



W.P.No.13188 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :
09.06.2022

Delivered on :
28.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 13188 of 2021
and WMP.No. 13996 of 2021

K.Subha

..Petitioner

Vs.

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

2.The Director General of Police,
Central Reserve Police Force,
NGO Complex, Lodhi Road,
New Delhi.

3.The Additional Director of Police
South Zone,
Central Reserve Police Force,
Telungana,
Hyderabad – 05.

4.The Inspector General of Police,
Central Reserve Police Force
Gayathri Hills, Southern Sector,
Telangana – 500033



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5.The Deputy Inspector General of Police,
Central Reserve Police Force,
Avadi, Group Centre,
Chennai-600065.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in respect of the order passed by the 5th respondent dated 09.05.2020 in No.P.VIII.6/2014-EC(2) which was confirmed by the 4th respondent/Inspector General of Police dated 20.01.2021 and quash the punishment of stoppage of increment for a period of two years and the reinstatement shall be treated as not spent on duty and consequently direct the respondents to pay all attended benefits (treated as duty) w.e.f. 28.07.2014.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.C.Samivel, SCGSC

ORDER

The relief sought for in the present petition is to calling for the entire records in respect of the order passed by the 5th respondent dated 09.05.2020 in No.P.VIII.6/2014-EC(2) which was confirmed by the 4th respondent/Inspector General of Police dated 20.01.2021 and quash the punishment of stoppage of increment for a period of two years and the reinstatement shall be treated as not spent on duty and consequently direct



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the respondents to pay all attended benefits (treated as duty) w.e.f.

28.07.2014.

2. The learned counsel for the petitioner has submitted that the petitioner joined as a Assistant Sub Inspector in the CRPF on 05.06.1991 and promoted as Sub Inspector. The petitioner has served in the respondent office for the past 30 years. The petitioner has submitted application to the Deputy Inspector General of Police, Group Centre, Avadi/5th respondent to sanction one year Child Care Leave in accordance with CCS Service Rules 1972. The said request was not considered by the respondent. The said request was rejected by the respondent, hence the petitioner has filed a writ petition in W.P.No. 26690 of 2012, this Court by order dated 03.10.2012 set aside the said rejection order passed by the respondents and remanded back to consider the claim of the petitioner in the light of the medical records and to pass orders. The 1st respondent has considered the said request made by the petitioner and sanctioned only 47 days leave.

3. The learned counsel for the petitioner has further submitted that the petitioner has again made request to the respondent seeking extension of



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leave for 10 months on the ground of treatment of her daughter suffering from psychological problem. The said request was also rejected by the respondent, hence the petitioner has filed another writ petition in W.P.No. 31503 of 2012 seeking Child Care Leave. This Court by order dated 04.03.2013, directed the respondents to grant leave to the petitioner as requested by the petitioner. In the meantime the petitioner was transferred from Central Zone to Eastern Sector and framed three charges as against the petitioner viz., 1. when the petitioner is functioning as Sub Inspector committed an act of misconduct, 2. She committed of misconduct in a capacity of member of the force u/s 1 of CRPC in that she absented from duty w.ef. 03.09.2012 to 19.10.2012 without any permission and 3. She disobeyed the lawful orders of Deputy Inspector of Police/senior officers when she was directed to report back for duty.

4. The learned counsel for the petitioner has submitted that without proper enquiry and without following the principals of natural justice, enquiry has been conducted and the enquiry officers filed the report as all the three charges are proved. Subsequently, the Deputy Inspector General has passed an order imposing punishment of compulsory retirement with



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immediate effect with the penalty of deduction of 1/3rd pension . Challenging the said order, the petitioner has filed a writ petition in W.P.No. 40493 of 2015. This court by order dated 21.01.2020 has directed the respondents to consider the claim made by the petitioner and observed as follows;

“The impugned order passed by the respondent is quashed and remitted back to the fifth respondent to reconsider the punishment against the petitioner and to pass appropriate order after providing further opportunity to the petitioner. It is open to the writ petitioner to submit further explanation for reconsidering the penalty imposed by the fifth respondent, if so advised, within a period of two weeks from the date of receipt of a copy of this Order. The fifth respondent shall consider the said explanation of the writ petitioner, in accordance to law, and pass appropriate order and complete the entire exercise within a period of twelve (12) weeks from the date of receipt of a copy of this order”.

5. Pursuant to the said order of this Court, the respondent had modified the punishment order and reinstated the petitioner in service and awarded the punishment of stoppage of increment for a period of two years w.e.f next date of increment and on expiry of this period. Challenging the same, the present writ petition is filed.



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6. On the other hand, the learned Senior Central Government Standing Counsel appearing for the respondent has submitted that as the petitioner neither submitted her written defense within the time specified nor appeared before the enquiry officer. Hence the enquiry officer conducted the enquiry exparty proceedings by recording statements of prosecution witnesses and provided the copies of the same to the petitioner through her advocate from time to time with a direction to submit reply/representation if any. However, the petitioner has not responded to any of the correspondence. Therefore, based on the written statements of the PWs and available documents, the enquiry officer has completed the enquiry and held the charges framed against the petitioner and awarded punishment of Compulsory Retirement from service w.e.f 28.07.2014 with the penalty of reduction of 1/3rd of pension which she is entitled in case of normal pension admissible to her under the provisions of Rule 40 of CCS (Pension) Rules, 1972 vide order dated 16.11.2014. Subsequently, pursuant to the directions issued by this Court in W.P. No. 40493 of 2015, dated 21.01.2020, this 4th respondent had considered the explanation dated 17.02.2020 submitted by the officer and passed orders modifying the punishment of compulsory retirement into



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stoppage of increment for a period of two years and further ordered that from the date of compulsory retirement from service w.e.f. 29.07.2014 to the date of her reporting back into service on reinstatement shall be treated as 'not spent on duty' for all purposes and the petitioner will not be entitled for any pay and allowances for the intervening period under the provisions of Fundamental Rule 54(1).

7. The learned Senior Central Government Standing Counsel appearing for the respondent has further submitted that aggrieved against the said modification order, the petitioner has preferred the appeal and revision petitions and the were rejected by the 4th respondent by following the relevant rules and procedure, therefore the present writ petition, challenging the said rejection order passed by the 4th respondent does not warrant any interference by this Court and the same is liable to be dismissed.

8. Heard Mr.D.Rajagopal, learned counsel appearing for the petitioner and Mr.C.S.Samivel, learned Senior Central Government Standing Counsel appearing for the respondent and perused the materials available on record.



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9. The primordial ground raised by the learned counsel for the petitioner is that due illness the petitioner had applied for medical leave in accordance with the relevant rules along with the medical certificate from Government doctors who gave treatment and therefore the punishment of stoppage of increment for two years and treating the period from the date of compulsory retirement from service w.e.f. 29.07.2014 to the date reporting back into service on reinstatement as 'not spent on duty' cannot be imposed against the petitioner. According to the petitioner the claim of Child Care Leave was on bonafide reasons to take care of her child, thus the same cannot be charged as unauthorised absence.

10. On perusal of documents, admittedly, after the charges are proved against the petitioner, 5th respondent has passed an order imposing punishment of compulsory retirement with the penalty of deduction of 1/3rd pension. Challenging the said punishment order, the appeal preferred before the 4th respondent and revision petition before the 3rd respondent were also dismissed by orders dated 16.11.2014 and 06.07.2015 respectively. Aggrieved against the said dismissal orders, the petitioner had filed a writ



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petition in W.P. No. 40493 of 2015. This Court by order dated 21.01.2020, has quashed the punishment order passed by the 5th respondent and directed the respondents to reconsider the punishment awarded against the petitioner.

11. Pursuant to the said order of this Court, the 5th respondent had considered the explanation dated 17.02.2020 submitted by the petitioner and passed the impugned order dated 09.05.2020 modifying the punishment by reinstating the petitioner in service and awarded punishment of stoppage of increment for a period of two years and further ordered that from the date of compulsory retirement from service w.e.f. 29.07.2014 to the date of her reporting back into service on reinstatement shall be treated as 'not spent on duty' for all purposes under the provisions of Fundamental Rule 54(1). As far as the punishment of stoppage of increment is concerned the petitioner has submitted a representation by way of an appeal to the 4th respondent and the same was dismissed by order dated 20.01.2021. As against the said dismissal order, the petitioner has preferred a review petition before the 3rd respondent and the same is pending till date.



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WEB COPY 12. The petitioner has clearly stated in her representation that she has two daughters and her elder daughter is suffering from serious mental illness and psychological problems and undergoing treatment which fact was accepted by this Court in the order dated 04.03.2013 in W.P.No.31503 of 2012 filed by the petitioner. Further, based on the directions issued by this Court in the subsequent writ petitions filed by the petitioner and the medical records submitted by the petitioner, the respondent had granted Child Care Leave to the petitioner and regularised the absence period from 03.09.2012 to 19.10.2012 and modified the punishment of compulsory retirement and permitted petitioner to reinstate into service.

13. In view of the above factual positions, this Court is of the view that the punishment of stoppage of increment for two years and treating the period from the date of compulsory retirement from service w.e.f. 29.07.2014 to the date reporting back into service on reinstatement as 'not spent on duty' requires reconsideration.

14. Though the petitioner has sought to quash the dismissal order dated 09.05.2020 passed by the 5th respondent, which was confirmed by the 4th respondent by order dated 20.01.2021 in the appeal, this Court is of the view



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that it would be proper to direct the 3rd respondent to pass orders on the review petition dated 01.02.2021 preferred by the petitioner within a time frame.

15. Accordingly, the 3rd respondent is directed to consider all the contentions raised by the petitioner in the review application dated 01.02.2021 and pass appropriate orders on merits and in accordance with law by taking note of the CCS (Leave) Rules, 1972, as expeditiously as possible, preferably within period of twelve (12) weeks from the date of receipt of a copy of this order.

16. In the result, the writ petition is allowed to the extent above. No costs. Consequently, connected Miscellaneous Petition is closed.

28.06.2022

Index: Yes/No
Internet : Yes
Speaking Order/Non Speaking Order.
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D.KRISHNAKUMAR. J

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