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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.563 of 2020
and C.M.P.No.8078 of 2020

1. The Commandant,
Central Industrial Security Force (CISF),
(Disciplinary Authority),
Department of Atomic Energy (DAE),
Ministry of Home Affairs,
Kalpakkam, Kancheepuram District.
Tamil Nadu- 603 102.
2. Deputy Inspector General,
Central Industrial Security Force (CISF),
(Appellate Authority), Zonal Headquarters,
NFC Complex, ECIL-P.O.,
Hyderabad-62.
3. The Inspector General,
Central Industrial Security Force (CISF),
(Revision Authority), Western Sector-35,
Navi Mumbai-400 210.
4. The Director General,
Central Industrial Security Force (CISF),
Block No.13, CGO Complex, Lodhi Road,
New Delhi-110 003.
5. Government of India
Rep. by the Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110 001.

.. Appellants/Respondents

Vs.

Babitha

.. Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent
against the order dated 26.08.2019 in W.P.No.32163 of 2012.



Prayer in W.P.No.32163 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the order of removal bearing ref.No.V-15014/DAE CK) Maj.03/BB-Dise/201-4997 dated 05.11.2011 issued by the 1st respondent as confirmed by the 2nd respondent, Appellate Authority by his order No.V-11014/A-01/2011/L & R DAE/641 dated 28.01.2012 read with order of the 3rd respondent bearing No. 15012/ 12-5037 dated 4.6.2012 rejecting the petitioners revision filed and marked as Exhibits A B & C respectively and quash the same.

For Appellants : Mr.K.S.Jeyaganeshan

For Respondent : Mr.N.G.R.Prasad,
for M/s.Row and Reddy

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The writ appeal is directed against the order dated 26.08.2019 made in W.P.No.32163 of 2012 quashing the order terminating the respondent from service, which was confirmed by the Appellate Authority as well as the revisional authority.

2. The facts leading to the above appeal are as follow :

2.1. The first respondent had joined the Central Industrial Security Force (CISF) at Barwaha in Madhya Pradesh as Lady Constable on 27.09.2007. After completion of training for nine months, she was posted at CISF Unit, Jaduguda in Jharkhand. Later, she was transferred to the CISF Unit, Department of Atomic Energy (DAE), Kalpakkam, Tamil Nadu, on 10.06.2009. She had also joined duty at Kalpakkam on 06.07.2009.

2.2. The writ petitioner was married to one Mr.Vikas Chowdary on 17.02.2010. She has stated in her writ petition that one Mr.S.P.Khilare, Assistant Commandant of the first appellant unit, misbehaved with her, which was also witnessed by one Mr.Vedpal Boora, Inspector in the CISF Unit. The said Vedpal Boora had, in fact, given a statement to that effect, which he was compelled to withdraw. However, when he refused to do so, the charges were framed against him and he was ultimately dismissed on 10.05.2011, which was challenged by him in W.P.No.24618 of 2011. The writ petition was partially allowed setting aside the order of dismissal and directing the first respondent to conduct a fresh enquiry against the said Vedpal Boora, by affording him adequate opportunity to participate in the enquiry and treat his absence till then as, having been kept under suspension and pay the subsistence allowance. The above said order was passed on 18.01.2018.



2.3. Since the writ petitioner herein had made a specific complaint about the said Khilare's misbehaviour, the appellants turned hostile towards her, instead of taking action against the erring officer. They had transferred the writ petitioner on 23.03.2010 from CISF Unit, Kalpakkam, to RTC, Barwaha, Madhya Pradesh. The writ petitioner had made several requests and representations seeking to cancel the transfer order on the ground that there was no medical facilities available at Barwaha and she had to be under medical treatment on account of her pregnancy. She had also made a request to transfer her at least to an unit nearest Delhi. But her requests were not heeded to in toto, however, the transfer order dated 23.03.2010 was kept in abeyance on the basis of her representations. This is so on the ground that a medical certificate was issued by the Medical Officer of the appellants on 12.05.2010 stating that the writ petitioner was suffering from depression, migraine and frequent miscarriages. The writ petitioner was given abortion leave from 13.05.2010 to 12.06.2010, based on the medical certificate issued by the Medical Head of the DAE Hospital on 12.05.2010.

2.4. The Medical Officer at the Atomic Energy Hospital (DAE), Kalpakkam, had also gave a medical report stating that the writ petitioner was having a recurrent abortion on 25.11.2010. In the meanwhile, the petitioner had again complained against one Mr.Prabhakar, Inspector of the first respondent Unit, alleging that he misbehaved with her. This incident happened on 28.11.2010 also aggravated her severe depression and she was hospitalised for two months.

2.5. The writ petitioner also made a request on 10.12.2010 to the fourth appellant to give her personal audience, regarding her request to transfer to Delhi. But the appellants had transferred the writ petitioner from DAE, Kalpakkam, to the 1st RB, Barwaha, State of Madhya Pradesh on 31.12.2010 based on her claim of transfer to Delhi. Immediately, on 05.01.2011, she sent another representation to cancel her transfer on medical grounds followed by written representations dated 10.01.2011 and 11.01.2011 to take action against the officials Mr.Khilare and Mr.Prabhakar of the first respondent unit on the alleged misbehaviour.

2.6. As already the transfer order dated 31.12.2010 was issued, she challenged the same in W.P.No.2152 of 2011 before this Court. Though initially an order of stay was granted in her favour, the writ petition came to be dismissed on 04.03.2011 and the appeal against the same in W.A.No.747 of 2011 also met with the same fate on 09.06.2011. Immediately, after the dismissal of the writ petition even without waiting for the period of limitation to go for an appeal was over, the appellants on 23.3.2011 had affixed the order of transfer on the doors of her house.

2.7. In the meanwhile, the writ petitioner came to know that she became pregnant and intimated the same to the



appellants by e-mail communication on 10.05.2011. On 29.06.2011, the appellant issued a charge sheet for not obeying the order of transfer dated 23.03.2011, which was received by the parents of the writ petitioner on 30.07.2011. She had quoted her health issues and the state of depression in which she was and requested for the cancellation of order of transfer and gave explanations to the charges framed against her.

2.8. Despite the health condition of the writ petitioner and also her pregnancy, the appellants proceeded to conduct an ex-parte enquiry and removed her from service on 05.11.2011, which is the first order of termination. Aggrieved by the same, an appeal was preferred on 22.11.2011, which was rejected by the second appellant - the Deputy Inspector General, CISF, on 28.01.2012. The writ petitioner had preferred a revision before the third appellant, who is Inspector General of Police, CISF, against the said order, which was also rejected on 04.06.2012 and the same was received by her in the first week of October, 2012.

2.9. The above said orders, dated 05.11.2011, 28.01.2012 and 04.06.2012, which were marked as Exs.A, B and C respectively, were challenged in the writ petition in W.P.No.32163 of 2012.

3. According to the writ petitioner, since she was relieved from the first appellant's jurisdiction, as early as on 23.03.2011, to Barwaha, Madhya Pradesh, any disciplinary action that should be taken can be initiated only by the officials at Barwaha, Madhya Pradesh and not the first appellant. Therefore, the order of termination is without jurisdiction. The second ground placed by the writ petitioner was that she was set ex-parte in the enquiry and removed from service on 05.07.2011, and when she was pregnant as early as on 08.05.2011 and communicated the same to the authorities on 10.05.2011, in terms of Section 12(1) and (2)(a)(b) and (c) of the Maternity Benefit Act, 1961, no enquiry can be conducted in her absence on account of such pregnancy. It was the definite case of the writ petitioner that she had been communicating with the authorities expressing her difficulty, based on her ill-health, in joining the transferred place. Therefore, assailing the dismissal order on the ground that the dismissal cannot be passed, when the employee is pregnant, as per the Maternity Benefit Act, the writ petitioner sought to quash the orders marked as Exs.A, B and C.

4. The appellants filed their counter-affidavit in the writ petition contending that the complaints given by the writ petitioner against Mr.Khilare, Assistant Commandant and Prabhakar, Inspector, were found to be false, in the enquiry conducted based on the complaints given by her. Her request for posting in Delhi was not considered, because of the posting policy, as per which, the candidate should have completed her out of home zone tenure. Being the member of the Force, she was



liable to be posted anywhere in India, as she had already given a declaration at the time of appointment in CISF, to the effect that she accept the liability to serve anywhere in India. It is further stated by the authorities that since she could not be posted in her home zone, she was posted at CISF, 1st Reserve Battalion, which is nearer to New Delhi and nearest to her home zone on 31.12.2010. The writ petitioner ought to have joined the new place in the first week of April, 2010 and thereafter, could have made a request and availed the benefits under the Maternity Benefits Act. It is also stated that the disciplinary action was taken only because she had not returned to her new place of posting, despite advising her to join there. Since she did not join the new place, she was removed from service ex-parte on 05.11.2011, after enquiry, which was much earlier to her pregnancy. It is only after two months from the date of relieving order, the petitioner raised the dispute of having become pregnant and the same cannot be accepted.

5. The Writ Court, after hearing the parties elaborately and discussing the facts, had set aside the orders passed under Exs.A, B and C on the ground that the provisions of the Maternity Benefits Act, 1961 was not adverted to by the authorities.

6. The primary question that arose for consideration is : whether the provisions of the Maternity Benefits Act, 1961, is applicable to the facts of this case ?

7. In this context, it is apposite to extract the relevant provisions, namely, Section 12 of the Maternity Benefits Act, 1961, which reads as follows :

"12. Dismissal during absence of pregnancy -

(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2)(a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus: Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.



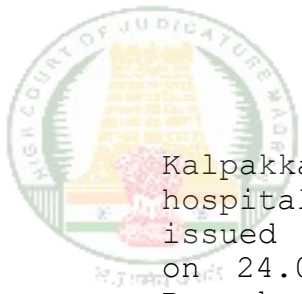
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(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1)."

8. The case of the writ petitioner is that she has been suffering from depression, migraine and frequent miscarriages. It appears that she was sanctioned maternity leave (abortion leave) from 13.05.2010 till 12.06.2010. Her medical condition was also certified by the DAE Hospital, Kalpakkam. On 25.11.2010, the DAE Hospital found that the writ petitioner was suffering from recurrent abortions. The writ petitioner was transferred to RTC, Barwaha, on 23.03.2010 and the same was kept in abeyance, based on her request on health grounds. Again, she was transferred to 1st RB Barwaha on 31.12.2010, which she questioned in W.P.No.2152 of 2011 before this Court and the same was dismissed on 04.03.2011, so also the appeal against the same in W.A.No.747 of 2011 on 09.06.2011. The Division Bench of this Court, in the said order dated 09.06.2011, had specifically observed that the said dismissal will not come in the way of the request in considering the representation of the appellant, if any, pending before them. Admittedly, there were several representations sent by the writ petitioner to consider her case and cancel the transfer order on medical grounds were pending. On 10.12.2010, the writ petitioner requested for a personal interview to put forth her grievance and to transfer her to anyone of the CISF Units nearer to Delhi.

9. It is not out of place to refer to the medical certificates, which are recommendation for leave, issued by the DAE Hospital, Government of India, Kalpakkam. The first certificate refers to her absence from duty for 3 days from 08.03.2011 to 10.03.2011 ; the second one dated 14.03.2011 refers to absence from duty for 8 days from 10.03.2011 to 17.03.2011, as the writ petitioner was suffering from depression ; and the third certificate dated 18.03.2011 recommended her absence from duty for 14 days from 18.03.2011 to 31.03.2011. From the above, it is evident that the writ petitioner was on leave on medical grounds, as recommended by the DAE Hospital,



Kalpakkam. While the writ petitioner was advised rest by the hospital, the movement order/transfer dated 23.03.2011 was issued relieving her on 23.03.2011 and directing her to depart on 24.03.2011 in order to report at 1st Reserve Battalion, Barwaha. In spite of the writ petitioner furnishing the certificates, wherein and whereby, she was recommended for leave, the Movement Order has been issued by the Assistant Commandant, CISF, DAE, Kalpakkam. Since the writ petitioner/respondent did not join the transferred place, a call-up notice was issued on 09.05.2011 asking her to report to the transferred place, as she failed to join duty after availing the eligible joining time of 12 days from 24.03.2011 to 04.04.2011. Immediately, the writ petitioner had given a reply dated 10.05.2011 through her husband stating that already she had suffered two abortions and now that she has conceived and also taking treatment for depression, she was advised not to travel and she would join duty after she recover.

10. It is also pertinent to note that the representations of the writ petitioner to consider her transfer were yet to be disposed of and she had sent a reminder on 21.06.2011. Even after the Division Bench had observed that it was open to the appellants to consider the request of the writ petitioner and she also had been sending request reminders, the first respondent had issued the charge memorandum dated 29.06.2011 for not reporting for work at the transferred place in the State of Madhya Pradesh, which was served on the parents of the writ petitioner. In the meanwhile, it was also returned by the writ petitioner that she had become pregnant and the same was communicated to the appellants through e-mail representation. Therefore, when it is made known to the appellants that the writ petitioner was pregnant, they ought not to have proceeded with the disciplinary proceedings, as she is entitled to take leave, and also she could not travel and attend the enquiry and passed the order of termination dated 05.11.2011, which was confirmed by the appellate and revisional authorities.

11. The writ petitioner also had been sending several representations to postpone the dates of enquiry, which, the authorities have also done. However, due to advancement of pregnancy, she could not attend the hearing, which is evident from the medical records. It is evident and borne out from the records that between the first termination order dated 05.11.2011 marked as Ex.A, till the order of the appellate authority dated 28.01.2012, the petitioner was in her advanced stage of pregnancy and delivered the child on 07.01.2012.

12. When the Act specifically states that when a woman, who is absenting herself from work in accordance with the provisions of the Act, the employer cannot discharge or dismiss her during



the said period, on account of her absence. In the instant case, it has been categorically established that she was not medically fit during the relevant point of time and the certificates were also issued by the DAE Hospital itself, and being pregnancy, it continued for a period of not less than nine months, as the respondent had delivered on 07.01.2012, it should be presumed that she was pregnant between end of March, 2011 and January, 2012.

13. The distance between the I Reserve Battalion, Barwaha in the State of Madhya Pradesh, and Delhi is about 900 KMs, and the writ petitioner was taking treatment in St. Stephen Hospital, Delhi, before which she was taking treatment in Kalpakkam, Tamil Nadu. In the conspectus of the above facts, we are of the view that the domestic enquiry was not conducted properly but conducted in an arbitrary manner without affording an opportunity to the writ petitioner, especially when she was on the maternity leave. The appellants, after becoming known that the writ petitioner became expectant, ought to have postponed the enquiry at the charge memo level itself and ought not to have proceeded with the enquiry ex-parte. The said act of the appellant would amount to violation of principles of natural justice.

14. Now, the next question that requires determination is whether the punishment imposed upon the writ petitioner is proportionate to the charges levelled against her ?

15. No doubt, it is true that the writ petitioner is in uniformed services, where, the discipline should be maintained with all command. At the same time, there cannot be inhumanity in enforcing the discipline. Admittedly, the writ petitioner was pregnant, when the appellants proceeded to conduct the enquiry ex-parte. Earlier, she was suffering with depression, migraine and frequent miscarriages. Though the writ petitioner has no right to seek posting in any particular place of her choice, on account of her medical illness, she made such a request. Merely because she made allegations against the officials of the first respondent unit, she cannot be vindicated, taking advantage of her non-joining in the transferred place, to send her out of the Uniformed Force.

16. It is pertinent to note that the Hon'ble Supreme Court in Union of India V. V.Shanmuganathan, (2018) 18 SCC 341, modified the punishment of removal from service imposed on the CISF Inspector for the charge of unauthorisedly overstaying joining time on transfer with "compulsory retirement from service". The claim of the respondent therein was also on account of medical ground, i.e., meeting with an accident. We are of the considered opinion that since the respondent therein



5. The Commandant,
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W.A.No.563 of 2020

SSV (CO)

B.VC (18/08/2021)