



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.7391 of 2013

V.Paraman

... Petitioner

vs.

1.The Commandant,
65 Bn, Central Reserve Police Force,
Baradera, Raipur,
Chhattisgarh State.

2.The Deputy Inspector General, Range
Central Reserve Police Force,
Bangrasia,
Bhopal, Madhya Pradesh.

3.The Deputy Inspector General,
Central Reserve Police Force,
Group Centre,
Avadi, Chennai - 600 065.

4.The Director General,
Central Reserve Police Force,
CGO Complex, Lodhi Road,
New Delhi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order No.P.VIII-65/2013-EC-III, dated 28.01.2013 passed by the second respondent and received by the petitioner on 04.03.2013 confirming the order of the first respondent in his office order No.P.VIII-6/2011-12-EC-II-65, dated 09.06.2012 and quash the same and to direct the second respondent on the appeal petition filed by the petitioner, dated 26.09.2012, and to pay 50% back wages from 02.12.1997 to 05.05.2010 and to treat the period as continuity of service.

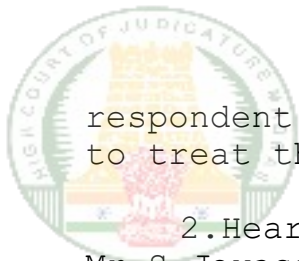
For Petitioner : Mr.K.Vadivelu

For R-1 to R-3 : Mr.S.Jeyasingh

Central Government Standing Counsel

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent, dated 28.01.2013, confirming the order of the first respondent, dated 09.06.2012, and to direct the second



respondent to pay 50% back wages from 02.12.1997 to 05.05.2010 and to treat the period as continuity of service.

2. Heard Mr.K.Vadivelu, learned Counsel for the petitioner and Mr.S.Jeyasingh, learned Central Government Standing Counsel appearing for the respondents 1 to 3.

3. The petitioner joined as a Constable in Central Reserve Police Force in the year 1987 and he was posted to 80 Bn at Neemuch in the year 1988. The petitioner was deployed in various places. While he was serving at Shillong under the first respondent, the petitioner applied for 30 days leave in 1998. Thereafter, the petitioner requested for extension of leave granted to him from 08.07.1998. When the petitioner reported duty on 27.12.1998, a charge memo was issued alleging that the petitioner was absented for a long time without proper explanation. Thereafter disciplinary proceedings was initiated against the petitioner and he was removed from service by an order.

4. The petitioner filed a Writ Petition in W.P.No.1384 of 2003. This Court, by order, dated 16.09.2009, set aside the order of punishment on the ground that the petitioner's request for change of Enquiry Officer was not considered and that the whole proceedings culminated into the punishment is vitiated for the irregularities in the conduct of the proceedings. The relevant portion of the order passed by this Court in W.P.No.1384 of 2003, dated 16.09.2009, is extracted hereinbelow:

"20. In view of the above, I am of the considered opinion that the impugned orders are liable to be set aside. But it is seen that the petitioner is guilty of approaching this Court, only in January 2003 as against the impugned orders dated 01.05.1999 and 17.7.1999. Therefore, the petitioner is not entitled to full back wages, as he has come to Court after more than 3 years. An identical situation was considered by the Apex Court in C.N.Malla vs. State of Jammu and Kashmir (JT 2009 (11) SC 1) and it was held in paragraph-12 as follows:-

"12. The legal position is fairly settled by catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is in-built in such exercise. The Court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case. Each case, of course, would depend on its own facts. In so far as the present case is concerned, the Division Bench was mainly influenced by two reasons in denying the appellant back wages, viz (one) unauthorised leave and (two) delay in



approaching the Court. The two reasons noticed by the Division Bench neither collectively nor individually justify denial of back wages to the appellant in its entirety. The allegation of unauthorized absence has not been established as no enquiry was held; the case of the appellant was that he had sent several applications for extension of leave for undergoing further training. As regards the second reason viz., delay, suffice it to say that this aspect was clearly taken note of by the single Judge and it was for this reason that back wages were not awarded to him for the period from date of termination until date of filing writ petition. The observation of the Division Bench that if the Court orders payment of back wages to the petitioner (appellant herein), it will be against the public interest and also will drain the public exchequer is founded on no legal premise."

21. Therefore, in fine, the Writ Petition is allowed, the impugned orders are set aside and the respondents are directed to reinstate the petitioner into service with continuity of service, but with 50% of back wages within 4 weeks. Since the proceedings are set aside on a technical ground, it will be open to the respondent, if they so desire, to proceed afresh from the stage at which the irregularity crept in.

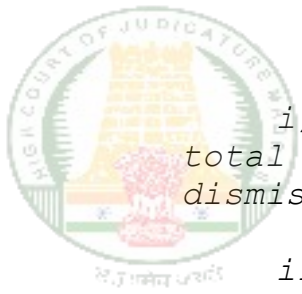
22. The Writ Petition is allowed on the above terms. No costs".

5. Thereafter, by letter, dated 14.12.2011, the memorandum of charge along with annexure was handed over to the petitioner. It is stated that Deputy Commandant was appointed as Enquiry Officer to enquire into the charges. It is stated that the delinquent was given reasonable opportunity to defend his interest at every stage during the course of enquiry and finally, the petitioner was awarded with the punishment of stoppage of one increment for two years without cumulative effect, by proceedings, dated 09.06.2012, by the Disciplinary Authority, as herein below:

"Therefore, In pursuance of power vested in me under Section 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules, 1955. I Hereby order:-

1. Stoppage of one increment for two years without cumulative effect.

2. His suspension period and absence period is hereby regularized as under:



i) Suspension period and from 02.12.1997 to 07.07.1998 total 219 days and 28.12.1998 to date of i.e., date of dismissal (01.05.1999) 125 days treated as such.

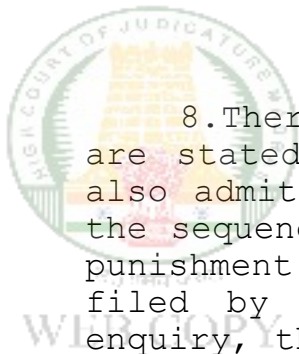
ii) Absence/Suspension period w.e.f. 08/07/1998 to 27.12.1998 total 174 days regularized into LHP with no leave salary.

iii) His intervening period w.e.f. 01.05.1999 to date of his reinstatement i.e., 05.05.2010 counted as qualifying service for all purpose except financial benefits, but he will not draw any financial benefits other than 50% back wages already drawn and paid to him as per compliance of Hon'ble High Court order dated 16.09.2009.

08. For the suspension period which has been regularized/treated as such he would not be entitled for any extra allowance/payment than that he was already drawn/ordered to be drawn in the form of subsistence allowances. Similarly for the period regularized as "LHP with no leave salary" he will not be entitled for any pay and allowance during this period."

6. Challenging the order of punishment, dated 09.06.2012, the petitioner preferred an appeal before the Deputy Inspector General, Central Reserve Police Force through proper channel. Since this Court had granted the relief earlier in the Writ Petition, it is submitted by the petitioner that he is entitled to continuity of service and 50% of back wages for the entire period during which the petitioner was placed under suspension. It is further stated that the petitioner is entitled to 50% of back wages from 02.12.1997 to 04.05.2010. It is further submitted that the respondent should count the period from 02.12.1997 to 04.05.2010 as a period of service. The appeal preferred by the petitioner was also dismissed by holding that the punishment of stoppage of one increment for two years without cumulative effect is justified. The Appellate Authority did not consider the legal implications in the order denying back wages for the entire period during which the petitioner was placed under suspension. Aggrieved by the same, the above Writ Petition is filed.

7. The learned Counsel appearing for the petitioner submitted that the order of this Court earlier in the Writ Petition filed by the petitioner is not strictly followed by the respondents. The learned Counsel for the petitioner then submitted that the petitioner cannot be denied at least the benefit of 50% back wages from 02.12.1997 to 04.05.2010, during which the petitioner was placed under suspension.



8. There is no factual issue in this case, as the facts, which are stated in the affidavit in support of the Writ Petition, are also admitted by the respondents in their counter affidavit. From the sequence of events, this Court is able to see that the order of punishment earlier was set aside by this Court in the Writ Petition filed by the petitioner in W.P.No.1384 of 2003. After fresh enquiry, the order of punishment was modified as one of stoppage of one increment for two years without cumulative effect. However, the period of suspension from 02.12.1997 to 04.05.2012 was regularised by treating the period as a period of leave without salary.

9. This Court is unable to find any reason for denying the salary for the period of suspension. When the order of dismissal was set aside by this Court for reasons and the Disciplinary Authority has found that the petitioner has valid reasons for his absence, the punishment was reduced to one for stoppage of one increment for two years without cumulative effect. Therefore, the period of suspension from 02.12.1997 to 04.05.2010 has to be regularised and the petitioner cannot be denied salary for the entire period. The petitioner himself has claimed only 50% of back wages. Since this Court has already held that the petitioner is not entitled to full pay for the entire period of suspension and it is enough if 50% of salary is paid to the petitioner, this Court has no hesitation to hold that the petitioner is entitled to 50% of back wages from 02.12.1997 to 04.05.2010. The petitioner is also entitled to regularisation of the entire period of suspension from 02.12.1997 to 04.05.2010 for the purpose of salary and other monetary benefits.

10. Accordingly, the Writ Petition is allowed and the impugned order, dated 28.01.2013 passed by the second respondent confirming the order of the first respondent, dated 09.06.2012 are set aside. The punishment of stoppage of one increment for two years without cumulative effect is upheld. However, the entire period from 02.12.1997 till reinstatement, ie., on 04.05.2010, should be counted as qualifying service for all purpose and the petitioner is entitled to 50% of back wages for the entire period from 02.12.1997 to 04.05.2010. The entire exercise shall be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)



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4.The Director General,
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+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-27916[F] dated
02/09/2021)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-27981[F] dated 02/09/2021)

Order made in
W.P.(MD) No.7391 of 2013
02.09.2021

RS (15.09.2021) 6P 7C