

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NO.23735 of 2020
and
WMP Nos.23610 & 23611 of 2019

Siva Lakshmi

... Petitioner

-Vs-

1. Union of India
Rep. by its Secretary to the Government
Department of Home Affairs, New Delhi
2. The Director General of Police
O/o. Directorate General
CRPF, Block No.1
CGO Complex, Lodhi Road
New Delhi 110 003.
3. The Special Director General of Police
South Zone, CRPF
Chandrankutta, Hyderabad 500 005.
4. The Inspector General of Police
Southern Sector CRPF
Road No.10 C, Jubilee Hills,
Near MLA / Mps Colony
Gayathri Hills, Hyderabad 500 033.
5. The Deputy Inspector General of Police
Group Centre, CRPF
Avadi, Chennai 600 065.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, order or direction and in particular a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 22.07.2019 terminating the petitioner from service under the provisions contained in Rule-6 of CCS (Temporary Service) Rules, 1965 by the fifth respondent in proceedings No.D.II.01/2019-EC.II.GC.AVD and quash the same and directing the respondents to reinstate the petitioner into service by giving alternative job like

administrative staff as advised by the Medical Superintendent of Government, Pulmonary Disease Hospital, Tambaram.

For Petitioner : Mrs. R. Meenakshi

For Respondents : Ms. Sunitha Kumari
Senior Standing Counsel Central
Government.

ORDER

This Writ Petition has been filed challenging the impugned order passed by the fifth respondent by his proceedings dated 22.07.2019 and for a direction to the respondents to reinstate the petitioner by giving her an alternative job.

2. The case of the petitioner is that her husband was working in CRPF in the rank of constable from the year 1994 onwards. He died in the year 2014 by committing suicide while on duty. He died leaving behind the petitioner and two children.

3. The petitioner was considered for compassionate appointment and she was appointed to the post of constable (general duty) by proceedings dated 24.08.2016. The petitioner was sent for basic training at the Training Centre for 3 months. During training, the petitioner fell sick and it was diagnosed that she is HIV positive. The petitioner was sent for repeated medical treatment and ultimately the petitioner was found medically unfit to undergo the basic training and, by the impugned office order, she was relieved from service. Aggrieved over the same, the present Writ Petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that, as per the standing orders for Central Para Military forces, the individuals who are found HIV positive are brought under various categories and each category is being identified with a particular type of duty, which can be assigned to them. The learned Counsel submitted that as per the medical reports, the CD4 count was found to be 409, which is falling under P2 and, therefore, the petitioner can be engaged in Administrative work. The learned counsel relied upon the judgment of the Allahabad High Court, wherein a similar case was dealt with and the Allahabad High Court, on considering the facts and circumstances of the case, directed the respondents to consider the fresh

representation made by the petitioner therein and to deploy her in a suitable job. The learned counsel submitted that with the present health status of the petitioner, she can be given the job on the Administrative side and the petitioner cannot be completely thrown away from the job.

5. The learned Central Government Standing Counsel reiterated the stand taken by the respondents in the counter affidavit. The learned counsel submitted that the petitioner was appointed on compassionate grounds. During training, the petitioner fell sick and, therefore, she was admitted in the hospital at Avadi. At that point of time, she was diagnosed HIV positive. The petitioner was given regular treatment and every time her situation only deteriorated and she was not able to recover well and the petitioner was, therefore, placed under low medical category, which requires lifelong treatment. The learned counsel submitted that, left with no other option, the respondents had to terminate the service of the petitioner. The learned counsel, therefore, submitted that there is no ground to interfere with the impugned order passed by the fifth respondent.

6. It is seen from the impugned order passed by the fifth respondent that he has confined the suitability of the petitioner to the post of constable and, therefore, he has come to the conclusion that the petitioner is medically unfit to undergo the basic training.

7. It is clear from the service Regulations of the respondents that there is a standing order dated 15.12.2008, which specifically deals with the persons suffering from HIV/AIDS. The said standing order categorises those persons and fits them into a particular job they are capable of handling. The fifth respondent, while passing the order, ought to have seen if the petitioner is capable of being accommodated in any administrative work or other works, which does not involve field work. The fifth respondent ought to have taken into consideration the standing order and must have dealt with the case of the petitioner in a more humane manner.

8. It is unfortunate that the petitioner had got into a situation like this only because of her husband and by the time she settled down in her work, she was also diagnosed HIV positive. The petitioner cannot be now left in lurch as she seems to be the only bread winner of the family and infact, the petitioner was given compassionate appointment, considering the fact that there were two children and there was no source of

income for the petitioner. Therefore, the respondents will have to necessarily take into consideration the service regulations and must try to accommodate the petitioner in a post which the petitioner is capable of doing with her prevailing medical condition. That is the whole purpose of the standing order that was issued on 15.12.2008.

9. In view of the above discussions, this Writ Petition is disposed of with a direction to the petitioner to make a representation to the fifth respondent by marking a copy of the same to respondents 2 to 4 and appropriate orders shall be passed by taking into consideration the standing orders, which deals with the personnel who suffer from HIV/AIDS and accommodate the petitioner in an appropriate job in accordance with the standing order. Orders shall be passed in this regard within a period of eight(8) weeks from the date of receipt of copy of this order.

10. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government,
Union of India
Department of Home Affairs, New Delhi

2. The Director General of Police
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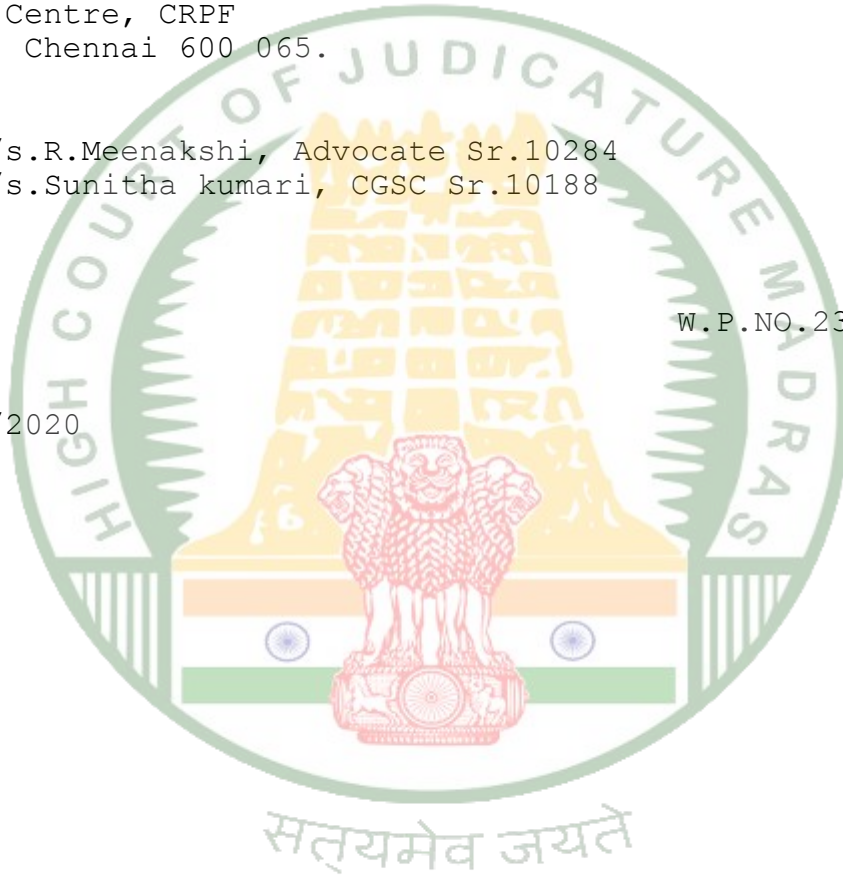
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5. The Deputy Inspector General of Police
Group Centre, CRPF
Avadi, Chennai 600 065.

+1cc to M/s.R.Meenakshi, Advocate Sr.10284
+1cc to M/s.Sunitha kumari, CGSC Sr.10188

W.P.NO.23735 of 2020

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srg 16/03/2020



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