

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 11298 of 2016

With
CAN 1 of 2020

Jai Karan
Versus
Union of India & Ors.

For the petitioner : Ms. Punam Basu
Ms. Pritha Biswas

For the respondents : Mr. Siddhartha Lahiri

Heard on : 11th December, 2023

Judgment on : 11th **December, 2023.**

Raja Basu Chowdhury, J:

In re: CAN 1 of 2020

1. Ms. Basu, learned advocate representing the petitioner at the very outset submits that although, the petitioner is aggrieved by a part of the order dated 3rd June, 2014, to the extent reflected in paragraph 10 thereof, whereby the Inspector General, despite reinstating the petitioner had proposed that the intervening period from the date of termination of his service till the date of

reinstatement be treated as “dies non” for all practical, by permitting the petitioner to make a representation, the said challenge is not reflected in the prayer portion of the writ petition. She, however, submits that a perusal of the writ petition would clearly identify the aforesaid challenge. She further submits that an application, being CAN 1 of 2020 has been filed, *inter alia*, praying for leave to amend the writ petition in the manner indicated therein. The same should be allowed.

2. Mr. Lahiri, learned advocate representing the respondents, does not object to the same.
3. Having regard to the aforesaid and considering the materials on record, I am of the view that the aforesaid amendment as sought for, does not alter the nature and character of the present proceedings as the basis thereof, is already present in the pleadings.
4. In view thereof, leave is granted to the learned advocate-on-record of the petitioner to correct the prayer (b) of the writ petition by incorporating the partial challenge to the order dated 3rd June, 2014, as indicated above, at the end of the prayer.
5. The application, being CAN 1 of 2020 is, thus, disposed of.

In re: WPA 11298 of 2016

6. The instant writ petition has been filed, *inter alia*, challenging the order dated 18th August, 2014, issued by the Inspector General of the respondents whereby, the intervening period from the date of termination of the petitioner till the date of reinstatement in service

was treated as “dies non”, in furtherance to the proposal dated 3rd June, 2014.

7. Shorn off unnecessary details the facts are that the petitioner was appointed in the CISF as Constable on 21st April, 2002. After completion of his basic training he had reported for regular posting to CISF Unit DSP, Durgapur. According to the petitioner at the time of his appointment he had submitted an attestation form in which column 12 was left blank. The same related to verification of character and antecedents of the petitioner.
8. Upon the aforesaid form being sent for verification, a report was submitted by the District Magistrate Jhajjar, Haryana on 1st May, 2003 mentioning therein that a criminal case was registered against the petitioner under Section 323, 324 and Section 34 of the Indian Penal Code at Sadar Bahadurgarh Police Station (FIR No. 303 dated 29th August, 2001). The petitioner was, however, acquitted by the learned First Class Judicial Magistrate, Bahadurgarh Court on 23rd March, 2002.
9. At the material point of time when the petitioner was under probation his service was terminated by the DIG, CISF Unit, DSP, Durgapur on 12th June, 2003 by paying a month's salary in lieu of one month's notice, on account of suppression of fact before the department. The petitioner was not afforded any opportunity of hearing, nor any documents were supplied to the petitioner based on which the decision to terminate the petitioner had been taken.

10. Records reveal, immediately upon his termination, the petitioner had made a representation on 24th June, 2003. His representation, however, was disposed of by an order dated 27th August, 2003 issued by the IG Headquarters thereby, confirming the order of termination. According to the petitioner, the aforesaid order dated 27th August 2003 is a non-speaking order.
11. In the circumstances as aforesaid and being aggrieved with his termination which he claims to be wrongful, he had filed a writ petition before this Hon'ble Court which was registered as WP No.5594(W) of 2005. On contested hearing by an order dated 20th August, 2009 a Coordinate Bench of this Hon'ble Court had directed the authority to reconsider the petitioner's candidature on the basis that if such information was available at the initial stage what they would have done according to the prevalent rules and practice. It was also provided in the aforesaid order that the respondents are expected to apply non-discriminatory standard in taking a decision in the matter.
12. Although, an intra-Court appeal was filed by the respondents, by an order dated 20th February, 2014, the Division Bench of this Hon'ble Court had directed the respondents herein who were the appellants to the said case to proceed with the matter in accordance with law by observing as under:-

"We dilute the observations made by the single bench to the extend of Joy Alexander's case whether such treatment can be meted out to the petitioner or not is at

the discretion of the authorities concerned. As order had not been quashed by the single bench, we are not inclined to interfere with the order passed by the appellants. The appellants are at liberty to proceed with the matter in accordance with law taking into consideration the suppression of material fact by the petitioner and, thereafter considering the various decisions of the Hon'ble Apex Court take a decision in accordance with law".

13. Records reveal that pursuant to the aforesaid direction issued by the Division Bench of this Hon'ble Court by an order dated 3rd June, 2014 the Inspector General being the respondent no.3 was, inter alia, pleased to set aside the order of termination dated 12th June, 2003 issued by the DIG, CISF Unit, DSP, Durgapur, with a further direction to reinstate the petitioner in service. However, by the said order he proposed to treat the intervening period i.e. the period from the date of termination of his service till the date of reinstatement as "dies non".
14. Although, the petitioner claims to have made a representation in time and the same was forwarded through the commandant, the same was not processed by the commandant in time. The petitioner had subsequently made another representation. However, according to the petitioner, the respondents ignoring such representation had passed the order dated 18th August, 2014 thereby, confirming the proposal at paragraph 10 of the order dated 3rd June, 2014 to treat

the period from the date of termination till the date of reinstatement as “dies non”.

15. According to the petitioner, subsequently, however, the respondents had passed a fresh order on 3rd June, 2015 taking into consideration the petitioner’s representation and having found that the petitioner had failed to identify the mitigating points in its representation that would warrant any further consideration, the prayer for regularization of the petitioner for the intervening period as duty, instead of “dies non”, being not acceptable was rejected on the principle of “no work no pay”.

16. The petitioner has not only challenged the proposal dated 3rd June, 2014 which proposed that the intervening period between the date of termination from service and the date of reinstatement be treated as “dies non” as is reflected in paragraph 10 of the said order but also the order dated 18th August, 2014 whereby, the said proposal was affirmed as also the subsequent rejection of the petitioner’s representation vide order dated 3rd June, 2015.

17. Ms. Basu, learned advocate representing the petitioner, submits that once, the respondents decided to reinstate the petitioner taking into consideration the factum of suppression and non-disclosure of the information in column 12 of the attestation form as a minor aberration as inclusion of the fact was not likely to cause disadvantage to the petitioner in joining any government service, by

setting aside the order of dismissal, the intervening period between his dismissal and reinstatement ought not to have been treated as “dies non”. In any event, the ground on which the respondents had purported to reject the petitioner’s representation cannot be sustained especially since, the petitioner had no role to play, in not performing his duty at the relevant point of time. The petitioner had, in fact, being denied the opportunity of work and as such the decision to treat the aforesaid period as “dies non” for all practical purposes appears to be not only harsh but excessively oppressive. She submits that the aforesaid direction should be set aside and the respondents should be directed to make payment of all benefits including arrear salary and back wages to the petitioner, by treating the intervening period as on duty.

18. Ms. Basu, by placing reliance on an unreported judgment delivered by a Coordinate Bench of this Hon’ble Court in the case of ***Sri Sukdeb Mandal v. Union of India*** delivered on 6th September, 2022 in **WPA 28149 of 2015**, submits that similarly circumstanced persons have been given not only the benefits of continuous service but salary and all other benefits from the date of termination till the date of reinstatement. She also places reliance on another judgment delivered by the Hon’ble Supreme Court in the case of ***Joginder Singh v. Union of India & Ors.***, delivered on 9th January, 2015 in **Special Leave to Appeal (C) Nos. 6975-6976 of 2014**.

19. *Per contra*, Mr. Lahiri, learned advocate representing the respondents, submits that it is an admitted position that the petitioner was terminated on 12th June, 2003 and did not work with the respondents until 18th June, 2014. The petitioner cannot be permitted to unjustly enrich himself at the cost of the State exchequer. The petitioner having not worked cannot be entitled to any benefit for the aforesaid period. It is still further submitted that the petitioner's case was duly considered by the respondents by an order dated 3rd June, 2015 and the respondents having found that the petitioner had not worked for the aforesaid period, his claim was denied on the principle of "no work no pay".
20. As regards the judgments cited by Ms. Basu, Mr. Lahiri submits that a judgment is an authority for what it decides. The aforesaid judgments have been passed in the respective facts of the cases, the aforesaid judgments are distinguishable on facts and do not assist the petitioner.
21. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, it is noted that the petitioner was successfully selected to the post of a Constable and had joined the CISF as a Constable on 21st April, 2002. He was on probation when it was detected that he had suppressed a criminal case by not declaring the same in column 12 of the attestation form. Such fact came to light when on verification of the attestation form, the District Magistrate Jhajjar, Haryana in his

report dated 1st May, 2003 communicated that a criminal case was registered against the petitioner under Section 323/324/34 of the Indian Penal Code against FIR No. 303 dated 29th August, 2001. Although, the petitioner was acquitted from such proceedings, the respondents by treating that the petitioner having suppressed material facts as regards his criminal proceedings, had terminated the petitioner from service by giving the petitioner one month's notice pay. Despite, the petitioner making a representation and praying for reinstatement, his representation dated 24th June, 2002 was not considered. On the contrary, the Assistant Inspector General by letter dated 18th December, 2002 informed the petitioner that his representation had been rejected as being devoid of merit.

22. The petitioner, being aggrieved had moved this Hon'ble Court by filing a writ petition being WP No. 5594 (W) of 2005 when by an order dated 20th August, 2009 a Coordinate Bench of this Hon'ble Court was, inter alia, pleased to direct the respondents to reconsider the petitioner's case. Although, an appeal was preferred from the said order, the Hon'ble Division Bench of this Court by an order dated 20th February, 2014 was, inter alia, pleased to direct the respondents to proceed with the matter by taking into consideration the suppression of fact by the petitioner on the basis of the diverse decisions of the Hon'ble Supreme Court and to take a decision thereon in accordance with law.

23. Records reveal that the Inspector General of the respondents had since, by an order dated 3rd June, 2014 was pleased to reinstate the petitioner in service by setting aside the order of termination dated 12th June, 2003. However, by the selfsame order it was proposed that the period between the date of termination of service of the petitioner till the date of reinstatement be treated as “dies non” for all practical purposes by observing as under:-

“8 Apart from above, non-declaration of the fact in Column No.12 of Attestation Form appears to be a minor aberration as inclusion of the fact was not likely to cause disadvantage to the petitioner, in joining any government service. Further, depriving a young man of a legitimate government job merely on such a filmsy ground would be a serious set back to him. Thus, keeping in view the facts enumerated above and considering his young age, long service career before him and wishing that he would prove himself a suitable and disciplined member of the force in future, I feel the petitioner should be given a chance to correct himself by setting aside the order of termination passed by the DIG, CISF Unit DSP Durgapur vide order No.(5889) dated 12.06.2003 in the instant case and reinstating him in service.

9. Therefore, in terms of Rule 2691)(ii) of CISF Rules 2001, the order of termination dated 12.06.2003 issued by the DIG, CISF Unit DSP Durgapur against the petitioner is set aside and the petitioner is re-instated in service with direction to report at CISF Unit DSP Durgapur within 15 days from the date of receipt of this order, failing which it will be presumed that he is no

more interested to serve this organization and this order shall automatically stand cancelled.

10. Further, it is proposed to treat the intervening period i.e. from the date of termination of his service till the date of his re-instatement as “dies non” for all purposes. In case he wishes to make a representation in this regard he may do so in writing within 15 days from the date of receipt of the same. If he fails to submit the same within the stipulated period of 15 days it will be presumed that he has nothing to represent and order will be passed as per rules”.

24. It appears that although, the petitioner claims to have made a representation in terms of the opportunity afforded to him in the order dated 3rd June, 2014, the respondents had proceeded to decide the said issue on 18th August, 2014 by treating no representation had been made by the petitioner, thereby confirming its proposal as made out in paragraph 10 of the order dated 3rd June, 2014, to treat the intervening period between the date of termination and the date of reinstatement as “dies non”. Subsequently, however, the respondents had proceeded to consider the petitioner’s case as would appear from the order dated 3rd June, 2015 and having found the petitioner’s prayer for regularization of the intervening period “as on duty” instead of “dies non” unacceptable, had rejected the same on the principle of “no work no pay”. Being aggrieved, the present writ petition has been filed.

25. In this case, it is noted that the respondents themselves in the order dated 3rd June, 2014 had found that the criminal proceedings

that was registered against the petitioner does not come under the category of serious offence/moral turpitude. It was further noted by the Inspector General, in his aforesaid order that the petitioner was acquitted by the learned Judicial Magistrate, 1st Class, Bahadurgarh Court on 20th March, 2002 as the criminal case was settled amicably on compromise. It has been further recorded that non-declaration of the fact in column 12 appears to be a minor aberration as inclusion of the fact was not likely to cause disadvantage to the petitioner in joining any government service.

26. Having regard to the aforesaid, it is apparent and clear that the initial decision of the respondents to terminate the petitioner was bad. No opportunity of hearing at any stage was given to the petitioner. The respondents having realized the same had set aside the said order dated 3rd June, 2014, however, at the same time it was proposed by the Inspector General that the intervening period from the date of termination from service till the date of reinstatement of the petitioner, to be treated as “dies non” for all practical purposes. The aforesaid proposal was confirmed by order dated 18th August, 2014.

27. Although, Ms. Basu, learned advocate representing the petitioner has argued by drawing attention of this Court to the affidavit in opposition, that there is no denial of the factum of the petitioner forwarding his representation to the aforesaid proposal through, the

Commandant, however, in the absence of the records being produced, I am unable to determine the same.

28. Be that as it may, records reveal that the respondents have, however, by an order dated 3rd June, 2015 reconsidered the petitioner's representation and had come to a finding that the petitioner's prayer for regularization of the intervening period as "on duty" cannot be accepted on the principle of no work no pay. It must be noted here that when the petitioner was terminated from service no opportunity of hearing was given to him. At that stage the respondents did not consider the fact that non-disclosure of the information, in column 12 of the attestation form is a minor aberration, as inclusion of such fact was not likely to cause disadvantage to the petitioner in joining any government service. Although, a representation was made, the aforesaid order or of rejection was not reconsidered. It is only when the respondents realized the mistake that the order dated 12th June, 2002 was set aside but in the interregnum more than a decade had passed. To activate the respondents in reconsidering their decision, the petitioner had to approach this Hon'ble Court. Even after the order dated 20th August, 2009, the respondents did not reconsider the case. It was only after the Division Bench of this Hon'ble Court by its order dated 20th February, 2014 refused to set aside the direction for reconsideration, that the case was reconsidered and the order of reinstatement dated 3rd June, 2014 was passed. The

petitioner certainly could not be made responsible for the delay in reconsideration of his case.

29. Having regard to the aforesaid, I am of the view that directing the aforesaid intervening period from the date of termination till the date of reinstatement to be treated as “dies non” is harsh, unreasonable and oppressive. However, the fact that the petitioner did not work cannot be lost sight of.

30. Having regard to the aforesaid I am of the view that justice would be subserved if the petitioner is treated to be in continuous service for the entire intervening period i.e. from the date of termination till the date of reinstatement and is paid all notional benefits therefor, including 50 per cent of his back wages.

31. In view thereof, the orders dated 18th August, 2014 and 3rd June, 2015 are set aside. The respondents are directed to accordingly correct the petitioner’s service records and disburse the back wages as directed, within 6 weeks from the date of communication of this judgment and order on the basis of the observations made herein above.

32. With the above observations and directions the writ petition is disposed of.

33. There shall, however, be no order as to costs.

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

(Raja Basu Chowdhury, J.)

sb.