which fact ought to have been considered by the authorities before taking extreme

action of terminating him from service. At the same time, the learned counsel would point to the fact that before resorting to termination, there was no enquiry conducted and therefore, on this ground, the order of termination is liable to be interfered with.

9. Per contra, Mr.Srinivasamurthy, learned counsel appearing for the respondents would strongly oppose any grant of relief to the petitioner on the ground that the petitioner before his appointment was involved in a serious offence of causing injury to the victim which landed in being convicted by the criminal Court. The fact of the matter is that the petitioner was convicted by the competent criminal Court by judgment, dated 22.03.2010 in C.C.No.106 of 2010. Merely because of the fact that he was only directed to pay a fine, does not absolve him of conviction handed over to him by the Criminal Court. According to the learned counsel for the respondents, in Column No.12 of the attestation form, all the questions, viz., (a) to (f) were filled up by the petitioner giving negative answers, which clearly amounted to suppression of his involvement in criminal case and his conviction. Such conduct of the petitioner cannot be construed to be as a minor indiscretion committed by him particularly when higher standard and discipline is expected in a uniformed service, like CISF.

10. The learned counsel for the respondents would also submit that the relevant para as referred to by the learned counsel in "Avtar Sing case", the Hon'ble Supreme Court has only held that petty offences like shouting slogans may be ignored by condoning the lapses and that cannot be equated with that of the case of the petitioner where he was involved in offences attracting several provisions of IPC as mentioned in the termination order and also as convicted by the Criminal Court. In regard to the other decision cited by the petitioner, he would submit that the case where a criminal case was registered against the employee therein and ultimately the same was compromised and he was acquitted, whereas, in this case, the petitioner suffered clear conviction by the Criminal Court and therefore, he may not be allowed to take advantage of certain charitable observation made by the Hon'ble Supreme Court. Therefore, he would urge this Court to dismiss the Writ Petition.

11. Heard the learned counsel for the petitioner and the respondents and perused the pleadings, materials and decisions placed on record.

12. No doubt the petitioner was convicted by the Criminal Court in C.C.No.106 of 2010 dated 22.03.2010 and was directed to pay of Rs.1200/- for the offences punishable under Sections 147, 148, 294(b), 324 and 506(ii) IPC as he being 10th accused in the case. However, the conviction did not result in the petitioner

being sentenced to imprisonment. The learned trial Court has merely directed the petitioner to pay fine of Rs.1200/- on the basis of the conviction recorded by it and this was the crucial factor ought to have weighed by 3rd respondent or by 1st respondent as the case may be while considering the request of the petitioner for his retention in service.

13. As rightly contended by the learned counsel for the petitioner, attestation forms that were submitted at the time of his appointment by way of Annexure (iv) enclosed, would clearly disclose the involvement of the petitioner in the criminal case and the conviction recorded by the trial Court. Therefore, it is clearly established that the petitioner had no intention whatsoever to give false information or cause suppression of any information in order to earn appointment in the force. Though it is categorically established by the respondents that the petitioner had filled in (a) to (f) to Column No.12 in the application form negatively by suppressing his involvement in the criminal case, from the totality of the circumstances, it should be taken that such act on the part of the petitioner could not have been intentional or deliberate in order to misrepresent to the authorities concerned for the purpose of gaining employment when Annexure (iv) to the attestation form clearly revealed the petitioner's involvement in the crime and his conviction, merely filling up of few questions in the attestation form wrongly, could not be construed that the petitioner had willfully and deliberately suppressed the material information or given false information. In any event, it appears from the judgment given by the criminal Court that the petitioner was only arrayed as 10th accused in the criminal case and there appears to be no overt act attributed to him and probably that was why the criminal Court thought it fit to direct him to pay only a fine of Rs.1200/- and not sentenced him to imprisonment. In such circumstances, the authorities who took action against the petitioner, ought to have considered that part of the criminal Court's conviction as mitigating circumstance in favour of the petitioner herein. Unfortunately, the authority took a rigid view in the matter without appreciating the totality of the circumstances and terminated the petitioner from service.

14. In fact, an appeal has been filed by the petitioner to the first respondent on 4.7.2011 in which the petitioner has clearly mentioned under what circumstances, he was implicated in the criminal case. In fact, the petitioner appears to have paid fine amount of Rs.1200/- immediately without foreseeing the implication of such conduct in future. In fact, in the appeal he stated that he had replied all the questions in Column No.12 in the negative as per the instructions in Hindi by the officer

concerned. In any case, from the conduct of the petitioner and circumstances of the case, benefit of doubt ought to have been given to the petitioner particularly in view of revelation of his involvement in criminal case and record of conviction in Annexure (iv) to the attestation form itself. Unfortunately, 1st respondent who considered the appeal has gone about to discharge his duties mechanically and rejected the appeal as a matter of-course. When an officer is entrusted with the power to deal with such claims and request in the realm of the fact that the petitioner had earned the employment, which had been snatched away, it was incumbent upon the authority to consider all the circumstances of the case before coming to the conclusion against the employee concerned. A mere solitary mistake committed by a person cannot result in the person losing his hard earned job in the force unless the person concerned is found to have involved in serious acts of misconduct while earning his employment in the force and aberration of this nature on the part of the petitioner herein ought not to have been formed the basis for such a severe action taken by 3rd respondent in terminating his services. As regards the objection by the petitioner that no enquiry was proceeded before he was terminated from service, the same was answered by the respondents that in view of the fact that the petitioner was serving as a probationer, no enquiry was necessary. This Court is of-course in agreement with such submission that no detailed enquiry was necessary for putting an end to the career of probation as his probation was not found to be satisfactory. At the same time, when an order of termination is slapped against the petitioner, it is the duty of 3rd and 1st respondents to ensure that fair play and equity must weigh with the authorities while taking such harsh action against the member of the force. In this case, this Court finds that the filling up of questions negatively by the petitioner cannot put himself in such an irretrievable position of his losing his hard earned job. Therefore, this Court is of the considered view that the impugned termination order dated 29.6.2011 is liable to be interfered with.

15. For the above said reasons, the impugned order dated 29.6.2011 is hereby set aside and the petitioner is entitled to be reinstated in service with continuity of service and other attendant benefits. This Court makes it clear that on being reinstated, the petitioner is not entitled to back wages for the period of his non-employment on the principle of 'no work, no pay'. The respondents are directed to implement the order of this Court, within a period of 8 weeks from the date of receipt of a copy of this order.

16. The Writ Petition is allowed on the above terms. No costs. Consequently, connected MPs are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector General of WS,
CISF, Western Zone Headquarters,
CISF Complex, Sector-35 Kharghar,
Navi, Mumbai-10.

2. Central Industrial Security Force (CISF),
Chennai Port Trust Chennai-600 001,
Tamil Nadu.

3. The Senior Commandant,
CISF, Ministry of Home Affairs,
1st R.B.Barwaha, Kargone, Madhya Pradesh

+1 CC to Mr.K.P.Narayanakumar, Advocate sr 28363.

+1 CC to Mr.K.Srinivasamurthy, Advocate sr 28717,

WP.No.29183 of 2011

GJII(CO)
SP(22/04/2019)

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