



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 13-02-2015

Coram

The Honourable Mr. Justice SATISH K. AGNIHOTRI

and

The Honourable Mr. Justice M. VENUGOPAL

W.A.No.64 of 2015

N. GURUVAIAH S/O LATE NARAIHA
NO. 6 GANDHI NAGAR
POONAMALLEE.

Appellant

Vs

THE DEPUTY DIRECTOR OF PUBLIC
HEALTH AND PREVENTIVE MEDICINE
INSTITUTE OF PUBLIC HEALTH
POONAMALLEE CHENNAI - 56

Respondent

Writ appeal preferred under Clause 15 of the Letters Patent against the order dated 05-09-2014 made in W.P. No.20016 of 2008. Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent culminated in the impugned termination order in Rc.No.10319/P1/85 dated 04.08.2008, quash the said order and entire proceeding thereunder against the petitioner, and reinstate the petitioner in service as a Mazdoor in the respondent - Department forthwith along with all attendant and monetary benefits and continuity of service.

For appellants Mr. B. Balachander

JUDGMENT

(Judgment of the Court is delivered by SATISH K. AGNIHOTRI, J.)

The appellant/ the writ petitioner, questioning the legality and validity of the termination order in Rc.No. 10319/P1/85 dated 04-08-2008 came up with a petition seeking quashment of the same and also as a natural corollary reinstatement in service as Mazdoor with monetary benefits and continuity of service.



2. The learned Single Judge, relying on a decision in Vaikundam Vs. State of Tamil Nadu rep. by the Principal Commissioner and Commissioner for Revenue Administration, Chennai - 5¹, quashed the termination order on the ground that the same was bad and directed the respondent to reinstate the appellant in service by granting 25% of the back wages and continuity of service.

3. The facts in nutshell are that the appellant joined as a Sweeper in the respondent's office against leave vacancy sometime in the year 1984. After some time, he was temporarily appointed as Mazdoor at the Institute of Public Health, Poonamallee under Rule 10 (a)(i) of the General Rules for Tamil Nadu State and Subordinate Services. As projected by the appellant, he made a representation on 29-10-1985 for regularization of service. To his surprise, he was removed from service by impugned order dated 04-08-2008, on the ground that he has sought an appointment on compassionate grounds, without disclosing the fact that after the death of his father, his mother was given employment as she was entitled to be considered on compassionate grounds.

4. The case of the appellant before the Writ Court was that after regularization of his service, he had worked for more than three decades and as such, the termination was erroneous and without application of mind.

5. The learned Writ Court, having examined all the facts, held that from a reading of the appointment order dated 15-03-1985 read with the relevant Government Order, it was evident that the appellant was not appointed on compassionate grounds. After regularization, the appellant was allowed to continue till the impugned termination order was passed on the basis that he has suppressed the material fact of the employment of his mother. Recording the aforesaid finding, the learned Writ Court held the termination order as bad and as such, granting reinstatement, directed to pay 25% of the backwages with continuity of service and other consequential relief within a period of one month.

6. The learned counsel appearing for the appellant would submit that once the order of termination is found illegal, the appellant is entitled to full backwages as a natural consequence.

7. It is well-settled principle of law that grant of backwages is not automatic, but, depends on several factors like gainful employment, absence from work, nature of conduct and also, the period the employee spent outside the service.

8. In the case on hand, there is no pleading to establish that the appellant was gainfully employed elsewhere. Thus, the learned Writ Court has rightly come to the conclusion that the appellant is

1 2012 (4) MLJ 478



entitled to 25% backwages, with continuity of service and other consequential benefits.

9. For the reasons mentioned herein above, we do not find any error, irregularity or irrationality in the order of the Writ Court, warranting interference.

10. The writ appeal is dismissed as above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp
To

THE DEPUTY DIRECTOR OF PUBLIC
HEALTH AND PREVENTIVE MEDICINE
INSTITUTE OF PUBLIC HEALTH
POONAMALLEE CHENNAI - 56

+ 1 cc to M/s. Ashok Menon, Advocate Sr.8099

W.A.No.64 of 2015

VD(CO)
Eu 2.03.15