



W.P.(MD).No.5196 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 13.11.2024

ORDER PRONOUNCED ON : 18.11.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.5196 of 2023
and WMP(MD).No.4893 of 2023**

T.Murugesan

....Petitioner

Vs

1.The Additional Deputy Inspector General of Police
Group Centre
Central Reserve Police Force
Avadi, Chennai

2.The Additional Deputy Inspector of General of Police
Group Centre, Central Reserve Police Force
Yelahanka, Bangalore 560 064.

3.The Director General Central Reserve Police Force
C.G.O.Complex
Lodhi Road, New Delhi.

4.The Commandant 109Bn,
Central Reserve Police Force
Zembabawak, Alzawl
Mizoram

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the respondent in his proceedings in



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II-1/2019-109-EC-II dated 21.06.2019 and quash the same as illegal and consequently directing the 4th respondent herein to disburse the monetary benefits from payable to the petitioner from 02.04.1991 to 30.04.2012 including the period from the date of discharge till the date of reinstatement from 15.11.2001 to 28.05.2010 as spent on duty and continue to pay pension to the petitioner within the time that may be stipulated by this Court.

For Petitioner : Mr.T.Murugesan
Party-in-person

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of India
Assisted by Mr.P.Paulpandi for R1 to R4

ORDER

The present writ petition has been filed by a former CRPF constable challenging the order passed by the fourth respondent on 21.06.2019 wherein the request of the petitioner for pension including family pension has been rejected.

2.The petitioner has also prayed for disbursing the monetary benefits for the service period between 02.04.1991 to 30.04.2012 including the period from the date of discharge till the date of reinstatement namely 15.11.2001 to 28.05.2010.

(A)Facts leading to the filing of the present writ petition are as follows:

3.The petitioner herein was en-listed in CRPF as a Constable on



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02.04.1991. He was transferred from CRPF, Avadi to 109 Battalion on 18.06.2001. On 23.06.2001, the petitioner has submitted his resignation due to domestic problem. However, the resignation letter was not accepted and the petitioner was permitted to go on leave between 20.07.2001 to 17.09.2001.

4.The petitioner having rejoined on 18.09.2001 again submitted his resignation letter on 26.09.2001 and the same was accepted by the competent authority on 15.11.2001. The petitioner herein had filed WP(MD).No.5148 of 2006 wherein he had challenged the order of acceptance of resignation letter and sought a prayer to admit him into the service with monetary benefits. The said writ petition was allowed by this Court on 18.11.2009. In compliance with the order of this Court, the petitioner was reinstated in service on 28.04.2010 with a condition that the reinstatement is subject to the outcome of the writ appeal.

5.On 12.06.2010, the respondent authorities have passed an order of declaring that the period between 10.11.2001 to 28.05.2010 will be treated as 'Dies-non' period. This order was not put to challenge by the writ petitioner. The respondent authorities had filed WA(MD).No.520 of 2010 challenging the order of this Court in WP(MD).No.5148 of 2006. The Hon'ble Division Bench was pleased to allow the writ appeal on 14.02.2012 setting aside the order of the writ Court and confirmed the order of discharge based upon the



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resignation letter. Based upon the order of the Hon'ble Division Bench, the petitioner was relieved from service on 30.04.2012. The petitioner herein had filed Rev.Aplc.(MD).No.57 of 2012 seeking to review the order in WA(MD).No.520 of 2010 dated 14.02.2012 and the review application was dismissed on 01.08.2013.

6.The petitioner herein had filed SLP.Nos.9728 of 2012 and 4852 of 2014 before the Hon'ble Supreme Court challenging the order in writ appeal as well as the order of review application and the same were dismissed by the Hon'ble Supreme Court on 02.04.2012 and 28.02.2014 respectively. Thereafter, the petitioner has filed another review application before this Court in Review Application(MD).No.103 of 2017 and the Hon'ble Division Bench was pleased to dismiss the same as withdrawn on 19.07.2018. Thereafter, the petitioner had filed CMP.(MD)SR.No.51552 of 2018 in WA(MD).No.520 of 2010 with a prayer to recall the order dated 14.02.2012 made in WA(MD).No.520 of 2010. The said miscellaneous petition was dismissed by the Hon'ble Division Bench on 16.02.2022. Aggrieved over the same, the petitioner had filed SLP.(Civil).No.22912 of 2022 before the Hon'ble Supreme Court and the said Special Leave Petition came to be dismissed on 09.12.2022.

7.The petitioner had filed WP(MD).No.7487 of 2012 challenging the order dated 24.04.2012 wherein the petitioner was relieved from duty



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pursuant to the order of the Hon'ble Division Bench and sought for regularising the period between 15.11.2001 to 28.05.2010. This Court by an order dated 08.04.2019 had confirmed the relieving order issued by the authorities, but permitted the writ petitioner to give a representation for disbursement of the benefit payable to a discharged person. Taking advantage of the said order, the petitioner has given a representation to the fourth respondent on 13.05.2019 seeking service and other monetary benefits for the period from April 1991 to 24.04.2012 including the period from 15.11.2001 to 28.10.2001 and pensionary benefits including the family pension. This representation has been rejected by way of the impugned order of the fourth respondent dated 21.06.2019.

(B)Submissions on either side are as follows:

8. According to the petitioner, the benefits arising out of his service for the period between 02.04.1991 to 30.04.2012 have not been disbursed. He had further contended that the petitioner was discharged from service on 15.11.2001 and he was reinstated only on 28.04.2010 pursuant to the order of the writ Court in WP(MD).No.5148 of 2006. The said interregnum period should be treated as a duty period and monetary as well as the pensionable benefits should be disbursed to him. He had further contended that the order of 'Dies-non' passed by the authority has already been set aside by this Court and therefore, the authorities cannot contend that the said period is a



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'Dies-non' period. Hence, he prayed for allowing the writ petition.

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9.Per contra, the learned Deputy Solicitor General of India appearing for the respondents relied upon the orders of this Court passed in various writ petitions and had contended that the petitioner is trying to resurrect the issues which were already settled by the Hon'ble Division Bench of this Court and by the Hon'ble Supreme Court. The period between 10.11.2001 to 28.05.2010 had been declared to be a 'Dies-non' period by way of order dated 12.06.2010. The said order has not been put to challenge by the writ petitioner. Therefore, such an issue cannot be raised by the petitioner now. He had further contended that all the monetary benefits for which the petitioner is entitled to for the service period between 02.04.1991 to 15.11.2001 have already been disbursed. The petitioner having resigned from service is not entitled to any pension in view of the Central Civil Service Rules. Hence, he prayed for dismissal of the writ petition.

9A.The learned Deputy Solicitor General had relied upon a judgment of the Hon'ble Supreme Court reported in **(2008) 2 SCC 244 (Director General, Border Security Force and others Vs.Deenamma Sanuel)** to contend that the petitioner having resigned would not be entitled to receive pension.



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(C)Conclusion:

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10.I have considered the submissions made on either side and perused the material records.

11.The petitioner has submitted his resignation letter for the second time on 26.09.2001 and it has been accepted by the authorities concerned on 15.11.2001. Though it was put to challenge by the writ petitioner, he was not successful up to the Hon'ble Supreme Court. Therefore, the order discharging the petitioner from service on the basis of the resignation letter submitted by him on 26.09.2001 has attained finality.

12.The petitioner was reinstated in service on 28.04.2010 pursuant to the order of the writ Court in WP(MD).No.5148 of 2006 with a condition that it is subject to the order of the Appellate Court. The Appellate Court in WA(MD).No.520 of 2010 had set aside the order of the writ Court and confirmed the order of discharge. Therefore, the services rendered by the petitioner based upon the order of the writ Court between 28.04.2010 to 30.04.2012 can never be taken into consideration, in view of the fact that it is a service during the litigation period.

13.The petitioner was discharged from service on 15.11.2001 and he was reinstated, in view of the writ Court order on 28.04.2010. The said period was declared as a 'Dies-non' period by way of order of the authority dated 12.06.2010. This order has not been put to challenge by the writ petitioner.



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That apart, this Court while disposing of WP(MD).No.7487 of 2012 in paragraph No.5 has categorically held that the respondents cannot be faulted for treating the period from the date of discharge till the date of reinstatement as one of 'Dies-non'.

14.It is settled position of law that the petitioner would not be entitled for any benefits for the 'Dies-non' period. It is not in dispute that the petitioner is governed by the Central Civil Services (Pension) Rules. As per Rule-26 of the said Rules, whenever a member of service resigned from the post, it results in forfeiture of the past service. When the entire past services is forfeited, the petitioner cannot rely upon Rule 49 of the said Rules seeking pension on the ground that he had completed 10 years of service.

15.The Hon'ble Supreme Court in a judgment reported in **(2001) 4 SCC 309 (Union of India and others Vs. Rakesh Kumar)** in paragraph No. 16 has held as follows:

“16.On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an



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officiating or temporary capacity. This rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at the rate of half months emoluments for every completed six monthly period of qualifying service. In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that respondent- members of the BSF have completed more than 10 years of qualifying service. Further clause 2(a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less than 33 years. The amount of pension is to be calculated fifty per cent of average emoluments subject to maximum provided therein. Clause 2(b) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the pension shall be proportionate to the amount of pension admissible under clause (a) and in no case, the amount of pension shall be less than Rs.375/- per month. This would only mean that in case where government servant retires on superannuation i.e. the age of compulsory retirement as per service conditions or in accordance with the CCS (Pension) Rules, after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under clause (2) of Rule 49. This



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clause would cover cases of retirement under Rules 35 and 36, that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after prescribed age and such other cases as provided under the Rules. However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the government where service qualifies. Hence, on the basis of Rule 49 member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants.”

16.In view of the above said factual and legal position, it is clear that the petitioner would not be entitled to the relief sought for in the writ petition. There are no merits in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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