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W.P.No.1114



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2023

DELIVERED ON: 31.01.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.11143 of 2005

- 1.C.Paulraj (deceased)
- 2.Tmt.Kadalkani
- 3.Selvan P.Inbaraj
- 4.Selvan P.Kanagaraj
- 5.Selvi Kaladevi
- 6.Tmt.Parvathy
- ...Petitioners

(P2 to P6 substituted as Legal Heirs in the place of deceased petitioner as per Court order dated 24.06.2014 by this Court in W.P.M.P.No.221 of 2013 in W.P.No.11143 of 2005)

vs.

- 1.Union of India,
Represented by the Group Commandant/CISF,
CISF Group Head Quarters,
Rajaji Bhawan,
Besant Nagar,
Chennai – 600 090.

- 2.The Deputy Inspector General,
C.I.S.F. Southern Zone,
(Ministry of Home Affairs),
Rajaji Bhavan, 'D' Block,
Besant Nagar,
Chennai – 600 090.

...Respondents

(R1 amended as per order dated 09.07.2014 by this Court in W.P.M.P.No.163 of 2014 in W.P.No.11143/2005)



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent in No.V-15014(2)Maj,09/96/CP/MRL/GHM/AD.VI/ dated 07.02.1997 and No.V-15014/GHC/AD VI/CP/Misc/2004 dated 25.10.2004 and the Proceedings of the second respondent in No.V-11014/17/97/A6 4421 (SZ) dated 16.06.1997 and quash the same and consequently to direct the first respondent to reinstate the petitioner into service with all attendant benefits including back wages after adjusting the pension amount so far received.

For Petitioners : Mr.P.I.Thirumoorthy

For Respondents : Mr.K.Gunasekar

ORDER

The Writ Petition has been filed challenging the proceedings of the first respondent in No.V-15014 (2) Maj. 09/96/CP/MRL/ GHM/AD.VI/ dated 05.10.2004 and the proceedings of the second respondent in No.V-11014/17/97/A6/4421(SZ) dated 16.06.1997 and consequently to direct the first respondent to reinstate the petitioner into the service with all attendant benefits including back wages after adjusting the pension amount so far received.



2.Heard Mr.P.I.Thirumoorthy, learned counsel appearing for the petitioners and Mr.K.Gunasekar, learned counsel appearing for the respondents.

3.The learned counsel appearing for the petitioners would submit that the petitioner joined as a Grade-II Constable in CISF during the year 1984 and was posted in Bihar. The petitioner was transferred to the Tamil Nadu and posted at C.I.S.F. Unit M.R.L. Company, Chennai. He would contend that on 25.01.1996 when the petitioner was working in the said Unit noticed that a Welding Generator worth about Rs.1,40,000/- was found missing and a complaint was lodged by the petitioner before Manali Police Station and it was taken on file as Crime No.34 of 1996 under Section 379 of I.P.C. against one Khader Basha. He would submit that on 28.06.1996, the petitioner received a requisition from Manali Police Station, for an enquiry based on the confession statement given by the said Khader Basha on 27.06.1996. He would further submit that when the petitioner went for the enquiry, he was included as one of the accused in the charge sheet and the petitioner was placed under suspension on the same day.

4.He would submit that a charge memo was issued to the petitioner on 18.09.1996 stating gross negligence and dereliction of duty and alleging that the petitioner failed to prevent the theft of undertaking property. He would submit that on 25.09.1996, the petitioner had given his explanation stating that he was



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falsely implicated. He would further contend that the petitioner was jointly performing his duties along with his Senior Constable namely one K.Kuppan, but no charge memo has been issued against the said Constable. He would submit that till the pendency of the criminal case, the Disciplinary Proceedings to be kept in abeyance, the same was not considered and the Enquiry Officer was appointed and the Enquiry Report was submitted before the first respondent on 03.12.1996. He would submit that during the enquiry, the prime witnesses such as the Senior Constable and Khader Basha was not examined even though the petitioner was implicated in the criminal case based on the confession statement given by Khader Basha.

5.He would further submit that the petitioner was furnished with a copy of the Enquiry Report on 04.01.1997, for which the petitioner had also given his representation dated 17.01.1997. He would further submit that the first respondent without considering the petitioner's explanation had passed the order of punishment of compulsory retirement on 07.02.1997. He would further submit that against the order of the first respondent, the petitioner had preferred an appeal before the second respondent, the same was rejected on 16.06.1997. He would further submit that on 28.05.1991, the petitioner was acquitted from the charges on merits stating that there is no evidence to prove that the theft was committed.

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6.He would submit that based on the confession statement given by Khader Basha one Palladi and Radhakrishnan were also charged but they were reinstated back into the service by the respondents. He would further submit that at the time of awarding the punishment, the petitioner was only aged 37 years, if he would have been allowed to be reinstated, he would have a service span for about 23 years. He would submit that the petitioner has made a representation to the first respondent on 02.07.2004 requesting for reinstatement, the said request was rejected on 25.18.2008 without assigning any valid reason. Hence, the petitioner has filed this Writ Petition claiming that the punishment of compulsory retirement passed by the first respondent and the rejection of reinstatement after acquittal by the first respondent are illegal.

7.Countering his arguments, the learned counsel appearing for the respondents would submit that the petitioner was appointed as a Constable in CISF and when the petitioner was working as a Constable in CISF Unit MRL, Manali was issued with a charge memo *vide* No.V- 15014/CP/CISF/MRL/Disc/Maj/96-7126 dated 18.09.1996, as the petitioner has committed gross negligence and dereliction while on duty in 'C' Shift on 24.01.1996. The petitioner failed to prevent the theft of undertaking property in the premises of MRL. He would further submit that the petitioner was charged as an accused No.9 in FIR No.244 of 1996 among 13 others in Mannali Police Station under Sections 251(B), 451



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and 380 of IPC. He would further submit that in connection with this case, the Police had arrested one Khader Basha, who was employed in INDCO Serve of CPCL Manali and based on his confession statement, the Welding Generator was recovered.

8.He would submit that a Departmental Enquiry was conducted and that the charges leveled against the petitioner was found to be proved and the petitioner was awarded with the punishment of compulsory retirement from service with full pension and gratuity by the order of the first respondent *vide* order No.V-15014(2)/Maj.09/96/CP/MRI/GHM/AD VI/820 dated 07.02.1997. He would submit that the petitioner had filed an appeal on 28.02.1997, after due consideration and examination, the Appellate Authority rejected the appeal *vide* order No.V-11014/17/97-A6(SZ)4421 dated 16.06.1997. He would further submit that the petitioner has been acquitted from the charges on 28.05.2001 extending the benefit of doubt. Subsequently, the petitioner filed an application on 02.07.2004 before the first respondent seeking to reinstate the petitioner on the basis of acquittal, the application was rejected by order dated 25.10.2004, stating that the charge framed by the department is different from that of the charge framed in the criminal case.



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9.He would submit that 7 personnel were placed under suspension in the incident alleging theft of the management property and in the incident, the petitioner submitted the name one Constable Kuppan as a defence witness and there was no action taken against the Constable as his name was not figured by the Department. He would further submit that as against the charges of one Constable Radhakrishnan, he was dealt under Rule 4 of CISF Rules, 1969 on the charges that he failed to prevent the theft of undertaking property which was taken out of the premises of MRL, but the charges framed against him were not proved stating that there is no evidence to show that the Constable R.Radhakrishnan neglected or derelicted in his duty. He would submit that as regards to the charges against the Constable D Paladhi, it is submitted that he was dealt under Rule 34 of CISF Rules, 1969 on the same charges as that of Constable R.Radhakrishnan, but it was proved that he was performing duty at TTP on 24.01.1996 which is situated about 3 KMs away from the place of incident hence, he cannot be held responsible for theft of property from the Plant when his duty was somewhere else on 24.01.19996, hence, the Disciplinary Proceedings were ordered to be dropped.

10.He would submit that when the Enquiry Officer requested the Controlling Officer of the Constable K.Kuppan to spare him for attending enquiry but the Constable Kuppan did not attend the enquiry. He would further



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submit that during the Preliminary Enquiry, the petitioner desired to produce the Constable K.Kuppan as his defence witness but at the time of the conclusion of the enquiry when petitioner was asked whether he wishes to say anything more or produce any defence evidence or any written statement, he replied in negative. Hence, it was the petitioner who did not insist on producing the Constable K.Kuppan as his defence witness and the letter dated 28.06.1996 written by the Inspector of Police, Manali Police Station clearly states that Khader Basha had given a confession statement stating that the petitioner was involved in the theft of CPCL Manali property and it is only based on the letter of the Inspector of Police, the petitioner was arrested. He would further submit that the petitioner cannot claim the benefit of the acquittal from the criminal charges for reemployment in CISF as the petitioner was awarded the punishment for his failure to prevent the theft of the management property, but the criminal case pertains to criminal conspiracy, house trespass and theft.

11.He would submit that the petitioner has not exhausted the departmental remedy of seeking Revision petition as available to the petitioner as under Section 9 (2) (B) of CISF Act, 1968. He would submit that the petitioner has only challenged the penalty imposed on him during the year 1997, after a lapse of more than 8 years, on this ground itself this Writ Petition is liable to be dismissed. Therefore, the respondents would submit that the first respondent has



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taken a lenient view in imposing punishment to the petitioner as a compulsory retirement with full pension benefits taking into consideration of his long service and his family members. Hence, he seeks to dismiss the Writ Petition.

12.I have heard the submissions made by the learned counsel appearing on either side.

13.The claim of the petitioner in this Writ Petition is that in the Enquiry Proceedings, the relevant witnesses were not examined to prove the delinquency and that in the criminal case that had been initiated against the petitioner, he had been acquitted.

14.From the Enquiry Report, it could be seen that one S.P.Muthu had been only examined as a prosecution witness. Even though, the entire Disciplinary Proceedings seems to have been culminated on the basis of a confession statement given by one Kadher Basha, the said person has not been examined. However, it is the case of the respondents that it is not the charge of theft that was departmentally proceeded with but was the failure on the part of the petitioner to prevent the theft of property of undertaking which had culminated into the criminal case.

15.I have also perused the Enquiry Report and the charges levelled against



the petitioner.

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16.It is not for the theft of the property of undertaking, he was charged with but his failure to prevent the theft alone was the article of charge on which he had been proceeded with.

17.The petitioner had also claimed alleged discrimination by contending that the persons who had also been charged with the criminal cases had been reinstated into service. The respondents had contended that as against those persons, the Departmental Enquiry ended in their favour and therefore, they were all reinstated.

18.An order of punishment imposed on the petitioner had been made on 07.02.1997 by the Disciplinary Authority and the appeal filed against the same also ended in the order of rejection on 16.06.1997. The petitioner had also not exhausted a further remedy of revision. It is also not disputed that the criminal case ended in acquittal on 28.05.2001. The present Writ Petition had been filed only in the year 2005 i.e. after the period of eight years of ending of the Disciplinary Proceedings and nearly four years after the acquittal in the criminal case. No explanation had been forthcoming on the side of the petitioner for the delay in filing the Writ Petition except to contending that in the year 2004 alone, the petitioner had made a representation for reinstatement. I am not convinced



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with the conduct of the petitioner in belatedly approaching this Court. The conduct of the petitioner would only presuppose that he had acquiesced himself with the order of compulsory retirement that had been inflicted upon him.

19.Filing a Writ Petition challenging an order of punishment made in the year 1997 on the claim that he had been acquitted in the criminal case in the year 2001, in my considered view would definitely be hit by laches. It is also pertinent to note that the Hon'ble Apex Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T.Murali Babu*** reported in (2014) 4 SCC 108 and the latest judgment in the case of ***Union of India and Others vs. N.Murugesan and Others*** reported in (2022) 2 SCC 25 had laid down the propositions that a delay in filing the Writ Petition would definitely hit by principles of laches and acquiescence.

20.In such view of the matter, I do not propose to interfere with the order of punishment that had been imposed on the petitioner.

21.In fine, the Writ Petition is dismissed. There shall be no order as to costs.



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Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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1.The Group Commandant/CISF,
Union of India,
CISF Group Head Quarters,
Rajaji Bhawan,
Besant Nagar,
Chennai – 600 090.

2.The Deputy Inspector General,
C.I.S.F. Southern Zone,
(Ministry of Home Affairs),
Rajaji Bhavan, 'D' Block,
Besant Nagar,
Chennai – 600 090.



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K.KUMARESH BABU, J.

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**A pre-delivery order in
W.P.No.11143 of 2005**

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