

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 31752 of 2008

Rafiqul Islam
Vs.
Union of India & Ors.

For the petitioner : Mr. Achin Kumar Majumder.

For Union of India : Mr. Kushi Prasun Chatterjee.

Heard on : 14.03.2023.

Judgment on : 14th March, 2023.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, praying for a direction upon the respondents to withdraw and revoke the order dated 5th June, 2002, forming Annexure P-2, whereby the period from the date of termination from service of the petitioner till the date of reinstatement, was directed to be treated as leave without pay.
2. The petitioner is a constable of Railway Protection Force (RPF) of Eastern Railway and was posted at Reserve Coy, Liluah Head Quarter under Howrah-1 Division, at the material point of time.

3. It is the petitioner's case that while he was in service, he was terminated by an office order dated 19th October, 1995 because of his involvement in police case and for suppression of factual information in the attestation form filled up by him. By a judgment and order dated 22nd August, 1996, the aforesaid criminal case ended in acquittal of the petitioner.
4. Following the aforesaid, challenging the aforesaid order of termination, the petitioner filed a writ application before this Hon'ble Court which was registered as CO No. 18128 (W) of 1996. On contested hearing, this Hon'ble Court directed the Chief Security Commissioner, RPF, Eastern Railway, to consider the petitioner's case and to pass a reasoned order upon giving an opportunity of hearing to the petitioner and by allowing the petitioner to produce all papers in support of his case.
5. It is the petitioner's further case that despite the aforesaid direction, the Chief Security Commissioner, RPF, Eastern Railways disposed of the petitioner's case on 31st March, 1997, by holding the order of termination passed by the appropriate authority, as valid and that there was no reason to reconsider his case.
6. Challenging the legality and validity of the purported order dated 31st March, 1997, passed by the Chief Security Commissioner, RPF, Eastern Railway, the petitioner had filed yet another writ application which was registered as WP No. 8313 (W) of 1997.

7. On contested hearing by an order dated 26th September, 2001, this Hon'ble Court was, *inter alia*, pleased to quash the impugned order dated 31st March, 1997 and was further pleased to direct as follows :

'The respondent no.2 is directed to decide the matter afresh, considering the question of exercise of discretion in the factual background which are also required to be considered. Such decision be taken within a period of three months from the date of communication of this order'.

8. Consequent upon the aforesaid the Chief Security Commissioner, RPF, Eastern Railway, Kolkata, by an order dated 5th June, 2002 after taking into consideration all factual aspects, *inter alia*, including the order dated 26th September, 2001 passed by this Hon'ble Court was pleased to come to a conclusion that the petitioner is required to be reinstated, and accordingly reinstated him in the rank of constable. By the aforesaid order the Chief Security Commissioner, RPF, Eastern Railway, Kolkata, however, directed that the period from the date of termination till the date of reinstatement of the petitioner was to be treated as leave without pay.
9. Being aggrieved with the aforesaid direction to treat the period from the date of termination till the date of reinstatement as leave without pay, the present writ application has been filed.

10. Mr. Majumder, learned advocate representing the writ petitioner submits that initially the petitioner was terminated by reasons of his involvement in a police case as also for suppression of factual information in the attestation form. He says that this Hon'ble Court by its order dated 26th September, 2001, after taking into consideration the factum of acquittal of the petitioner had concluded that out of the two grounds of termination, the one which was based on his involvement in a police case no longer existed. Insofar as suppression of factual information was concerned, this Hon'ble Court had concluded that the same was a *bona fide* mistake on the part of the petitioner. The aforesaid order dated 26th September, 2001 has been accepted by the respondents and there has been no appeal from the aforesaid order. He says that the respondents have not only accepted the order dated 26th September, 2001 but have also reinstated the petitioner by an office order dated 5th June, 2002 and that once the petitioner was reinstated, it was no longer open to the respondents to treat the period from the date of termination till the period of reinstatement as leave without pay.

11. According to Mr. Majumder, the aforesaid punishment could not have been inflicted upon the petitioner in the given facts and that too without giving any reason therefor. He says that the respondents having come to a conclusion that the

petitioner must be reinstated, there was no justification on the part of the respondents to treat the period of termination till the date of reinstatement as leave without pay. He says that the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya**, reported in **(2013) 10 SCC 324** in paragraph 38.5 while considering the consequence of reinstatement vis-à-vis payment of full back wages has been, *inter alia*, pleased to observe as follows:-

“38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or he principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages”.

12. In support of his aforesaid contention he also places reliance on a judgment delivered by the Hon'ble Supreme Court, in the case of ***Central Bank of India & Others v. Dragendra Singh Jadon***, reported in **(2022) 8 SCC 378**. He says that it is the settled proposition that whenever an employee is reinstated, the period from the date of termination till reinstatement should be treated to be in service. The employer should be directed to treat the period from the date of termination of the employee till the date of reinstatement as a period spent on-duty and the employee should be entitled to all benefits, *inter alia*, including seniority and the right to be considered for promotion and full back wages. The Chief Security Commissioner, RPF, by directing to treat the period from the date of termination till the date of reinstatement, as leave without pay, has occasioned complete failure of justice and the petitioner is suffering irreparable loss and prejudice.

13. *Per contra*, Mr. Chatterjee, learned advocate representing the Union of India by referring to Rule 52.1 and 52.2 of the Railway Protection Force Rules, 1987 (in short the said Rules), submits that it is for the employer to ensure that as soon as a recruit is selected but before he is formally appointed to the Force, his character and antecedents are verified in accordance with the procedure prescribed by the Central Government from time to time. Whenever after verification, a recruit is not found

suitable for the Force, he shall not be appointed as a member of the Force. In this case, since the petitioner had suppressed material facts and since a criminal case was pending against him, an order of termination had been issued. There is no irregularity on the part of the respondents in issuing such an order of termination. He, however, submits that pursuant to the direction passed by this Hon'ble Court on 26th September, 2001 the petitioner's case was reconsidered in the light of the observation made in the said judgment and by an office order dated 5th June, 2002, the Chief Security Commissioner, RPF, Eastern Railway, Kolkata, after analysing each and every records available in the case file and taking note of the whole matter afresh, directed the petitioner to be reinstated in the post as constable. Since the petitioner did not discharge any duty during the aforesaid period i.e. from the date of termination till the date of reinstatement, the aforesaid period was treated as the period without pay. The respondents cannot be faulted for having passed the aforesaid order.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although Mr. Chatterjee, learned advocate representing the Union of India has strenuously argued that it is within the jurisdiction of the employer before formally appointing a recruit to check his character and antecedents and verify the same and in case he is found unsuitable not to appoint him, such question in my view is

no longer relevant in the present case. It is true that the petitioner was terminated on the ground of both suppression as also involvement in the criminal case. Admittedly, however, this Hon'ble Court by an order dated 26th September, 2001 was, *inter alia*, pleased to hold that out of two grounds of termination, the ground insofar as the same related to involvement in a criminal case, no longer existed as the petitioner had been acquitted in a criminal trial. Insofar as suppression of factual information was concerned, this Hon'ble Court had returned a finding that the same was a *bona fide* mistake on the part of the petitioner.

15. Admittedly, the aforesaid order has been accepted by the parties and there is no challenge to the aforesaid order. In my view, once the respondents had accepted the said order, it is no longer open to the respondents to reopen such an issue at this stage. I find that by an order dated 5th June, 2002 the Chief Security Commissioner, RPF, Eastern Railway, after analysing the case records available in the file and after taking note of the whole matter afresh, directed reinstatement of the petitioner in the rank of constable. In my view, once the Chief Security Commissioner, RPF, had directed reinstatement of the petitioner, without in any way holding him guilty, he could not have directed to treat the period, from the date of termination till the date of reinstatement as leave without pay. I find that the judgment cited by Mr. Majumder in the case of **Deepali Gundu**

Surwase (supra) the Hon'ble Supreme Court held that wherever and whenever any employee is wrongfully terminated the wrongdoer is the employer and the sufferer is the employee/workman and in such case there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman, his dues in the form of full back wages. Admittedly, in this case the petitioner had been terminated and later reinstated. No finding of guilt having been returned, no punishment could have been inflicted on the petitioner. In my view, in the given facts the respondents ought not to have directed that the period from the date of termination till the date of reinstatement to be treated as leave without pay. No reasons for treating the period from date of termination till the date of reinstatement as leave without pay has been given. No opportunity of hearing was given to the petitioner before passing the aforesaid direction. The aforesaid direction appears to be high handed and unreasonable. In any event, without giving reasons no such order could have been passed.

16. The impugned order appears to be more than two decades old. In my view no fruitful purpose would be served to remand the matter at this stage to the Chief Security Commissioner, RPF Eastern Railways, for reconsideration. Since the order impugned insofar as the same directs to treat the period from the date of

termination till the date of reinstatement, as leave without pay, cannot be sustained, the same is set aside and quashed.

17. The petitioner shall, accordingly be entitled to not only full back wages but all consequential benefits arising out of the reinstatement, *inter alia*, including promotion and seniority for the aforesaid period.
18. With the aforesaid observations and directions the writ application, being **WPA 31752 of 2008** stands disposed of.
19. There shall be no order as to costs.
20. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)