

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4081 of 2015

J.Jason Joseph

.. Petitioner

Versus

1. The Union of India rep.by
The Chief Personnel Officer
Southern Railway HQ
Park Town, Chennai 600 003.

2. The Divisional Personnel Officer
Southern Railway
Tiruchirapalli Division
Tiruchirapalli 620 001.

3. The Registrar
Central Administrative Tribunal
Madras Bench
Chennai 600 104.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order of the third respondent/Tribunal passed in O.A.No.807 of 2013 dated 03.07.2014 and that of the order made in Review Petition No.32 of 2014 dated 27.10.2014; to quash the same and to consequently direct the respondents 1 and 2 to treat the period from 15.09.2005 to 17.04.2011 as "Qualifying Service" for all intent and purposes including grant of notional increments, with all other consequential benefits arising thereto including monetary and retirement benefits with interest.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.M.Johnson Durairaj
for M/s.V.G.Suresh Kumar
for RR1 and 2
R3- Tribunal

O R D E R

(Order of the Court was made by HULUVADI G.RAMESH,J.,)

The prayer in the writ petition is for the issuance of a writ of certiorari for mandamus to call for the records relating to the order of the third respondent/Tribunal passed in O.A.No.807 of 2013 dated 03.07.2014 and that of the order made in Review Petition No.32 of 2014 dated 27.10.2014; to quash the same and to consequently direct the respondents 1 and 2 to treat the period from 15.09.2005 to 17.04.2011 as "Qualifying Service" for all intent and purposes including grant of notional increments, with all other consequential benefits arising thereto including monetary and retirement benefits with interest.

2. The case of the petitioner is that while he was working as a Travelling Ticket Inspector in the respondent-Railways, he was issued with a charge memo for certain allegations levelled against him. Based on the departmental enquiry conducted and the report submitted by the disciplinary authority, he was imposed with the punishment of dismissal from service vide order dated 26.07.2002. The matter went up to the Apex Court in Civil Appeal No.1863 of 2011 and the Apex Court vide its order dated 14.02.2011 while refusing the back wages and also to restore the seniority, directed the respondents to extend the other benefits, viz., with regard to reinstatement with continuity of service.

3. It is the argument of the learned counsel for the petitioner that the Department had reinterpreted the order passed by the Apex Court with regard to the continuity of service and passed the following order:

"With reference to your letter cited it is advised that the intervening period from the date of dismissal to the date of reinstatement in the case of Shri.J.Jason Joseph can be taken only for continuity of service, i.e., it will not be counted as qualifying service but will be dies non between two spells of service before dismissal and after reinstatement."

The learned counsel for the petitioner therefore, submits that the aforesaid order passed by the Department, appears to be prima facie illegal and that cannot sustain. Challenging the said order, the petitioner preferred Original Application before the Central Administrative Tribunal and the same was dismissed. As against the same, he preferred Review Application and that also came to be dismissed by the Central Administrative Tribunal. He would further submit that the order of the Tribunal is as good as reinterpreting the very punishment order passed by the Apex Court. Hence, the present writ petition.

4. The learned Standing Counsel appearing for the respondent/Railways would try to stand by the order passed by the respondent-Department and also the impugned order passed by the Tribunal.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent-Railways.

6. The Apex Court, in its judgment in Civil Appeal No.1863 of 2011 dated 14.02.2011 has held as follows:

"6. However, while the High Court was justified in restoring the order of reinstatement with imposition of lesser punishment of reduction in service with continuity of service, the High Court was not justified in granting the reliefs of seniority and 25% back wages. When the High Court has upheld the finding that the respondent was guilty of charges 1, 6 and 7, any direction for back wages would amount to rewarding the guilty, which is not permissible. Nor will he be entitled to restoration of his seniority as ordered by the High Court.

7. In view of the above, we allow this appeal in part and set aside the order of the High Court awarding back wages of 25% and restoring the seniority. As a result of setting aside of the punishment of dismissal the respondent will be entitled to reinstatement with continuity of service, but shall be subjected to the punishment imposed by the appellate authority. The respondent will not be entitled to restoration of seniority or to any back wages."

7. A perusal of the aforesaid judgment of the Apex Court would clearly show that while modifying the order passed by the Division Bench of this Court, it has stated that the petitioner has to be reinstated into service with continuity of service. However, the respondent-Department has stated that the intervening period, viz., from the date of dismissal to the date of reinstatement of the petitioner into service would be taken only for continuity of service and that it will not be counted as qualifying service but will be dies non between two spells of service before dismissal and after reinstatement, which is totally against the order passed by the Apex Court in extending the benefit of service to the petitioner for calculating the qualifying service. In other words, what is being stated by the Apex court is to extend the benefit as ordered by the Division Bench by its earlier order and it has only stated that the back wages will not be paid and that the seniority will not be restored.

8. In view of the above, the impugned order is modified to the effect that the period from the date of dismissal to the date of reinstatement of the petitioner into service will be treated as continuity of service for calculating the qualifying service only for the benefit of providing monetary and terminal benefits to him.

9. At this juncture, the learned counsel for the petitioner would submit that the petitioner has already retired from service on 28.02.2013 and he would pray for early settlement of his retirement benefits.

10. In view of the above submission, it is for the Department to calculate the benefits of the petitioner taking his period of suspension till the date of his reinstatement as continuity of service for calculating the qualifying service and remit the amount within three months from the date of receipt of a copy of this order.

11. With the above direction, this writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vj2

To

1. The Chief Personnel Officer
Union of India
Southern Railway HQ
Park Town, Chennai 600 003.

2. The Divisional Personnel Officer
Southern Railway
Tiruchirapalli Division
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1 cc to Mr.L. Chandrakumar, Advocate, Sr. 22669

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BVR (CO)
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