

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).NO. 3089 OF 2006 (P)

PETITIONER:

B. MENGHANI, AGED 53 YEARS,
S/O. MURIJMAL, SENIOR ACCOUNTS OFFICER
INLAND WATERWAYS AUTHORITY OF INDIA, ERNAKULAM, KERALA
PERMANENT ADDRESS:, E-191 KALKAJI, NEW DELHI-110 019.

BY ADVS. SRI. T. C. GOVINDA SWAMY
SMT. D. HEERA
SRI. P. NPANKAJAKSHAN PILLAI

RESPONDENT(S):

1. THE CHAIRMAN, INLAND WATERWAYS AUTHORITY OF INDIA,
A-13, SECTION 1
NOIDA, U.P, PIN-201 301.
2. THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES & PENSION,
(DEPARTMENT OF PERSONNEL & TRAINING),
NORTH BLOCK, NEW DELHI-110 001.
3. THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF EXPENDITURE,
NORTH BLOCK, NEW DELHI-110 001.
4. THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF SHIPPING, ROAD TRANSPORT & HIGHWAYS,
DEPARTMENT OF SHIPPING
SHAHEED JEET MARG, NEW DELHI-1.
5. SHRI. S. JAYARAMAN, DEPUTY COMMISSIONER
(FINANCE), KENDRIYA VIDYALAYA SANGHATAN-18
INSTITUTIONAL AREA, SHAHEED JEET SINGH MARG
NEW DELHI-110 016.

R1 BY ADV. SRI. V. SANTHARAM, SC, IWAI
SRI. N. NAGARESH, ASGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.3089/06

PETITIONER'S EXTS:

- EXT.P1: COPY OF INLAND WATERWAYS AUTHORITY OF INDIA RECRUITMENT, SENIORITY AND REGULATIONS, 192 PUBLISHED IN THE OFFICIAL GAZETTE ON 26.8.92 WITH RELEVANT PORTION OF THE SCHEDULE.
- EXT.P2: COPY OF ORDER OF THE MINISTRICY OF FINANCE, OM NO.F6(82)-1C/91 DT.22.9.92.
- EXT.P3: COPY OF GOVERNMENT OF INDIA BY DEPARTMENT OF PERSONNEL AND TRAINING OM NO.35034/I/97 -ESTT(D) DT.9.8.99.
- EXT.P4: COPY OF GOVERNMENT OF INDIA, DEPARTMENT OF PERSONNEL AND TRAINING BY ITS OM NO..35034/I/97 -ESTT(D) (VOL.IV) DT.10.2.2000.
- EXT.P5: COPY OF REPRESENTATION DT.25.6.2004 ADDRESSED TO THE 1ST RESPONDENT.
- EXT.P6: COPY OF LETTER ADDRESSED TO THE RESPONDENT FROM THE OFFICE OF THE 1ST RESPONDENT BEARING NO.8/IWAI/ESTT/34/04 PT-II DT.28.2.05.
- EXT.P7: COPY OF LETTER BEARING NO.8/IWAI/ESTT/34/04 VOL.III DT.6.1.06 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT.
- EXT.P8: COPY OF COMMUNICATION BEARING OM NO.8(I) E-III(B)/2001 DT.1.4.2004 ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF FINANCE.
- EXT.P9: COPY OF OFFICE ORDER BEARING NO.8-IWAI/ESTT/34/04-PT-IV DT.4.5.05 ISSUED FROM THE OFFICE OF THE FIRST RESPONDENT.
- EXT.P10: COPY OF LETTER BEARING NO.IW-14021/5/2004 IWT DT.15.4.05 ISSUED BY THE DEPARTMENT OF SHIPPING.
- EXT.P11: COPY OF PROCEEDINGS OF THE DEPARTMENTAL PROMOTION COMMITTEE.

RESPONDENTS' EXTS:

- EXT.R1(A): COPY OF AGENDA DT.NIL PLACED BEFORE THE AUTHORITY.
- EXT.R1(B); COPY OF GOVERNMENT COMMUNICATION DT.15.5.95.
- EXT.R1(C): COPY OF PROMOTION ORDER DT.19.7.95 OF THE PETITIONER.
- EXT.R1(D): COPY OF IWAI SCHEME DT.NIL.
- EXT.R1(E); COPY OF COMMON PAY SCALE LIST DT.NIL.
- EXT.R1(F); COPY OF LETTER NO.11014/3/2005-IWT DT.15.4.2005 ISSUED BY THE 4TH RESPONDENT.
- EXT.R1(G); COPY OF ORDER NO.6/82/E-111/B/91 DT.28.2.2003.
- EXT.R1(H): COPY OF LETTER NO.A-11013/2/97-IWT DT.17.11.2000/
- EXT.R1(I): COPY OF FIR ALONG WITH ANNEXURES.
- EXT.R1(K): COPY OF JUDGMENT DT.1.12.2011 PASSED BY THE SPECIAL JUDGE (SPE/CBI)-I, ERNAKULAM IN CALENDAR CASE NO.05/2006 IN R.C.NO.06(A)/2006.

TRUE COPY

dsn

P.S.TO JUDGE

ANIL K.NARENDRA, J

W.P.(C)No.3089 Of 2006

DATED THIS THE 5th DAY OF AUGUST, 2015

JUDGMENT

The petitioner who was working as Senior Accounts Officer in the Inland Waterways Authority of India has filed this Writ Petition seeking the following reliefs:

- "a. Issue a writ of certiorari or other appropriate writ, order or direction calling for the records leading to the issue of Exhibit P7 and quash the same,;
- b. Issue a writ of certiorari or other appropriate writ, order or direction calling for the records leading to the issue of Exhibit P9 and quash the same.
- c. Declare that the petitioner is entitled to be granted the benefit of the first financial up-gradation in scale of ₹10,000-15200/- with effect from 30.10.99;
- d. Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents to grant and pay the petitioner, the benefit of the first financial up-gradation in the scale of pay of ₹10,000-15200/- w.e.f.30.10.99 with all consequential arrears of pay and allowances emanating therefrom;
- e. In the alternative, issue a writ of mandamus or other appropriate writ, order or direction commanding respondents 1 to 4 to implement Exhibit P8 forthwith and to grant the petitioner the first financial up-gradation in scale ₹10,000-15200 with effect from 30.10.99 with all

arrears of pay and allowances arising therefrom.

f. Award costs of and incidental to this petition."

2. The respondents have filed a counter affidavit contending, inter alia, that the petitioner is not entitled for the reliefs sought for.

3. During the pendency of the Writ petition the petitioner was charge sheeted under Section 7 of the Prevention of Corruption Act by the Central Bureau of Investigation, Ernakulam and a crime was registered as Crime No.RC. 06(A)/2006. Ext.R1(j) is the judgment of the Special Judge (SPE/CBI)-I, Ernakulam in C.C.No.5/2006 by which the petitioner was found guilty and sentenced to undergo rigorous imprisonment for 3 years and to pay fine of ₹50,000/-, in default to undergo rigorous imprisonment for 6 months under Section 7 of the Prevention of Corruption Act and also to undergo rigorous imprisonment for a period of 3 years and to pay fine of ₹50,000/-, in default to undergo rigorous imprisonment for 1 year for the offence punishable under Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act.

4. Pursuant to Ext.R1(j) judgment, disciplinary proceedings were initiated against the petitioner under the provisions of the Central Civil Service (Classification, Control and Appeal) Rules,

1965 and consequently he was dismissed from service by Order No.9-IWAI/Estt./2/2006 Pt-I dated 27.12.2011 Ext.R1(k) is a copy of the said order. Now W.P.(C)No.7105/2012 filed by the petitioner challenging Ext.R1(k) order is pending before the High Court of Delhi.

5. Since the petitioner has already been convicted for an offence punishable under the provisions of the Prevention of Corruption Act, by Ext.R1(j) judgment, and that he was also imposed with a punishment of dismissal from service by Ext.R1(k) order passed by the Disciplinary Authority, which is now under challenge in W.P.(C)No.7105/2012 pending before the High Court of Delhi, the petitioner is not entitled for the relief sought for in this writ petition at this point of time.

6. In such circumstances, this Writ petition is closed, leaving open all the contentions raised by the petitioner and reserving his right to re-agitate the issue once he is acquitted in the criminal case and his order of dismissal is reversed.

No order as to costs.

Sd/-

ANIL K.NARENDRA, JUDGE

dsn