



W.P.(MD).No.15069 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15069 of 2018

and

W,M.P(MD)No.13647 of 2018

A.Venugopalan Nair

... Petitioner

Vs.

- 1.The Deputy Inspector General,
Central Industrial Security Force (CISF),
Department of Space Headquarters,
New BEL Road, Bangalore – 560 094.
- 2.The Senior Commandant,
Central Industrial Security Force (CSIF) Unit,
Vikram Sarabai Space Centre,
Thoomba, Trivandra, Kerala.
- 3.The Deputy Commandant,
Central Industrial Security Force (CISF) Unit,
ISRO Propulsion Complex (IPRC),
Mahendragiri Post – 627 133,
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



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records in pursuant to the impugned order passed by the 3rd respondent in his proceedings Pans Ee - 38017/Ko Su B/ IPRC / Dastha / Pen /AVG/18 - 1867 dated 09.05.2018 and quash the same and consequently direct the respondents to disburse the retirement and monetary benefits with interest and to sanction the pension and arrears within a stipulated period may be fixed by this Court.

For Petitioner : Mr.M.Saravana Kumar

For Respondents : M/s.S.Ragaventhre
Central Government Standing Counsel

ORDER

This petition has been filed challenging the order of the 3rd respondent, dated 09.05.2018 with the consequential relief to disburse the retirement and monetary benefits with interest.

2. The petitioner was appointed as Constable on 11.10.1982 in Central Industrial Security Force (CISF) and posted in Bihar State. Thereafter, promoted as Lance Naik in the year 1993. In the year 1996, he was posted in the State of Andhra Pradesh. On 20.07.1996, when he was in “C” shift duty for patrolling in the administrative building of RSTPS, Ramagundam, Andhra Pradesh State, some criminals gained entry into the administrative building and



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broke open the lock of “C” section cash locket, which was situated in the ground floor, have taken the cash kept in the “C” section. However, the respondents have initiated disciplinary proceedings against the petitioner by issuing charge memo, dated 22.08.1996 alleging the petitioner has committed theft. The petitioner has submitted his explanation and an Enquiry Officer was appointed. Thereafter, the petitioner was imposed with the punishment of stoppage of increment for 2 years. Against which, the petitioner has preferred an appeal. Subsequently, on appeal, the petitioner was imposed with the punishment of dismissal from service. Aggrieved over the same, the petitioner had filed W.P. No.11261 of 1998 before the High Court of Andhra Pradesh, wherein the impugned dismissal order was set aside with the direction to the respondents to reinstate the petitioner into service without back wages. It was directed that the period of suspension shall be taken as duty period for the purpose of service. The petitioner was reinstated on 01.07.2004 and he was subsequently promoted as Head Constable in the year 2016 and attained superannuation on 31.05.2018. While the petitioner was allowed to retire on superannuation, the 3rd respondent herein passed the impugned recovery order, dated 09.05.2018 stating that there is a break in service from 05.10.1997 to 30.06.2004 and the said period cannot be calculated for fixation of pay. The



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auditing party had objected to fixation of pay to the said period and directed to refix and the excess payment to the tune of Rs.3,05,349/- (Rupees Three Lakh Five Thousand Three Hundred and Forty Nine only) was directed to be adjusted from the DCRG amount in lumpsum. The contention of the petitioner is the said deduction is against the principles of natural justice since no notice was issued to him. Aggrieved over the same, the present writ petition is filed.

3. The contention of the petitioner is the respondents have taken the said period as if the petitioner has not worked during the said period and has calculated the terminal benefits except the break in service period. However, the High Court of Andhra Pradesh has stated the suspension period to be treated as duty period. Therefore, the impugned order is against the order of the High Court of Andhra Pradesh. Hence, the petitioner prayed to allow the writ petition.

4. The respondents have filed counter stating that the High Court of Andhra Pradesh has dealt elaborately. Thereafter, has directed the respondents to reinstate the petitioner into service without back wages and also held the period of suspension shall be taken as duty period for the purpose of service.



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The contention of the respondent is that the petitioner was never suspended from service during the enquiry period. But, the High Court of Andhra Pradesh has directed the respondents to regularize the suspension period. Hence, such direction cannot be implemented, since there is no suspension at all in the present case. The learned standing counsel appearing for the respondents further submitted that the High Court of Andhra Pradesh has granted only reinstatement without back wages. Since the order is silent about continuity of service, the said period from 1997 – 2004 should be considered as if the petitioner is not in service at all. Therefore, the learned counsel for the respondents vehemently argued that the said period cannot be regularized, since the petitioner was out of service during the said period. Hence, she prayed to dismiss the writ petition.

5. Heard Mr.M.Saravanakumar, learned counsel for the petitioner and M/s.S.Ragaventhree, learned Standing Counsel and perused the records.

6. After considering the rival submissions and perusing the records, it is seen that the High Court of Andhra Pradesh has not granted continuity of service, equally has not stated the period should be taken as if it is non



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employment period and the petitioner is not entitled to any benefits. However, the High Court has held that the suspension period should be treated as duty period. If the word “suspension” is substituted with the word “dismissal” in the order passed by the High Court of Andhra Pradesh, the period of dismissal should be taken as a duty period. The said line ought to be construed in the given circumstances, since there was no suspension in the case of the petitioner.

7. On perusing the entire order, including the original order passed by the disciplinary authority, the disciplinary authority has imposed a lesser punishment of stoppage of increment for 2 years. The appellate authority has remitted back the case to the original authority to pass fresh order. After remitting, the original authority has passed the order of dismissal. The Andhra Pradesh High Court has held that the disciplinary authority has not given any reason for enhancing such punishment and the punishment is biased one and hence quashed the punishment. Therefore, considering all these circumstances into consideration, the High Court of Andhra Pradesh has intended to grant continuity of service, that is why the High Court has directed to treat the suspension period as duty period.



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8. Therefore, this Court is inclined to set aside the order of the 3rd respondent and pass the following order:

(i) The impugned order is quashed.

(ii) The period from 1997 – 2004 shall be taken as duty period and continuity of service shall be granted to the petitioner.

(iii) The recovered amount shall be repaid to the petitioner.

(v) The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order.

9. With these directions, this Writ Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes/ No

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S.SRIMATHY, J.

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