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W.P.No.265 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.265 of 2023

M.Anbarasan (No: 121505048-Ct(GD))

.... Petitioner

-Vs-

1.The Union of India
Rep.by the Chief Secretary
HQRS DG BSF, 10 CGO Complex
Lodhi Road
New Delhi-110 003.

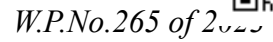
2.The Commandant/HQr
No.36, Battalion, Border Security Force
Miran Sahib
Jammu (J & K)-181 101.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent issued impugned order vide No.Estt/1409/Disc-CT(GD)-AM/36Bn/2020/11689-705 dated 21.7.2020 and to quash the same and direct the respondents to reinstate the petitioner to join duty and consequently settle the all monitory benefits.

For Petitioner : Mr.G.Suresh
for Mr.S.Nedunzhezhiyan

For Respondents : Mr.R.Rajesh Vivekanandan
Deputy Solicitor General of India



This writ petition has been filed challenging the proceedings of the 2nd respondent dated 21.07.2020, terminating the services of the petitioner and for a consequential direction to the respondents to reinstate the petitioner with all attendant benefits.

3. Thereafter, there was complete shutdown due to Covid 19 pandemic and the petitioner was not in a position to get in touch with the commandant to explain his situation.



W.P.No.265 of 2020

4.The petitioner received a show cause notice dated 09.03.2020 and the petitioner was not able to give any reply within the time frame. The same resulted in the impugned Order passed by the 2nd respondent dated 21.07.2020, terminating the services of the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

5.The respondents have filed a counter affidavit. The respondents have stated that the petitioner was unauthorizedly absent even on two earlier occasions and both times he was punished under the BSF Act, 1968. It is further stated in the counter that the petitioner had unauthorizedly absented himself from 16.11.2019 till the date of dismissal on 21.07.2020 and the petitioner did not respond to the summons and he was not reachable and he did not produce any medical records or documents to justify his absence. In view of the same, considering the fact that the petitioner belongs to a disciplined force, the impugned order came to be passed against the petitioner, dismissing him from service. Accordingly, the respondents have justified the dismissal Order passed against the petitioner. That apart, the respondents have also taken a stand that the petitioner has an appellate remedy and hence, the present writ petition itself is not maintainable. In view of the same, the respondents have sought for the dismissal of this writ petition.



W.P.No.265 of 2020

6. Heard Mr.G.Suresh, learned counsel for the petitioner and Mr.R.Rajesh

Vivekanandan, learned Deputy Solicitor General of India for the respondents.

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7.The fact remains that the petitioner was absent from duty 16.11.2019 till the date on which the termination Order was passed on 21.7.2020. On carefully reading the termination order, it is seen that attempts were made to serve the notice on the petitioner and the petitioner on receipt of the show cause notice failed to submit any reply and he also failed to rejoin the unit. Therefore, the respondent left with no other option, found that there was unauthorized absence for 249 days which resulted in the termination Order passed by the 2nd respondent.

8.The petitioner has come up with an explanation for his absence from November 2019. The petitioner has stated that his wife was pregnant and her health became very serious towards the end of pregnancy and he had to take care of his wife till February 2020. Even thereafter, the child was hospitalized for nearly 21 days. That was followed by the Covid pandemic. Therefore, the petitioner has some material to justify his absence during the relevant period.

9.Considering the peculiar facts and circumstances of the case, this Court is inclined to grant one opportunity to the petitioner to put forth his defense before the 2nd respondent. The 2nd respondent shall consider the same after affording opportunity



W.P.No.265 of 2020

to the petitioner and pass fresh orders within the time frame fixed by this Court. In the light of the above discussion, the impugned proceedings of the 2nd respondent dated 21.07.2020, is hereby set aside. The petitioner is directed to submit a reply to the show cause notice dated 21.06.2020, within a period of two weeks from the date of receipt of copy of this order along with all supporting documents. On receipt of the same, the 2nd respondent shall conduct the enquiry after affording opportunity to the petitioner and final orders shall be passed within a period of eight weeks thereafter.

10. In the result, this writ petition is disposed of with the above directions. No costs.

24.09.2024

Index : Yes/No

NCS : Yes/No

KP

To

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W.P.No.265 of 2023

N.ANAND VENKATESH, J.

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W.P.No.265 of 2023

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