

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.A.No.24 of 2021

D.Ayyappan Raj

.. Appellant

Vs

1. The Union of India
rep. by its Secretary to Government
Ministry of Home Affairs, New Delhi.
2. The Director General
Border Security Force
CGO Complex, Lodhi Road
New Delhi.
3. The Director General
Central Industrial Security Force
CGO Complex, Lodhi Road
New Delhi.
4. The Deputy Inspector General
Central Industrial Security Force
South Zone, Besant Nagar
Chennai - 600 090.
5. The Commandant
HQ No.133 Battalion
Border Security Force
Dantiwada, Banaskantha District
Gujarat - 385 505.
6. The Commandant
Central Industrial Security Force
Meenambakkam
Chennai - 600 027.

Page numbers

7. The Deputy Commandant
Central Industrial Security Force
Airport Security Guard
Trichy.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 18.8.2020 in W.P.No.25952 of 2013 passed by the learned Single Judge.

WP.No.25952/2013: Petition filed Under Article 226 of the constitution of India to call for the records relating to the order passed by the 5th respondents in his order No.Estt.X-222/Res(GC)/2013/2219-22 dated 08/04/2013 and quash the same and to direct the respondents to count the services of the petitioner rendered in Border Security Force from 24/10/01 to 09/11/03 and in Central Industrial Security Force from 10/11/2003 to 14/04/12 i.e., 10 years 6 months and 17 days and to pension from 15/09/12 and continue to pay to the petitioner.

For Appellant : Mrs.AL.Ganthimathi

For Respondents : Mr.D.Simon
for 1st respondent

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

There is no merit in the appeal and it is a complete waste of time.

2. The admitted facts are that the writ petitioner-appellant was employed with the Border Security Force, upon obtaining the appointment on or about October 24, 2001. The writ petitioner thereafter sought to apply to the Central Industrial Security Force for a position. The writ petitioner claims that due intimation was issued to the Border Security Force authorities seeking permission for the petitioner to apply for a job with Central Industrial Security Force. However, it does not appear that any permission of the kind sought by the writ petitioner was granted by the Border Security Force.

3. Though the writ petitioner insists that at subsequent stages - when he was called for an interview and, ultimately, offered the job - the writ petitioner informed the appropriate authorities in Border Security Force, it does not appear that the writ petitioner's application for the relevant post in Central Industrial Security Force was processed through the

Page numbers

official or proper channel. The mere intimation to the employer in such a case would not pass for permission to be obtained from the employer to obtain a new employment.

4. It appears that the writ petitioner continued in the same habit when the petitioner was employed with Central Industrial Security Force and at the time that the writ petitioner switched over from Central Industrial Security Force to Bharat Heavy Electricals Limited.

5. The grievance in the petition under Article 226 of the Constitution was that the periods that the writ petitioner spent in service with Border Security Force and Central Industrial Security Force were not taken into account to reckon the pensionary dues of the writ petitioner. While dealing with the matter, the learned Single Bench has referred to the appropriate Rules and the failure on the part of the writ petitioner to obtain permission from either erstwhile employer before joining BHEL. The learned Single Bench reckoned that in each case the writ petitioner had resigned, though the grounds for resignation may be completely irrelevant.

6. In the light of the discussion in the impugned judgment and order dated August 18, 2020 and the appropriate conclusions drawn from the relevant facts, there is no scope for interference. Since the writ petitioner's application for appointment was not processed through the official channel either when he switched over from Border Security Force to Central Industrial Security Force or when he switched over from Central Industrial Security Force to Bharat Heavy Electricals Limited, the periods of service spent with Border Security Force and with Central Industrial Security Force could not be legitimately taken into account for the purpose of ascertaining the writ petitioner's pensionary dues upon the writ petitioner retiring from Bharat Heavy Electricals Limited upon reaching the age of superannuation.

For the aforesaid reasons, the appeal, W.A.No.24 of 2021, is dismissed. There will be no order as to costs. Consequently, C.M.P.No.374 of 2021 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sasi

Page numbers

To:

1. The Secretary to Government
Union of India
Ministry of Home Affairs, New Delhi.
2. The Director General
Border Security Force
CGO Complex, Lodhi Road
New Delhi.
3. The Director General
Central Industrial Security Force
CGO Complex, Lodhi Road
New Delhi.
4. The Deputy Inspector General
Central Industrial Security Force
South Zone, Besant Nagar
Chennai - 600 090.
5. The Commandant
HQ No.133 Battalion
Border Security Force
Dantiwada, Banaskantha District
Gujarat - 385 505.
6. The Commandant
Central Industrial Security Force
Meenambakkam
Chennai - 600 027.
7. The Deputy Commandant
Central Industrial Security Force
Airport Security Guard
Trichy.

+lcc to Dr.D.Simon, Advocate SR.3603

+lcc to M/s.AL.Ganthimathi, Advocate SR.3090

GP(CO)
CB(04/02/2021)

W.A.No.24 of 2021

Page numbers