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W.P.No.24002 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.24002 of 2013

M.Kavitha ... Petitioner
Vs.

1.Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.

2.The Director General
Central Industrial Security Force,
Head Quarters,
CGO Complex,
Lodhi Road,
New Delhi – 110 003.

3.The Deputy Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Besant Nagar,
Chennai – 600 090.

4.The Commandant
CISF Unit,
CPCL, Manali,
Chennai – 600 068.

5.The Assistant Commandant,
CISF Unit,



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CPCL, Manali,
Chennai – 600 068.

... Respondents

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Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the Notification dated 08.08.2013 issued by the second respondent in E-32017/(2)/08LDCE-2013/Rect/2297 in so far as the para 6(d) and 10(j) is concerned and quash the same and to direct the respondents to accept the application submitted by the petitioner dated 21.08.2013 for the post of SI/Exe through LDCE and process the same in accordance with law and to permit the petitioner to participate in the physical efficiency test and written examination to be held during October, 2013.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.T.L.Thirumalaisamy

ORDER

This writ petition has been filed by the petitioner to call ffor the records relating to the Notification dated 08.08.2013 issued by the second respondent in E-32017/(2)/08LDCE-2013/Rect/2297 in so far as the para 6(d) and 10(j) is concerned and quash the same and to direct the respondents to accept the application submitted by the petitioner dated 21.08.2013 for the post of SI/Exe through LDCE and process the same in accordance with law and to



permit the petitioner to participate in the physical efficiency test and written examination to be held during October, 2013.

2. The case of the petitioner is as follows:-

2.1. The petitioner has completed B.A. Political Science and joined in the Central Industrial Security Force as Lady Constable on 19.04.2003. She has served all over India and was transferred to the CISF Unit, CPCL, Manali, under the fifth respondent on April 2010. The first respondent has issued a notification dated 07.08.2012 for recruitment of the Sub Inspector Executive through limited departmental competitive examination against the Recruitment Year 2012 for filling up the post of 417 vacancies.

2.2. Pursuant to the above notification dated 07.08.2012, the petitioner has submitted an application on 28.08.2012 and in the questionnaire form-I in Appendix-B3 of the application in column- 4 C (iv), the petitioner has stated that in the departmental enquiry censure was ordered in the year 2006 and it is pertinent to note here that the censure is not a punishment. This being so, the fifth respondent on 30.08.2012 has returned the application of the petitioner on the ground that the petitioner is not eligible to apply for the post of SI Executive through LDCE-2012 as per para-6(d) and 10(h) of the



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notification dated 07.08.2012. Aggrieved by the above order passed by the fifth respondent, the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner would submit that the as per para-6(d) of the notification, the candidates must have good annual confidential report for the last four years and should have unblemished service record till the issue of call for appointment. The impugned order has been passed by the fifth respondent rejecting the application as per para-6 (d) of the notification and the present case of the petitioner is not falling under para-6 (d) of the notification dated 07.08.2012, since the petitioner has good ACR for the past four years.

4. The another ground mentioned in the impugned order for rejecting the application is para-10(h). As per para-10(h), the application of the petitioner should not be forwarded because the petitioner has been awarded with the punishment of censure. It is further stated that the censure is not a punishment and the same is not a bar for submitting the application for the post of SI/Exe under the LDCE – 2012. As per the decision of the full bench of this Court, the punishment of censure is not a bar for promotion etc.



Therefore the impugned order passed by the fifth respondent on the ground that the punishment of censure is a bar as per para-6 (d) and 10 (h) of the notification issued by the second respondent dated 07.08.2012 is unsustainable.

5. This apart, the petitioner was having unblemished record for the past 9 years except the censure awarded in the year 2006. Therefore the petitioner was having clear record for the past four years and the ACR is also good for the past four years.

6. The learned counsel for the petitioner relied on the order passed by this Court in *W.P.No. 28595 of 2012, dated 29.10.2012 and in W.P.Nos. 9489, 9490 and 13181 of 2011 dated 06.07.2012*. The said orders are not applicable to this case. In the present case, the punishment of censure was imposed as per the CISF Rules 2001, consequently the candidate who have not maintained Good ACRs for the last four years and who have been awarded any major or minor punishment during his/her entire service till the date of forwarding his/her application. Moreover, the above orders are passed by the learned Single Judge and both the counsels appearing for the petitioner



as well as respondents were not in a position to find out whether any appeal has been preferred against the above two orders.

7. The Counter affidavit is also filed by the fourth respondent on 07.01.2013 and the relevant paragraphs are extracted hereunder for better appreciation and understanding:-

“4. It is submitted that the petitioner applied for the post by submitting her application dated 28.08.2012. While scrutinizing the application of the petitioner it was noticed that petitioner’s ACR grading for the year 2010-2011 was “average” and she was also awarded a minor penalty of “Censure” on 23.11.2006. Accordingly her application was rejected and in this regard the petitioner was communicated through the order dated 30.08.2012.

6. It is submitted that ACR for the year 2010 and 2011 of the Petitioner is only average. Further she had suffered the punishment of censure and the punishment has been imposed as per CISF Rules 2001. Thus the petitioner is not eligible for the post as per the notification Clause 6(d) and 10(h). Therefore, there is no substance in Ground ‘A’ and ‘B’.”

8. The learned Counsel appearing for the respondents submitted that apart from the above statements in the counter affidavits, as per the



notification dated 07.08.2012 in Clause 10(h), the petitioner is not eligible for applying to the post of Sub Inspector Executive. The learned counsel for the respondents relied on the order of this Court in W.P.No.3545 of 2018, dated 10.02.2010 in the case of GSN Rao Vs. The Union of India rep. by its Secretary to Government and 5 others in which it has held as follows:-

“9. The petitioner also challenges Rule 3, stating that the expression “should have clean record of service” is completely arbitrary and it excludes a person who has been awarded a minor penalty. He further submits that persons who have suffered minor punishments and even if their appeals are pending they are denied of the opportunity to take the examinations to get an early promotion. He would state that Rule 3 also requires to be struck off is being manifestly arbitrary.

16. The next submission of the petitioner challenging Rule 3 on the ground that a person who suffered a minor penalty is also prohibited from taking part in the examination because his service record cannot be said to be clean also cannot be accepted. CISF is a disciplined force, which was formed for protection and security of industrial undertakings owned by the Central Government and other industrial undertakings. The post of a Commandant is an extremely important post. The decision of the Government to restrict only such of those employees who have a squeaky-clean record to be



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entitled to take the limited departmental competitive examination cannot be found fault with nor can it be termed to be arbitrary.”

9. The learned counsel for the respondents also relied on the order passed by the learned Single Judge in W.P.No. 326 of 2020 and 783 of 2019 dated 10.02.2020. The relevant paragraph is extracted hereunder for better appreciation and understanding:-

“7. This Court need not go into all other issues, which have been raised in these Writ Petitions. A Division Bench of this Court has upheld the Clause, stipulating the requirement of a candidate not being awarded with any major or minor punishment during the entire service till the date of considering the application. Even though the Clause was upheld with regard to the post of Assistant Commandant, the same will equally apply even to the post of Sub-Inspector and what is important is, the Clause, that was put under challenge. In view of the orders of the Division Bench, this Court is bound by the said orders and this Court cannot grant any relief to the petitioner de hors Clause 10 (k) of the Notification. As such, this Court does not find any illegality in the respondents rejecting the application submitted by the petitioner, by relying upon Clauses 6 (d) and 10 (k) of the Notification.”

10. Heard the learned counsel on either sides and perused the materials available on record.



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11. In the case on hand, the petitioner has applied to the post of Sub Inspector Executive pursuant to the recruitment notification of the year 2012. As per the notification, the candidate should not have awarded any punishment, the candidate must have good ACR for last four years and should have unblemished service records till the issue of offer of appointment and this apart in clause 10(h), “the candidate who have not maintained good ACRs for the last four years and who have been awarded any major or minor punishments during his/her entire service till the date of forwarding his/her application. Further in a case, if a candidate is awarded any major or minor punishment after submission of his/her application, it will be the responsibility of the concerned Unit Commander to inform the facts to the application receiving Zonal DIGs as well as this Directorate and not to relieve such candidate for attending the test whenever he/she is called for the same.” The petitioner was awarded punishment of Censure in the year 2006 (i.e.) on 23.11.2006 and as per the Clause 6(d), “the candidates must have good ACRs for the last four years and should have unblemished service record till the issue of offer of appointment” and in the case on hand, the notification is of the year 2012 and four years is calculated from 2008 -2012, the candidate

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must have good ACR for the last four years and in this case, the petitioner doesn't possess good ACR for the last four years due to the awarding of minor penalty of censure by the Respondent. This apart, the petitioner's ACR in the year 2010-2011 was 'average'. The punishment of censure which was awarded on 23.11.2006 is as per the CISF Rules 2001. Therefore the petitioner is not eligible for the post as per the notification Clause 6(d) and 10(h).

12. In the view of the above factual matrix of the case and the ratio laid down by the Hon'ble Division Bench as well as the learned Single Judge, of this Court, the order passed by the second respondent dated 08.08.2013 in his letter No.E-32017/(2)/08LDCE-2013/Rect/2297 does not warrants any interference by this Court and the same is hereby confirmed.

13. In the result, this writ petition stands dismissed. No costs.

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Speaking Order : Yes/No
Neutral Citation Yes/No

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- 1.The Secretary to Government,
Ministry of Home Affairs,
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- 2.The Director General
Central Industrial Security Force,
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J.SATHYA NARAYANA PRASAD,J.

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