

73.
27.3.2023
S.D.

W.P.A. 1788 of 2023

Laxmi Kanta Paul
Vs.
Union of India & Ors.

Mr. Rajarshi Basu
Mr. Lal Ratan Mondal
Mr. Probal Sarkar
Ms. Sk. Kiran

... For the Petitioner

Mr. S.C. Prasad

..For the U.O.I.

The petitioner challenged an order passed by the Deputy Inspector General (Admn.), Srinagar Sector, CRPF passed sometime on or about October 20, 2022. Pursuant to the said order, the period of August 4, 2001 till April 22, 2014 was treated as a period of “non-duty” by the respondent authorities. The petitioner was working as a Constable (G.D.) with the Central Reserved Police Force (CRPF). On July 2001, the petitioner was terminated from service. The petitioner challenged the said order of termination. The Hon’ble Single Bench rejected such application. By the order dated January 16, 2014, the Hon’ble Division Bench held that the service of the petitioner/appellant was only terminated on the ground

of health and not on any other ground. From the report of the Medical Board, it was found that the actual health condition of the petitioner was not known to the authorities and the authorities took an “*erroneous decision*” in the absence of proper and valid medical report in respect of the health condition of the petitioner. Therefore, the impugned order of termination was quashed.

The respondent authorities were directed to reinstate the petitioner in services forthwith “without paying any back wages”.

By an order dated February 7, 2023, this Court took a *prima facie* view that the respondents cannot be permitted to take advantage of their own wrong. The period for which the petitioner was not allowed to work was a period of “*forced unemployment*” imposed by the respondent authorities on the petitioner.

Mr. Prasad, learned counsel appearing on behalf of the respondent authorities hands over an office order dated September 26, 2022 issued by the DIG, CRPF, Srinagar. By the said order, the DIG came to the finding that the petitioner will not be entitled for any Pay and Allowance or any other service benefits like seniority, promotional post and pay fixation equivalent to his batch mates on the principle of “*no*

work no pay". The written instruction of the DIG dated February 8, 2023 as handed over in Court today is retained with the records.

The written instruction issued by the Commandant on February 20, 2023 is also retained with the records which also reiterates the view that the petitioner will not be entitled to promotional course at par with his batch mates as the period between August 4, 2001 and April 22, 2014 is to be considered as period of "non-duty".

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the Hon'ble Division Bench directed that the petitioner is to be reinstated in services without payment of back wages considering the principle of "*No work no pay*". However, such a direction by the Hon'ble Division Bench cannot be stretched to the extent that to mean notional benefits like the seniority, promotional post, MACP or pay fixation would not be payable to the petitioner since the petitioner was in "*forced unemployment*" due to an "*erroneous decision*" taken by the respondent authorities.

This Court is of the view that the respondent authorities cannot be permitted to take advantage of their own wrong/"*erroneous decision*".

Therefore, it cannot be accepted that the period of "*forced unemployment*" was only condoned for the purpose of computation of pension under Rule 27 of the Central Civil Services (Pension Rules), 1972 without break in service and not for any other purpose. If an order/policy/guideline is capable of two interpretations then it has to be interpreted to give maximum benefits to the employee. Such view of this Court finds support in a decision of the Apex Court (**State of Rajasthan and Ors. vs. O.P. Gupta**) reported in 2022 Live Law 785.

In the light of the discussions above, the order dated October 6, 2022 issued by the Deputy Inspector General (Admn.), Srinagar Sector, CRPF is set aside and/or quashed.

The petitioner will be allowed to participate in the promotional process and will be given notional benefits including seniority from the initial date of joining of his service on March 10, 2001. It is also clarified that the petitioner's pay fixation will be made in accordance with the pay fixation of the petitioner's batch mates who were recruited in 2001.

With the directions aforesaid, **W.P.A. 1788 of 2023** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)