

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.A.Nos.651 and 669 of 2021
and CMP.Nos.3183 and 3498 of 2021

C.NanthanAppellant in W.A.No.651/2021

Robitashav Jatav Appellant in W.A.No.669/2021

Vs

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

2.The Director General,
Central Industrial Security Force,
CGO Complex,
Lodhi Road, New Delhi 110 003.

3.The Deputy Inspector General,
Central Industrial Security Force,
Neyveli Lignite Corporation (N),
Neyveli, Cuddalore District.

4.The Assistant Commandant / Admn.
Central Industrial Security Force Unit,
Neyveli Lignite Corporation,
Neyveli, Cuddalore District.

..Respondents in both appeals

Common Prayer:- Writ Appeal filed under Clause 15 of the
Letters Patent against the order passed in W.P.Nos.28969 &
28970/2013 dated 18.08.2020 passed by this Court.

Prayer in WP.No.28969 of 2013:

Filed under Article 226 of the Constitution of India praying
this Court to issue a writ of Certiorarified Mandamus to call
for the records relating to the order passedby the 2nd
respondent in his Letter No. E-37014/10/201/Fire (Part)-398 dt
27.5.2013 communicated by the 5th respondent in his letter No. E-

19098/CISF/NLC/DOC/13-3795 dt 10.6.2013 and quash the same and to direct the respondents to count the services of the petitioner rendered in 29.7.2001 to 31.3.2012 in the CISF i.e. 10 years and 8 months in the Central Industrial Security Force and to pay pension from 1.4.2012 and continue to pay to the petitioner.

Prayer in W.P.No.28970 of 2013: Filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus to call for the records relating to the order passed by the 2nd respondent in his Letter No. E-37014/10/2003/Fire (Part)-398 dt 27.5.2013 communicated by the 5th respondent in his letter No. E-19098/CISF/NLC/DOC/13-3794 dt 10.6.2013 and quash the same and to direct the respondents to count the services of the petitioner rendered in 14.8.2000 to 31.3.2012 in the CISF i.e. 11 years and 7 months in the Central Industrial Security Force and to pay pension from 1.4.2012 and continue to pay to the petitioner.

For Appellant in both appeals : Mr.R.Thiyagarajan

For Respondent in both appeals: Mr.Venkataswamy Babu

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The appellants are petitioners in W.P.Nos.28969 and 28970 of 2013 respectively. The appellants / writ petitioners filed the said writ petitions, praying for issuance of Writ of Certiorarified Mandamus to call for the records and quash the order of the 2nd respondent dated 27.05.2013 as communicated in proceedings dated 10.06.2013 respectively with consequential direction to count the services rendered by them in Central Industrial Security Force, for a period of 10 years and 8 months & 11 years and 7 months respectively and pay pension from 01.04.2012, with a further direction to continue to pay the pension due to the writ petitioners along with other writ petitioner with similar relief in W.P.No.25952 of 2013, came to be dismissed vide common impugned order dated 18.08.2020 and aggrieved by the same, the present Writ Appeals are filed.

2. The learned counsel appearing for the appellants / writ petitioners would submit that though the respective appellants in their resignation letters dated 24.03.2012 had cited domestic problem for resignation, the fact remains that in order to join other services only, they got relieved and the respondents were well aware of the same and also made a plea that in similar facts and circumstances, concession of counting the past services has also been extended and prays for interference.

3. The learned counsel appearing for the respondents would submit that as against dismissal of W.P.No.25952 of 2013, the Writ Appeal in W.A.No.21 of 2021 has been filed and the same came to be dismissed vide judgment dated 21.01.2021 and further drawn the attention of this Court to Rule 26(2) of the Central Civil Services (Pension) Rules, 1972 and would submit that in the light of the said provisions, coupled with the factual aspects that no permission had been obtained by the appellants / writ petitioners, before joining the services of other employer, and they are not entitled to any benefits and the said aspect has been rightly taken note of by the learned Judge and dismissed the Writ Petitions and prays for dismissal of these Writ Appeals.

4. Though the appellant in W.A.NO.651 of 2021 / petitioner in W.P.No.28969 of 2013, joined the services of Central Industrial Security Force (in short 'CISF') as a Constable on 29.07.2001 and after serving there for 10 years and 8 months, he submitted his resignation on 31.03.2012, citing some personal reasons and similarly the appellant in W.A.No.669 of 2021 / petitioner in W.P.No.28970 of 2013, joined as a Constable in the services of CISF on 14.08.2000 and after serving there for 11 years and 7 months, he submitted his resignation on 06.03.2012 citing personal reasons, and both of them after resignation joined the services of the Bharat Heavy Electricals Limited (BHEL), Trichy as Sub Inspector (Fire), after acceptance of resignation by the former employer i.e., CISF. It is relevant to extract Rule 26 of the Central Civil Services (Pension) Rules, 1972:

'26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4)The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

	that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;
	that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;
	that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;
	that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5)Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.''

5. Sub Rule (2) of Rule 26, makes it clear that if the resignation is submitted with proper permission seeking another appointment, whether temporary or permanent, then the past services would be taken into consideration. Admittedly in this case on hand, the petitioners made an attempt to get the No Objection Certificate from CISF and the same were rejected vide Office Memorandum of the Assistant Commandant, CISF Unit NLC, Neyveli, dated 03.12.2011 and no further challenge has been made to the said proceedings. The appellants / writ petitioners had failed to get the No Objection Certificate and had submitted the resignation letter citing domestic reasons and the same came to be accepted and thereafter, both of them had joined BHEL as Sub Inspector (Fire).

6. The Hon'ble Supreme Court of India in the decision reported in 2020 (3) SCC 346 (BSES Yamuna Power Limited Vs. Ghanshyam Chand Sharma and another) has considered the issue relating to resignation and voluntary retirement and while answering the same, held that the resignation cannot be deemed as voluntary retirement on completion of qualifying service for the purpose of pensionary benefits and the resignation is different from voluntary retirement and applicable legal consequences are distinct.

7. The Hon'ble Supreme Court of India has also placed reliance upon the judgment reported in 2019 (4) SCC 479 (LIC Vs. Shree Lal Meena), which in turn has also placed reliance upon the judgment reported in 2004 (9) SCC 461 (RBI Vs. Cecil Dennis Solomon) and it is relevant to extract the said paragraph:

'12. The Court in Shree Lal Meena (2) [LIC v. Shree Lal Meena, (2019) 4 SCC 479 : (2019) 1 SCC (L&S) 713] elucidated the distinction between resignation and voluntary retirement in the following terms: (SCC pp. 491-92, para 22)

"22. ... [quoting RBI v. Cecil Dennis Solomon [RBI v. Cecil Dennis Solomon, (2004) 9 SCC 461 : 2004 SCC (L&S) 737] , SCC pp. 467-68, para 10]

'10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of

resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering the prescribed period of qualifying service. Another fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in the case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

The above observations highlighted the material distinction between the concept of resignation and voluntary retirement. The Court also observed that while pension schemes do form beneficial legislation in a delegated form, a beneficial construction cannot run contrary to the express terms of the provisions: [Shree Lal Meena (2) case [LIC v. Shree Lal Meena, (2019) 4 SCC 479 : (2019) 1 SCC (L&S) 713] , SCC p. 495, para 26]

"26. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations (see Shashikala Devi v. Central Bank of India [Shashikala Devi v. Central Bank of India, (2014) 16 SCC 260 : (2015) 3 SCC (L&S) 319] ; Asger Ibrahim Amin v. LIC [Asger Ibrahim Amin v. LIC, (2016) 13 SCC 797 : (2015) 3 SCC (L&S) 12]). We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication."

8. Admittedly in the case on hand, the appellants / writ petitioners did not take prior permission and they submitted their resignation letters citing personal reasons only and their request for the No Objection Certificate from the previous employer namely CISF, also came to be rejected and no challenge has been made to the said orders and it has become final. Though it is the submission of the learned counsel appearing for the appellants / writ petitioners that in similar facts and circumstances, the benefit rather benevolence under Sub Rule 2 of Rule 26 of the Central Civil Services (Pension) Rules, 1972,

have been extended, no such material has been placed before the learned Single Judge and the learned Single Judge has also observed that in the absence of any such material, the Court could not come to their aid. The reasons assigned by the learned Single Judge, in the considered opinion of this Court, is per se sustainable.

9. In the light of the above facts and circumstances and rule position and in the absence of any error apparent on the face of the record or infirmity in the reasons assigned, this Court cannot interfere with the same in exercise of it's power under Clause 15 of the Letters Patent.

10. In the result, the Writ Appeal is dismissed, confirming the order dated 18.08.2020 in W.P.Nos.28969 and 28970 of 2013. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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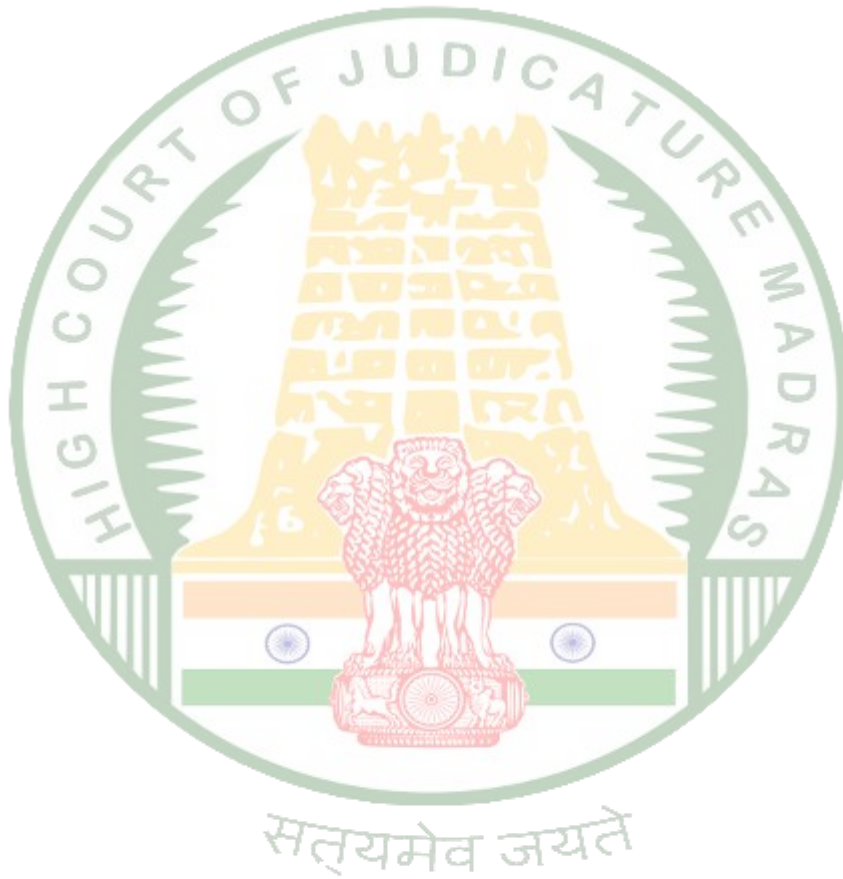
To

- 1.The Secretary to Government,
The Union of India,
Ministry of Home Affairs,
New Delhi.
- 2.The Director General,
Central Industrial Security Force,
CGO Complex,
Lodhi Road, New Delhi 110 003.
- 3.The Deputy Inspector General,
Central Industrial Security Force,
Neyveli Lignite Corporation (N),
Neyveli, Cuddalore District.
- 4.The Assistant Commandant / Admn.
Central Industrial Security Force Unit,
Neyveli Lignite Corporation,
Neyveli, Cuddalore District.

+2cc to Mr.R.Thiyagarajan, Advocate, S.R.No.24378 & 24377
+2cc to Mr.Venkataswamy Babu, Advocate, S.R.No.24741 & 24740

W.A.Nos.651 and 669 of 2021

SS (CO)
CB (30/06/2021)



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