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W.A. No.3035 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.10.2024

DELIVERED ON: 29.10.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and**

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.3035 of 2024

Swapan Paul

.. Appellant

Vs

- 1.Union of India,
Rep. by its Secretary to Government,
Ministry of Home Affairs,
New Delhi – 110 001.
- 2.The Deputy Inspector General,
Central Industrial Security Force (SZ),
Head Quarters, Rajaji Bhavan, 'D' Block, 1st Floor,
Besant Nagar, Chennai – 600 090.
- 3.The Commandant,
Central Industrial Security Force,
Visakhapatnam Port Trust,
Visakhapatnam – 530 035
Andhra Pradesh.

..Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order made in W.P. No.23822 of 2011 dated 04.04.2024.

For Appellant : Mr.Jayesh B. Dolia,
Senior Counsel for
M/s.Aiyar & Dolia

For Respondents : Mr.N.Ramesh,
Senior Panel Counsel

J U D G M E N T

(Judgment of the Court was made by MR.JUSTICE P.B.BALAJI, J.)

The Writ Petitioner aggrieved by the dismissal of the Writ Petition in W.P. No.23822 of 2011, in and by an order dated 04.04.2024 has preferred the present Writ Appeal.

2. The Appellant had sought for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the 3rd respondent in Memo No.V-15104/CISF/VPT/DISC/MAJ-01/SP/2010/456 dated 06.08.2010 and proceedings of the second respondent bearing Memo No.V-11014/66/2010/7115 dated 12.11.2010 and to consequently reinstate the petitioner/appellant as a Cook with all consequential benefits.



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3. We have heard Mr.Jayesh B. Dolia, learned Senior Counsel for M/s.Aiyer and Dolia and Mr.N.Ramesh, learned Senior Panel Counsel for the respondents 1 to 3. We have also perused the records, including the impugned order passed by the Writ Court.

4. With the consent of both the learned counsel for the appellant and the respondents, the Writ Appeal is taken up for final disposal at the stage of admission itself.

5. The learned Senior Counsel would submit that the appellant had valid reasons for not reporting to duty as he was under medical treatment and only because of the extended leave, the termination order came to be passed removing the appellant from service. The learned Senior Counsel would further submit that the Appellant is the sole breadwinner of the family and he has 10 more years service left with the third respondent and considering the peculiar circumstances, the learned Senior Counsel prayed for the Writ Appeal being allowed.



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6. Per contra, the learned Senior Panel Counsel appearing for the respondents would submit that the impugned order of the Writ Court does not deserve any interference as the Writ Court factored all relevant circumstances in coming to the conclusion that the proceedings terminating the services of the appellant were justified and proper in law.

7. We have carefully considered the submissions advanced on either side.

8. Admittedly, the petitioner was serving as a Cook in the Central Industrial Security Force on and from 05.08.1999. In December 2009, the appellant availed of Earned Leave of four days to attend his Uncle's funeral. According to the appellant, he could not join duty due to ill health and had took medical treatment upto July 2010. After recovering from illness, the appellant was allowed to join duty on 03.07.2010 and he worked till 06.08.2010. A charge memo was issued on 02.03.2010 for the unauthorised absence from 11.12.2009. The Enquiry Officer found the charges proved



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and the third respondent imposed a punishment of “Removal from service”.

The appellant preferred an Appeal before the second respondent, the same also dismissed on 12.11.2010.

9. It is the case of the appellant that despite production of medical records, the Enquiry Officer as well as the Disciplinary Authorities including the Appellate Authority have not considered the same and proceeded to remove him from services, which was wholly unjustified and harsh.

10. However, it is seen that the respondents have also placed the records before the Writ Court. From the records, it is seen that the appellant was in the habit of remaining unauthorisedly absent, for which he was already imposed as many as five punishment. The medical certificate produced by the appellant was also tested by the Disciplinary Authorities and it was found that the appellant was fit to resume duty but despite the same, the appellant did not join the duty. The illness alleged is also of not something very serious which warrants such lengthy period of leave and



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even according to the appellant, he was never admitted as an inpatient.

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11. The Writ Court has rightly taken note of all these facts and circumstances and also finding that no acceptable evidence had been produced for justifying the long unauthorised absence, the Writ Court confirmed the findings of the appellate authority.

12.The Writ Court has also discussed the case law relied on by the learned counsel for the respondents and rightly applied the ratio laid down in the cases of *Ex.Sepoy Madan Prasan Vs. union of India and Others*, reported in 2023 Livelaw SC 580 and *S.Alex Pandian Vs. The Inspector General, South Sector Head Quarters CISF and others* in *W.P. No.34976 of 2013* in coming to the conclusion that indiscipline in armed forces cannot be viewed lightly.

13. We find neither any merit in the Writ Appeal nor any justifiable grounds raised by the appellant to set aside the well considered and well



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merited findings of the Writ Court.

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14. In fine, the order of the Writ Court confirmed and the Writ Appeal is dismissed. No costs.

(D.K.K.J.) (P.B.B.J.)

29.10.2024

Internet: Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order
rkp

To

- 1.The Secretary to Government,
Union of India, Ministry of Home Affairs,
New Delhi – 110 001.
- 2.The Deputy Inspector General,
Central Industrial Security Force (SZ),
Head Quarters, Rajaji Bhavan, 'D' Block, 1st Floor,
Besant Nagar, Chennai – 600 090.
- 3.The Commandant,
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D. KRISHNAKUMAR. J.,
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P.B.BALAJI, J.

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Pre-delivery Judgment in
W.A.No.3035 of 2024

29.10.2024