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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.8172 of 2012

A.Anantha Jothi — Petitioner

Vs

1. The Union of India,
   Rep by its Secretary to Government,
   Ministry of Home Affairs,
   New Delhi

2. The Director General of Police,
   Central Industrial Security Force,
   No.13, C.G.O. Complex,
   Lodhi Road, New Delhi – 110 003.

3. The Inspector General,
   Central Industrial Security Force,
   North Eastern Sector,
   East Kolkata Township,
   Kasba, Kolkata – 700 107.

4. The Senior Commandant,
   Central Industrial Security Force Unit,
   ONGC Nazira, Kolkata.

5. The Commandant,
   Central Industrial Security Force,
   Chennai Port Trust, Chennai. — Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of the 3rd respondent in his order No.V-11014/NES/L&D/Rep-02/2012-3220 dated 11.05.2012 confirming the Notice No.24018/NES/Termination/11/7046 dated 09.11.2011 of the 4th respondent terminating the service of the petitioner and quash the same and further direct the respondents to take the petitioner into the strength of the CISF as constable with all monetary benefits.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.S.Jeyasingh
Senior Panel Counsel

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O R D E R

This writ petition is filed to call for the records relating to the order of the 3rd respondent in his order No. V-11014/ NES/ L&D/ Rep-02/ 2012-3220 dated 11.05.2012 confirming the Notice No.24018/ NES/ Termination/11/7046 dated 09.11.2011 of the 4th respondent terminating the service of the petitioner and quash the same and further direct the respondents to take the petitioner into the strength of the CISF as constable with all monetary benefits.

2. The case of the petitioner is that the petitioner was selected as Constable in CISF on 16.02.2010 and on after completion of Basic Training Course on 06.03.2010, he was posted at RTC Bhilai on 16.09.2010 and he joined duty. On 09.11.2011, the fourth respondent has passed a Termination Order, by invoking Rule 26(4) of the CISF Rules, 2001 stating that suppression of factual information in the attestation executed by the petitioner on 01.03.2010 is a serious matter. The petitioner submits that when he was a minor, the Juvenile Justice Board, Tirunelveli has passed the order in J.C.No.64 of 2004 on 22.06.2009 by admonishing the petitioner under Section 15(1) (a) of the Juvenile Justice (Care and Protection), 2000 Act. Aggrieved over the same, the petitioner has preferred an appeal before the third respondent on 29.11.2011 and the same was rejected on 11.05.2012. Hence, the petitioner has come up with this present Writ Petition.

3. The learned counsel for the petitioner submits that the petitioner belongs to a poor family and with great difficulty, he has completed his academic Course. The learned counsel further submits that without definite allegations or charges and without conducting enquiry or giving opportunity, the termination order has been passed by the fourth respondent. In order to support his contentions, the learned counsel relied upon the judgments reported in ***2011 (4) MLJ 1006 (Commissioner of Police and others Vs.Sangeeth Kumar) and 2016 (8) SCC 471, (Avtar Singh Vs.Union of India).***

4. On the other hand, the learned Senior Panel Counsel submitted that though the petitioner committed offence while juvenile, but after getting maturity, suppression of any information in his attestation form is a serious matter, which attracts provisions of clause (4) of rule 26 of CISF Rules 2001. Further, it is stated that even though the petitioner's case was ended in admonition under Section 15(1) (a) of the juvenile justice (Care & Protection) 2000 Act for committing an offence under Section 376 (1) IPC and granted pardon under Section 15(1) (a), he suppressed the factual information in attestation form make the petitioner, unfit for employment and hence action taken against him was as per proper rule and laid down procedure.

5. Heard both sides and perused the records.

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6. Perusal of the Termination order issued by the Senior Commandant, CISF Unit, ONGC, Nazira and the order passed by Central Industrial Security Force/NES would go to show that the petitioner has been straight away terminated from his service, without giving any notice or opportunity to him. It is settled law that before passing an order affecting the right of a person, an opportunity should be given to the person concerned. Here, in this case, no such opportunity was granted to the petitioner before passing the impugned orders. Considering the fact that the petitioner was a minor at the time of occurrence and also considering the fact that minor indiscretion made by young people required to be condoned rather than to brand them as criminals for the rest of their lives as held by Honourable Supreme Court in Judgment reported in 2011 (4) MLJ 1006 , (Commissioner of Police and others Vs.Sangeeth Kumar), this Court is inclined to interfere with the impugned order. Moreover, a perusal of order in J.C.NO.64 of 2004 dated 22.06.2009 would reveal that the said order has been passed only after obtaining the Social Investigation Report, wherein it was stated that the petitioner, who was then a juvenile was studying D.E.E.E in Anantha Polytechnic and during the holidays he did Coolie work to help his family, his conduct was said to be good. In the Social investigation report, recommendation was made that the juvenile can be released on admonition under Section 15(1) (a) of the juvenile justice (Care and Protection) 2000 Act. Taking into consideration all the above, the orders of terminating the petitioner from service needs to be quashed.

7. Accordingly, the impugned order of the 3rd respondent in his order No.V-11014/NES/L&D/Rep-02/2012-3220 dated 11.05.2012 confirming the Notice No.24018/NES/Termination/11/7046 dated 09.11.2011 of the 4th respondent terminating the service of the petitioner are hereby quashed. There shall be a direction to the respondents concerned to consider the representation of the petitioner, by giving opportunity to him and also taking into consideration of the judgment of Honourable Supreme Court as stated supra and pass appropriate orders on merits, within a period of three months from the date of receipt of a copy of this Order.

8. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

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   Rep by its Secretary to Government,
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5. The Commandant,
   Central Industrial Security Force,
   Chennai Port Trust, Chennai.

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-3014[F] dated 24/01/2020)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-3031[F] dated 24/01/2020)

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JMN(19.02.2020) 4P : 8C

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