

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.40493 of 2015

Mrs.K.Subha

.. Petitioner

Vs.

1. The Union of India
Represented by its Secretary,
Home Affairs, New Delhi.
2. The Director General of Police,
Central Reserve Police Force,
NGO Complex, Lohi Road, New Delhi.
3. The Additional Director of Police,
SouthZone, Central Reserve Police Force,
Telangana, Hyderabad - 05.
4. The Inspector General of Police,
Central Reserve Police Force,
Gayathri Hills, Southern Sector,
Hyderabad, Telangana State.
5. The Deputy Inspector General of Police,
Central Reserve Police Force,
Avadi, Group Centre, Chennai- 600 065.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third, fourth, and fifth respondent in their Order in No.R.XIII-48/2014-SZ- LEGal dated 06.07.2015, No.R.XIII-49/2014-Adm-7 dated 16.11.2014 and No.P. VIII-6/2014-EC(2) dated 28.07.2014 respectively and quash the same and further direct the respondents to reinstate the petitioner back in service with all resultant benefits including continuity of service, pecuniary benefits and other such benefits.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mrs.S.Meenakumari

O R D E R

This Writ Petition has been filed to call for the records of the third, fourth, and fifth respondent in their Order in No.R.XIII-48/2014-SZ- LEGAL dated 06.07.2015, No.R.XIII-49/2014-Adm-7 dated 16.11.2014 and No.P. VIII-6/2014-EC(2) dated 28.07.2014 respectively and quash the same and further direct the respondents to reinstate the petitioner back in service with all resultant benefits including continuity of service, pecuniary benefits and other such benefits.

2. The writ petitioner has been appointed as an Assistant Sub Inspector in the respondent Department on 05.06.1991 and thereafter, she was promoted as Sub Inspector. While she was working as Sub Inspector in CRPF Centre at Avadi, she made a representation to the respondent requesting to sanction one year child care leave in accordance with CCS [Leave] Rules 1972. The aforesaid request was rejected by the fifth respondent on 08.09.2012. Challenging the same, the writ petitioner has filed a writ petition in W.P.No.26690 of 2012. This Court, after considering the submissions of the parties, by an Order dated 03.10.2012 has set aside the impugned Order dated 08.09.2012 and the matter was remitted back to the first respondent to consider the claim of the petitioner in the light of the medical records and pass appropriate Order in this matter. Pursuant to the above said Order, the fifth respondent granted 30 days leave from 20.10.2012 to 18.11.2012. Thereafter, the writ petitioner filed a writ petition in W.P.No.310503 of 2012 to extend child care leave from 20.10.2012 to 19.10.2013 for one year. After hearing both the parties, this Court passed the following Order :

"11. When once there was a direction by this Court to consider the petitioner's request in the light of the certificates produced by her and that the Order refuting to grant leave was set aside and the first request having considered the same, cannot make adhoc sanction considering a part of the request of the petitioner and denying the rest of the part without any justification. The reason that the other employees may seek for such leave is an irrelevant consideration in deciding the case of the petitioner. The petitioner has admittedly produced the certificate from the well known psychiatrist that her child was suffering from Bi

Polar disorder and undergoing treatment. She is a girl child aged 15 years and she requires the attention of the petitioner. Therefore, sanctioning of leave only by considering the partial request cannot be justified.
"

3. According to the learned counsel for the petitioner, pursuant to the above Order, the following charges have been framed against the petitioner :

ARTICLE - I

That, the said No.911550514 SI (M) K.Subha of GC CRPF Avadi, while functioning as Sub Inspector (M), committed an act of misconduct/disobedience of orders/neglect of duties in her capacity as a member of the Force under section 11(1) of CRPF Act 1949, in that she did not proceed to ATC, CRPF, Ranga Reddy on attachment duty on 03/09/2012 in compliance to DIGP, GC CRPF Avadi office order No.T.IX-13/2012-EC.3 dated 01/09/2012, which is prejudicial to good order and discipline of the Force.

ARTICLE-II

That during the period and while functioning in the aforesaid office the said No.911550514 SI (M) K.Subha of GC, CRPF, Avadi committed an act of misconduct in her capacity as a member of the Force under section 11 (1) of CRPF Act 1949, in that, she absented from duties w.e.f. 3/9/12 (FN) to 19/10/12 without any permission/sanction of the competent authority and without any sufficient cause, which is prejudicial to good order and discipline of the force.

ARTICLE - III

That during the aforesaid period and while functioning in the aforesaid office, the said No. 911550514 SI (M) K.Subha of GC, CRPF, Avadi committed an act of misconduct/disobedience of orders in her capacity as a member of the Force under section 11(1) of CRPF Act, 1949, in that, she disobeyed the lawful orders of DIGP (HOO)/Senior Officers of GC CRPF, Avadi, when she was directed to report back for duty at GC Avadi/to proceed on attachment duty/to report before DIGP, C.H., CRPF, Avadi for second medical opinion etc which is prejudicial to good order and discipline of the Force.

Based on the aforesaid charges, the respondent has passed the impugned Order by imposing punishment of compulsory retirement from service with effect from 28.11.2014. Challenging the above said impugned Order, the present writ petition has been filed.

4. According to the learned counsel for the writ petitioner, the writ petitioner's leave for the period from 03.09.2012 to 20.12.2012 was submitted on the ground that her daughter was suffering from psychological problem. It is submitted by the learned counsel for the writ petitioner that this Court sanctioned leave to the writ petitioner from 20.10.2012 to 18.11.2012 18.12. Thereafter, the writ petitioner filed a writ petition in W.P.No.310503 of 2012 to extend child care leave from 20.10.2012 to 19.10.2013 for one year. Pursuant to the order passed in the above writ petition, aforesaid charges have been framed against the petitioner and subsequently, the respondent passed the impugned Order by imposing compulsory retirement with immediate effect with the penalty of reduction of 1/3 of pension is not sustainable and without any justification, arbitrary and the same is liable to be quashed.

5. The learned standing counsel appearing for the respondents filed counter affidavit and based on the statement in the counter stated that the charge memo has been framed against writ petitioner and the writ petitioner was asked to appear for enquiry. The petitioner neither appeared for the enquiry nor submitted any explanation. Therefore, the respondent has passed the impugned Order by imposing punishment against the writ petitioner. Further, the learned counsel for the respondent has stated that the Order passed by this Court for granting sanction of leave to the petitioner for 11 months child care leave in addition to 30 days from 20.10.2012 to 18.11.2012. But the instant charge memo has been framed against the writ petitioner for the period from 03.09.2012 to 19.10.2012 and for the aforesaid period, the writ petitioner has not obtained any sanction for the leave period. Therefore, the above period is unauthorised absence from attending duty. Therefore, the Order passed by the respondent is perfectly correct and do not need any interference.

6. Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondents.

7. The petitioner made representation to the fifth respondent on 08.08.2012 requesting sanction of one year child care leave in accordance with CCS [Leave] Rules 1972. But the aforesaid request was rejected by the fifth respondent on 08.09.2012. By challenging the said Order, W.P.No.26690 of 2012 has been filed and this Court by Order dated 03.10.2012 set aside the Order directing the respondent to consider the request of the writ petitioner afresh and pass appropriate Orders in the light of the medical records to be produced by the petitioner

within a period of two weeks. Instead of granting one year child care leave to the petitioner, the first respondent has simply granted 30 days leave to the petitioner. Hence, the writ petitioner filed W.P.No.31503 of 2012. In the aforesaid writ petition, by Order dated 04.03.2013, this Court has passed the Order as follows :

"11. When once there was a direction by this Court to consider the petitioner's request in the light of the certificates produced by her and that the Order refuting to grant leave was set aside and the first request having considered the same, cannot make adhoc sanction considering a part of the request of the petitioner and denying the rest of the part without any justification. The reason that the other employees may seek for such leave is an irrelevant consideration in deciding the case of the petitioner. The petitioner has admittedly produced the certificate from the well known psychiatrist that her child was suffering from Bi Polar disorder and undergoing treatment. She is a girl child aged 15 years and she requires the attention of the petitioner. Therefore, sanctioning of leave only by considering the partial request cannot be justified."

11. When once there was a direction by this Court to consider the petitioner's request in the light of the certificates produced by her and that the Order refuting to grant leave was set aside and the first request having considered the same, cannot make adhoc sanction considering a part of the request of the petitioner and denying the rest of the part without any justification. The reason that the other employees may seek for such leave is an irrelevant consideration in deciding the case of the petitioner. The petitioner has admittedly produced the certificate from the well known psychiatrist that her child was suffering from Bi Polar disorder and undergoing treatment. She is a girl child aged 15 years and she requires the attention of the petitioner. Therefore, sanctioning of leave only by considering the partial request cannot be justified.

12. Under these circumstances, the respondents are directed to grant leave to the petitioner as requested by her. Though this Court is conscious of the fact that the Court cannot sit in the appeal over the decision of the administrative authority, but the respondents persistently defied the Orders passed by this Court. Hence, there is no other option except to interfere with the arbitrary exercise of power by

the respondents.

13. In the light of the above, the writ petition will stand allowed to the extent indicated above. No costs."

8. On a perusal of the charges framed against the petitioner, it is seen that the writ petitioner was absent from 30.09.2012 to 19.10.2012 without any sanction or permission from the competent authority. It is an admitted fact that writ petitioner neither appeared for the enquiry nor submitted any explanation which resulted in passing of the impugned Order by imposing punishment of compulsory retirement from the service from 28.07.2014 with penalty of reduction of 1/3 of pension. On a perusal of the Orders passed by this Court in W.P.No.31503 dated 04.03.2013 wherein this Court has considered the relevant rules in para 10 of the Order. It is necessary to extract the following paragraphs :

"10. The relevant rule relating to child care under the All India Services (Leave) Rules, 1955, may be usefully reproduced below. Rule 18(D) was introduced with effect from 21.09.2011. The child care leave is given to a female member of the service. Rule 18(D) reads as follows :

"18(D) Child Care Leave to a female member of the Service - (1) A female member of the Service having minor children below the age of eighteen years may be granted child care leave by the competent authority for a maximum of 730 days during her entire service for taking care of upto two children.

(2) During the period of child care leave, such member shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(3) Child Care leave may be combined with leave of the kind due and admissible.

(4) Notwithstanding the requirement or production of medical certificates contained in sub-rule (i) of Rule 13 or Rule 19, leave of the kind due and admissible (including commuted leave not exceeding 60 days and leave not due) upto a maximum of one year if applied for, be granted in continuation of child care leave granted under sub rule (1).

(5) Child care leave may be availed in more than one spell.

(6) Child Care leave shall not be debited against the leave account of the member of the

Service."

9. The respondent has preferred an appeal against the Order in W.P.No.24643 of 2013 in W.A.No.2208 of 2013 and the same was subsequently dismissed as infructuous in view of the punishment Order imposed against the petitioner. Hence, the Order of this Court has become final. Further, it is seen that the petitioner was on leave from 03.09.2012 to 19.10.2012. The above period has been treated as unauthorised absence and charges have been framed against the petitioner. Further it is to be noted that in an earlier occasion, this Court, accepting the contention of the petitioner, has directed the respondents therein to consider the request of the petitioner for granting one year child care leave to the petitioner on the basis of the medical records produced by the petitioner and the respondents subsequently sanctioned leave for a period of 30 days from 20.10.2012 to 18.11.2012. That being the fact, having accepted the genuineness of the petitioner and granted child care leave to the petitioner for the period from 20.10.2012 to 18.11.2012, not accepting the petitioner's absence on the same ground for the earlier period as genuine and imposing a punishment of compulsory retirement from the service from 28.07.2014 with penalty of reduction of 1/3 of pension is highly arbitrary and without any justification. Therefore, imposing such a major punishment is shocking to the judicial conscious.

10. At this stage, it is relevant to refer the Order of this Court in P.Murugesan Vs. State of Tamilnadu, rep. by its Secretary to Government Home (Police) Department, Secretariat, Chennai and others reported in 2011 SCC OnLine Mad 1270, wherein, this Court following the dictum of the Honourable Apex Court, this Court has held as follows :

"14. The Honourable Supreme Court in the decision reported in AIR 2009 SC 2458(Jagdish Singh vs. Punjab Engineer College), though not in a disciplined Force, modified the punishment of dismissal of a person by ordering reinstatement without backwages with continuity of service. Same view was taken by the Honourable Supreme Court of India in the decision reported in AIR 2004 SC 2131 : (2004) 4 SCC 560 (Bhagwana Lal Arya vs. Commissioner of Police, Delhi). In the decision reported in 2009 8 MLJ 460(SC) (Chairman cum Managing Director, Coal India Limited and Another vs. Mukul Kumar Choudhuri and others), the Honourable Supreme Court considered the proportionality of punishment and held as follows:

"24. Dealing with the question of proportionality with regard to punishment in disciplinary matters, the Court said:

"32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither *Wednesbury* nor *CCSU* tests are satisfied. We have still to explain "*Ranjit Thakur v. Union of India* (Supra)."

33. In *Ranjit Thakur v. Union of India* (Supra) this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, *Wednesbury* and *CCSU* tests were satisfied. In another case, in *B.C.Chaturvedi v. Union of India* AIR 1996 SC 484: (1995) 6 SCC 749: 1996-I-LLJ-1231 a three-Judge Bench said the same thing as follows at p.1237 of LLJ:

"18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

11. Similar view has been taken by the Honourable Apex Court in *S.K.Giri Vs. Home Secretary, Ministry of Home Affairs and others* reported in 1995 Supp (3) SCC 519, wherein it has been held that punishment of removal from service as "severe and disproportionate" and set aside the Order and Ordered reinstatement of the employee stating that it was disentitled to arrears of salary from the date of removal upto 31st December,

1994. In another judgment in Girish Bhushan Goyal Vs. BHEL and another reported in 2014 (1) SCC 82, the Honourable Apex Court by holding that the punishment of dismissal from service is disproportionate, substituted it with the punishment of deduction of one year's increment from the entitlement of the employee. Similarly, in Surendra Prasad Shukla Vs. State of Jharkhand and Others reported in 2011 (8) SCC 536, the Apex Court has found that the punishment of dismissal from service as shockingly disproportionate and reduced the punishment from dismissal to compulsory retirement. Further, in Chief Executive Office, Krishna District Cooperative Central Bank Limited and another Vs. K.Hanumantha Rao and another reported in 2017 (2) SCC 528, the Honourable Supreme Court has been held that the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp discretion of the public authority.

12. In the light of the decisions of the Honourable Supreme Court, when the present case is analysed, it is seen that the petitioner initially applied child care leave for a period of one year on the ground that her daughter was suffering from psychological problems. As the same was rejected, the petitioner filed writ petition in W.P.No.26463 of 2013, pursuant to the Order passed by this Court dated 03.10.2012, the fifth respondent has sanctioned leave only for a period of 30 days from 20.10.2012 to 18.11.2012 and by an Order dated 04.03.2013 in W.P.No.31503 of 2012, the writ petition was allowed by setting aside the Order of rejection of the first respondent and the respondent was directed to grant leave to the writ petitioner for the subsequent period of 11 months. Prior to the above said period, the petitioner was on leave from 03.09.2012 to 19.10.2012 and the said period has been treated as unauthorised absence and charges were framed and a punishment of compulsory retirement from the service was awarded from 28.07.2014 with a penalty of reduction of 1/3 of pension, imposed on the petitioner, is excessive. While the authorities have granted child care leave to the petitioner in a subsequent Order and imposing a punishment of compulsory retirement from the service for the period from 28.07.2014 with a penalty of reduction of 1/3 pension is shocking to the judicial conscience and the said punishment has to be reconsidered by the authorities concerned. Therefore, in the light of the ratio laid down by the Honourable Apex Court cited supra, this Court is inclined to pass the following Order :

[i] The impugned Order passed by the respondent is quashed and remitted back to the fifth respondent to

reconsider the punishment against the petitioner and to pass appropriate Order after providing further opportunity to the petitioner.

[ii] It is open to the writ petitioner to submit further explanation for reconsidering the penalty imposed by the fifth respondent, if so advised, within a period of two weeks from the date of receipt of a copy of this Order.

[iii] The fifth respondent shall consider the said explanation of the writ petitioner, in accordance to law, and pass appropriate Order and complete the entire exercise within a period of twelve (12) weeks from the date of receipt of a copy of this Order.

13. The Writ Petition is allowed with the above terms. No cost.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vrc

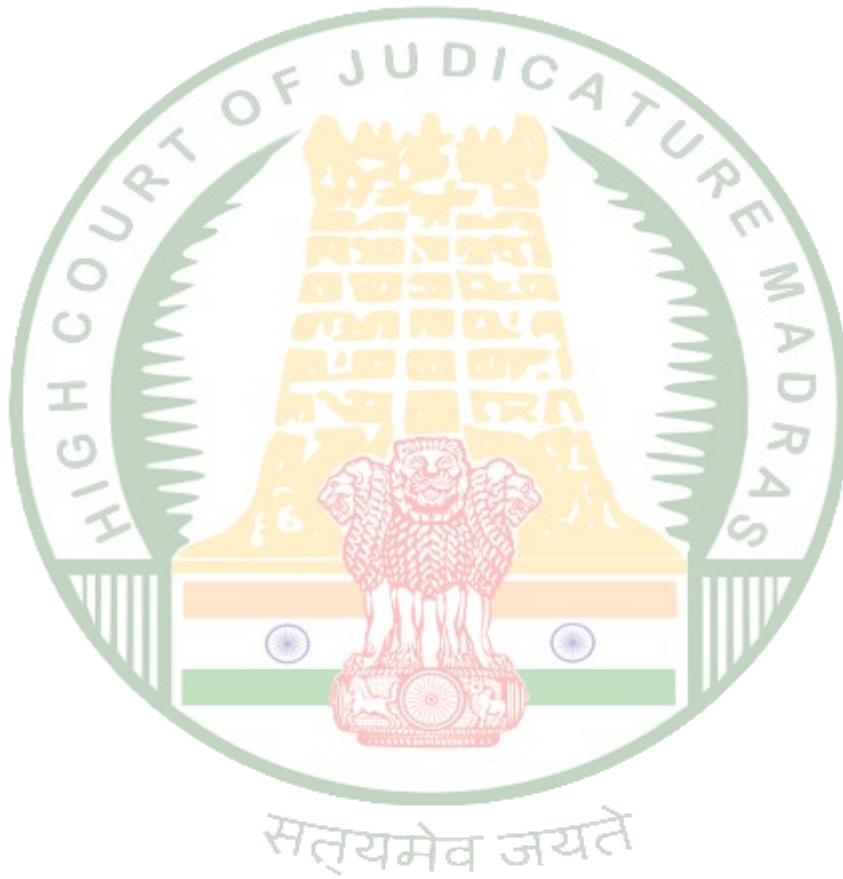
To

1. The Secretary, Union of India
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5. The Deputy Inspector General of Police,
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Avadi, Group Centre, Chennai- 600 065.

+1cc to M/s.S.Meenakumari, Advocate SR.4071
+1cc to Mr.D.Rajagopal, Advocate SR.3842

W.P. No.40493 of 2015

JP (CO)
CB (13/02/2020)



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