



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.10107 of 2014

WEB COPY

G. Balaji

...Petitioner

Vs.

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

2.The Director General,
ITB police Force, Block - 2
CGO Complex,
Lodhi Road, New Delhi - 110 003

3.The Deputy Inspector General Communication,
ITB Police Force,
CGO Complex,
Lodhi Road, New Delhi - 110 003

4.The Commandant,
45th Battalion, ITB Police Force,
Idayapatti, South Amoor,
Madurai 625 110

...Respondents

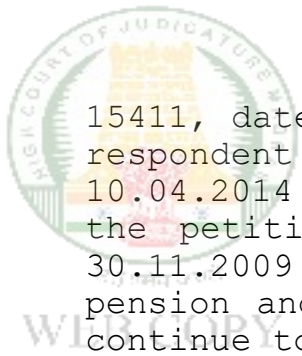
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the consequential order passed by the 4th respondent in his letter No. ITBP 45 Bn/Estt-2/RESIGN/13-2109 dated 10.04.2014 and enclosed with the order passed by 2nd respondent in his order No. AKT No. 1-31015/I/Estt/PSG/13-15411 dated 26.08.2013 and quash the same and to direct the respondents to count the services of the petitioner rendered in the 4th respondent department from 30.11.2009 to 16.03.2012 counting as service rendered, and pay *pro rata* pension and leave encashment (earned leave and half pay leave) and continue to pay to the petitioner.

For Petitioner : Mr. K.Vadivelu

For Respondents : Mr.R.Murugappan

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned order passed by the second respondent in order No. AAKT No. 1-31015/I/Estt/PSG/13-



15411, dated 26.08.2013 and consequential order passed by the fourth respondent in letter No. ITBP 45 Bn/Estt-2/RESIGN/13-2109, dated 10.04.2014 and to direct the respondents to count the services of the petitioner rendered in the fourth respondent department from 30.11.2009 to 16.03.2012 as service rendered, and pay *pro rata* pension and leave encashment (earned leave and half pay leave) and continue to pay to the petitioner.

2.The petitioner joined as Constable in the Central Industrial Security Force on 19.06.2000. Later, the petitioner submitted his resignation on 09.10.2009 to join as Sub-Inspector under the fourth respondent (ITB Police Force). The Petitioner's resignation was accepted by the Senior Commandant, CISF, Hyderabad, by order dated 20.11.2009. Thereafter, the petitioner joined as Sub-Inspector under the fourth respondent on 30.11.2009. Once again, the petitioner tendered his resignation on 16.03.2012 to the fourth respondent to join in M/s.BHEL as Sub-Inspector. It is stated that the fourth respondent also permitted the petitioner to join in the said post. The petitioner is working in BHEL Trichy, from 17.03.2013.

3.The petitioner, thereafter, made a representation to the fourth respondent to count the services rendered in ITB Police Force for the period from 30.11.2009 to 16.03.2012 and to pay pension and other retirement benefits. Since the request of the petitioner was rejected by the impugned order, the above writ petition is filed.

4.The learned counsel appearing for the petitioner placing reliance on Rule 26 of CCS Pension Rule, submitted that the petitioner is entitled to *pro rata* monthly pension and death cum retirement gratuity as admissible under the Rules.

5.Rule 26 of CCS Pension Rule, reads as follows:

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 :-

(i) 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 ;

(ii) 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 ;

(iii) 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 ;

(iv) 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.]”

6.This court is unable to accept the contention of the petitioner that the rejection of the request of the petitioner is contrary to Sub Rule 2 of Rule 26 of CCS Pension Rules. The petitioner has not made out the case that his request to be



considered under the said Rules. The petitioner had not obtained any permission before getting appointment in BHEL.

7.The learned counsel appearing for the petitioner submitted that by proceeding dated 26.11.2009, the petitioner's application requesting technical resignation was provisionally accepted by the fourth respondent. The communication dated 26.11.2009 does not mean that the petitioner is entitled to the benefit upon the Rules 26(2) of CCS Pension Rules. Hence, this Court is unable to find merits in the writ petition.

8.The respondents have filed a counter affidavit *inter alia* stating that the petitioner cited domestic problems for his resignation. The request of petitioner was accepted and the petitioner was discharged from service on 16.03.2012. It is the specific case that the request of the petitioner could not be accepted because he was discharged from service on his own request. The petitioner never applied for any written request for issuing No Objection Certificate to appear in the examination for the post of Sub-Inspector(Security) in BHEL. Sub Rule 2 of Rule 26 of CCS (Pension) Rules, 1972, provides that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment under the Government, if the service qualifies. The petitioner's resignation was cited to be on domestic grounds and the petitioner did not apply for being appointed in BHEL through proper channel.

9.In such circumstances, this Court is unable to grant any relief to the petitioner by considering the Sub Rule 2 of Rule 26 of CCS (Pension) Rules 1972. Hence, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Sn/Ns

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

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

2.The Director General,
ITB police Force, Block - 2
CGO Complex,
Lodhi Road, New Delhi - 110 003.

3.The Deputy Inspector General Communication,
ITB Police Force,
CGO Complex,
Lodhi Road, New Delhi - 110 003.

4.The Commandant,
45th Battalion, ITB Police Force,
Idayapatti, South Amoor,
Madurai 625 110.

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-28363[F] dated
07/09/2021)

W.P. (MD) .No.10107 of 2014
06.09.2021

RK (22.09.2021) 5P 6C