

[3167]

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION NO: 17977 OF 2006

Between:

M. Lokesh, S/o. M.E. Madaiah, Age 32 years, Occ: Constable, No.974500948,
CISF UNIT, IG Mint, Phase II IDA, Cherlapally, HCL (PO), Ranga Reddy District.

...PETITIONER

AND

1. The Commandant, CISF UNIT, BCCL, Dhanbad, Bihar State.
2. The Deputy Inspector General, CISF, South Zone,, Head Qtrs, Rajaji Bhavan, Basanth Nagar, Chennai, Tamilnadu.
3. The Inspector General/ES, CISF (ES), CISF (ES) HQRS, New Pataliputra City, PATNA-13, Bihar State.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondent No.3 in passing order dt. 28.3.2006, in Proc. No.V-11015/ES/LC/Rev-38/2005/247, by dismissing my revision and confirming the orders dt. 17.08.2005, passed by the Respondent No.2. and thereby confirming the orders dt. 19.05.2001, passed by the respondent No.1, as illegal, arbitrary, against the principles of Natural Justice and without jurisdiction and set-aside the same.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to expedite the hearing of WP by fixing an early date of hearing of the same.

Counsel for the Petitioner: SRI. P.S.P. SURESH KUMAR

**Counsel for the Respondents: SRI GADI PRAVEEN KUMAR,
DEPUTY SOLICITOR GENERAL OF INDIA**

The Court made the following: ORDER

HONOURABLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.17977 OF 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking the following relief:

"to issue an order or direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondent No.3 in passing order dated 28.03.2006 in Proc.No.V-11015/ES/LC/Rev-38/2005/247, by dismissing my Revision and confirming the orders dated 17.08.2005 passed by the Respondent No.2, and thereby confirming the orders dated 19.05.2001 passed by the Respondent No.1, as illegal, arbitrary, against the principles of natural justice and without jurisdiction and set-aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of Justice."

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the record.
3. The learned counsel for the petitioner stated that the punishment which is imposed on the petitioner is contrary to the Rule 31(d) of Central Industrial Security Force Rules, 1969 (for short "CISF Rules, 1969") as there is no provision in the said Rules for reduction of pay with cumulative effect. That the disciplinary authority passed the final order No.V-15014/CISF/BCCL/Adm.III/2001/1098 on 19.05.2001 and the CISF Rules were amended in

the year 2001 and they were brought into effect from 05.11.2001, whereby the Rule 34 (v) was amended as under:

"(v) save as provided for in clause (viii) below, reduction to a lower stage the time scale of pay for a specified period with further directions as to whether or not the enrolled member will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay."

Therefore, as on the date of passing of final order dated 19.05.2001, the disciplinary authority though had the power to pass an order directing the reduction of pay to the minimum stage but it had no power to withhold the increments of pay during the period of reduction and on expiry of period of reduction, which would have the effect of postponing the future increments of pay. That both the appellate authority as well as revisional authority without considering the same, in a mechanical manner dismissed the appeal and the revision filed by the petitioner. Therefore, the learned counsel for the petitioner prayed this Hon'ble Court to allow the present writ petition. In support of his contentions, learned counsel for the petitioner relied upon the decision in **Gaurav Joshi vs. Union of India, Rep. by the Secretary,**

Ministry of Home Affairs, CISF and the Inspector General/SWS, CISF¹.

4. Per contra, learned counsel appearing on behalf of the respondents vehemently opposed the maintainability of the present writ petition stating that no cause of action arose in this State as the disciplinary authority, appellate authority and the revisional authority are situated outside the territorial jurisdiction of this state and therefore, the learned counsel prayed this Court to dismiss the present writ petition as not maintainable. In support of his contention, learned counsel relied upon the decision in **Sri Alok Das vs. Union of India, rep. by its Secretary to the Ministry of Home Affairs, Government of India, New Delhi²**.

5. With regard to the objection taken by the learned counsel for to the respondents regarding maintainability of the present writ petitioner, the learned counsel for the petitioner relied upon the decisions in **Calcutta Gujarati Education Society and another vs. Regional Provident Fund Commissioner and others³** and **Cement Workers' Mandal vs. Global Cements Limited (HMP**

¹ 2006 LawSuit (Mad) 2014

² W.P (C) No.658 of 2016 dated 05.08.2020 of Tripura High Court.

³ (2020) 19 Supreme Court Cases 380

Cements Limited) and others⁴ and stated that on earlier occasion, this Hon'ble High Court had entertained the Writ Petition No.4030 of 2006 filed by the petitioner herein, whereby this Hon'ble High Court directed the revisional authority to dispose of the revision within a fixed time frame. Moreover, the petitioner was working in Hyderabad at the time of filing of this writ petition and therefore, this Court is having the necessary jurisdiction to decide the issue. Therefore, the present writ petition is maintainable.

6. Admittedly, the petitioner has already approached this Hon'ble Court by way of Writ Petition (W.P.No.4030 of 2006), whereby in the year 2006 when the Revision Petition filed by him was pending before the Revisional Authority and this Court *vide* order dated 03.03.2006 disposed of the said Writ Petition directing the Revisional Authority to dispose of the Revision, within a period of six weeks from the date of receipt of a copy of the order. The present Writ Petition is of the year 2006, at this point of time i.e., after a period of more than 17 years, the Writ Petitioner cannot be relegated back to file a Writ Petition before some other Court. Admittedly, the petitioner was working at CISF Unit, Cherlapally,

⁴ (2019) 20 Supreme Court Cases 517

Ranga Reddy District, i.e, within the territorial jurisdiction of this Hon'ble High Court. Therefore, this Court is not inclined to reject the Writ Petition on the objection taken by the respondents herein that this Court does not have the jurisdiction to decide the issue.

7. Insofar as with regard to the contention of the petitioner that the punishment which is imposed by the authority on the petitioner is contrary to the Rule 31(d) of CISF Rules, 1969 and that there is no provision in the said Rules for reduction of pay with cumulative effect is concerned, admittedly, the petitioner was issued a Charge Memo on the ground that he was unauthorisedly absent from services for a period of 61 days i.e, from 11.11.1999 to 10.01.2000 and an action was taken under the CISF Rules, 1969, more particularly, under Rule 31(d), which reads as follows:

"31. Nature of Penalties:

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) reduction to a lower class or trade or rank or to a lower time scale or to a lower stage in the time scale of pay;

As per the said Rule, even though punishment of imposition of reduction of pay to a lower class or trade or rank or to a lower

time scale or to a lower state in the time-scale of pay has been envisaged, the disciplinary authority in this particular case, has reduced the pay to the minimum stage in the time scale of pay of Rs.3050-75-3950-80-4590 for a period of four years with immediate effect and further ordered that during the reduction the petitioner will not earn the increments of pay and on expiry of the period of reduction will have the effect of postponing his future increments of pay, which is completely contrary to the Rule 31(d) of CISF Rules, 1969. The disciplinary authority passed the final order No.V-15014/CISF/BCCL/Adm.III/2001/1098 on 19.05.2001 whereas the CISF Rules were amended in the year 2001 and they were brought into effect from 05.11.2001. As on the date of passing of final order dated 19.05.2001, the disciplinary authority had no power to pass an order that during the reduction, the petitioner will not earn the increments of pay and on expiry of the period of reduction, will have the effect of postponing the future increments of pay. This Court as well as Hon'ble Supreme Court in catena of cases, has time and again stated that Statutory Rules governing the service law have to be strictly construed and any punishment that is sought to be imposed shall have to be in accordance with the statutory Rules. In **Gaurav Joshi**, case (1

supra), Hon'ble High Court of Madras, while interpreting Rule 31(e) of CISF Rules, 1969 has held as under:

"Para 3: At the outset, learned counsel appearing for the petitioners by drawing our attention to Rule 31(e) of the Central Industrial Security Force Rules, 1969, contended that as per the said provision, the authority concerned is permitted to impose penalty of withholding of increment or promotion and not withholding of increment with cumulative effect. It is pointed out that in view of the above provision, viz., Rule 31(e) as it stands, the authority/authorities can at the most impose the penalty of withholding of increment or promotion. In addition to the same, the Notification No.V-14013/64/88/L&R/1256 dated 14.10.1992, by the Directorate General, Central Industrial Security Force (Ministry of Home Affairs, New Delhi), is brought to our notice. After considering the above provision, viz., Rule 31(e) of CISF Rules, 1969 as well as the decision of the Calcutta High Court reported in 1981(2)SLR 807 [Food Corporation of India vs. State of West Bengal and others], wherein, it has directed all the authorities to note that in all the punishment orders, the words "with cumulative effect" have to be deleted. It is the claim of the learned counsel for the petitioners that in view of Rule 31(e) of the Rules, as interpreted by the Directorate General of Industrial Security Force, the penalty of withholding of increment "with cumulative effect" cannot be imposed."

Having regard to the same, this Court is of the opinion that the imposition of punishment on the petitioner with cumulative effect i.e., "during the reduction, the petitioner will not earn the increments of pay and on expiry of the period of reduction will have the effect of postponing his future increments of pay", could not have been imposed on the petitioner in the absence of any power or rule to that effect. Therefore, imposition of punishment of withholding of increments of pay of the petitioner with

cumulative effect cannot be imposed and the same has to be deleted.

8. Accordingly, the Writ Petition is allowed and the final order dated 19.05.2001 passed by the disciplinary authority, which is confirmed in the Appeal and the Revision by the Appellate Authority as well as the Revisional Authority is hereby modified and the words "It is further ordered that during the reduction, the petitioner will not earn the increments of pay and on expiry of the period of reduction, will have the effect of postponing his future increments of pay" stands deleted. No order as to costs.

As a sequel, miscellaneous petitions if any pending, shall stand closed.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble the Chief Justice UJJAL BHUYAN, on this Wednesday, the Eighth day of February, Two Thousand and Twenty Three.

SD/- K. VENKAIAH
ASSISTANT REGISTRAR

SECTION OFFICER

//TRUE COPY//

To,

1. The Commandant, CISF UNIT, BCCL, Dhanbad, Bihar State.
2. The Deputy Inspector General, CISF, South Zone., Head Qtrs, Rajaji Bhavan, Basanth Nagar, Chennai, Tamilnadu.
3. The Inspector General/ES, CISF (ES), CISF (ES) HQRS, New Pataliputra Cly, PATNA-13, Bihar State.
4. One CC to Sri. P.S.P. Suresh Kumar, Advocate [OPUC]
5. One CC to Sri Gadi Praveen Kumar, Deputy Solicitor General of India [OPUC]
6. Two CD Copies

CHR
GJP

BSR

HIGH COURT

DATED:08/02/2023

ORDER

W.P.No.17977 of 2006



**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

8
16/03/23
BSR