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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4969 of 2019

and

W.M.P.No.5674 of 2019

D.Vincent Thomas,
Commandant,
IRLA-4884,
CG Central Reserve Police Force,
Avadi, Chennai - 600 004.

.. Petitioner

Vs.

1.Union of India,
Represented by Secretary to Home Ministry of India,
North Block, Central Secretariat,
New Delhi - 110001.

2.Director General of Police,
Headquarters, Central Reserve Police Force,
Block No.1, Kudirya Karylaya Parisar,
Lodhi Road, New Delhi - 110003.

3.The Special Director General,
South Zone Headquarters,
Central Reserve Police Force,
Jubilee Hills, Hyderabad,
Telangana - 500005.

4.The Director of Accounts,
FAO - Central Reserve Police Force,
No.14, PSP.No.2-Rohini - Sector-23
New Delhi-110023.

5.Deputy Inspector General of Police
(Pers) Dte/DIG (Welfare) DTE
Headquarters, Central Reserve Police Force,
Block No.1, Kudirya Karylaya Parisar,
Lodhi Road, New Delhi - 110003.

6.Deputy Inspector General of Police,
Group Centre, Central Reserve Police Force,
Avadi, Chennai - 600 065.

.. Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Declaration, declaring therein that Rule 43(a) of the Central Reserve Police Force Rules, 1955 together with the corresponding Rule 12 of the Central Reserve Police Force Group "A" (General Duty) Officers Recruitment Rules, 2001 amended in 2010, reading as "other officers holding posts lower than the Deputy Inspector General shall retire from service on the afternoon of the last day of the month in which they attain the age of fifty seven years" as unconstitutional, discriminatory, unjust, violative of Articles 14 and 16 of the Constitution together with a consequential direction to the respondents to amend the both the rules referred to above, by way of enhancing the superannuation age from the present 57 years to 60 years for such 'other officers', thus ensuring uniformity/non-discrimination in the aforesaid Rules.

For Petitioner : Mr.A.Irudayam

For Respondents: Ms.S.S.Meenakumari
Senior Central Government Standing
Counsel.

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Instant writ petition has been filed for a Writ of Declaration, declaring that Rule 43(a) of the Central Reserve Police Force Rules, 1955 together with the corresponding Rule 12 of the Central Reserve Police Force Group "A" (General Duty) Officers Recruitment Rules, 2001 amended in 2010, reading as "other officers holding posts lower than the Deputy Inspector General shall retire from service on the afternoon of the last day of the month in which they attain the age of fifty seven years" as unconstitutional, discriminatory, unjust, violative of Articles 14 and 16 of the Constitution together with a consequential direction to the respondents to amend the both the rules referred to above, by way of enhancing the superannuation age from the present 57 years to 60 years for such 'other officers', thus ensuring uniformity/non-discrimination in the aforesaid Rules.

2. Supporting the prayer sought for, Mr.A.Irudayam, learned counsel for the petitioner submitted that, the petitioner has sent a representation, dated 12.02.2019 to the Director General of Police, Head Quarters, Central Reserve Police Force, New Delhi, the 2nd respondent herein, requesting him, to allow the petitioner to continue in service till 60 years.



3. Ms.S.S.Meenakumari, learned Senior Central Government Standing Counsel, was put on notice.

4. When a similar issue came up on 15.07.2019 in WP Nos.17143 and 18294 of 2019, this Court has dealt with the above issue and allowed the writ petitions, as hereunder.

"26. From the Office Memorandum No.143020/30/2019- Pers II (3459497), Ministry of Home Affairs (Police -II Division), Government of India, New Delhi dated 02.07.2019, it is evident that only in cases where interim stay has been granted by the Hon'ble High Court, officers / personnel, were retained in service beyond the age of 57 years of age and CAPFs are directed to implement the orders provisionally, subject to the final decision of the Review Petition.

27. Rule 43 of the CRPF Rules, has been struck down by the Delhi High Court and the decision has been confirmed by the Hon'ble Supreme Court. Orders have been implemented, wherever stay has been granted.

28. Under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all Courts within the territory of India. Decision to implement the orders of the Hon'ble Supreme Court, only to those officers / personnel, where interim stay has been granted by the Hon'ble Court to retain them in service beyond the age of 57 years of age, CAPFs provisionally, subject to the final decision of the Review Petition, is not the correct approach and that in the light of the binding precedent of the Hon'ble Supreme Court, the Union of India, represented by its Secretary to the Government, Department of Home Affairs, New Delhi, who is a party respondent in all the instant writ petition before us, is bound to implement the orders of the Hon'ble Supreme Court to all those similarly situated persons when the provision has been struck down. Restriction of implementation of the decision of the Hon'ble Supreme Court, only to those, who have obtained stay, cannot be appreciated.

29. The issue as to whether equally placed persons should be treated alike without any discrimination is no longer res integra. Useful reference can be made to the following decisions,

(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons



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similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(ii) In Govind Ram Purohit v. Jagjiwan Chandra reported in 1999 SCC (L & S) 788, at paragraph 3, the Hon'ble Supreme Court held thus:

"3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned."

(iii) In State of Karnataka v. N. Parameshwarappa reported in 2003 (12) SCC 192, the Hon'ble Supreme Court, at paragraph 8, held thus:

"8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case



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wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings."

(iv) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(v) In State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others reported in 2015 (1) SCC 347, wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

30. To fortify our view, we also rely on a passage from the judgment of the Hon'ble Supreme Court in Amrit Lal Berry Vs. Collector of Central Excise, New Delhi and Others, reported in (1975) 4 SCC 714, wherein Hon'ble Supreme Court observed as hereunder.

"24... We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

31. We have gone through the judgment of the Delhi High Court in Dev Sharma Vs. Union of India & Others, confirmed by Hon'ble Supreme Court in SLP (C) No.11944 of 2019.

32. Facts and law pleaded are one and the same. Decision of the Hon'ble Supreme Court squarely applicable to the writ petitions.

33. Following the decision made in SLP No.11944 of 2019 dated 10.05.2019, impugned provisions are struck down.



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34. Petitioner in WP No.17143 of 2019, was working as an Assistant Commandant (M), in Group Centre, CRPF, Avadi. Petitioner in WP No.18294 of 2019, was working as Inspector / GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai. Consequent to striking down of the Rule 43(a) of CRPF Rules, 1955, respondents are directed to reinstate the petitioners in service as Assistant Commandant (M), in Group Centre, CRPF, Avadi and Inspector / GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai, respectively, with continuity of service, within a period of one week from today.

35. With the above directions, writ petitions are allowed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed."

5. Review Petition filed in Review Petition (C) No.1555/2019 in S.L.P.(C) No.11944/2019, in the matter of Union of India vs. Dev Sharma, has been dismissed on 16.07.2019, by the Hon'ble Supreme Court, as hereunder:-

"Application for hearing in open Court is rejected.

Having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record, warranting reconsideration of the order impugned.

The Review Petition is, accordingly, dismissed."

6. Now, it is brought to our notice, that the review petition has been dismissed, by the Hon'ble Supreme Court, can the respondents, still oppose implementation of the orders of the Hon'ble Supreme Court, prima facie, in terms of Article 141 of the Constitution of India. Our answer is clear 'No'.

7. Implementation of Dev Sharma's case, according to the respondents, was subject to the review petition. When the same has been dismissed by the Hon'ble Supreme Court on 16.07.2019, we are of the view that under Article 141 of the Constitution of India, respondents are bound to implement the order of the Hon'ble Supreme Court, and cannot and should not be permitted to canvass on merits. The only contention raised by the respondents, for not implementing the orders of the Hon'ble Supreme Court, is that review petition was pending.



8. Following the abovesaid orders, the instant writ petition is allowed and the respondents are directed to allow the petitioner to continue in service till he attains the age of 60 years and accordingly orders be passed to that effect within one week, from the date of receipt of a copy of this order. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Home Ministry of India,
Union of India,
North Block, Central Secretariat,
New Delhi - 110001.
- 2.Director General of Police,
Headquarters, Central Reserve Police Force,
Block No.1, Kudirya Karylaya Parisar,
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- 3.The Special Director General,
South Zone Headquarters,
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