

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11- 2016

(Orders reserved on 25-10-2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32596 of 2016

K.Murugan

.. Petitioner

Vs.

1. The Director (HR),
Directorate of Finance and Accounts,
ONGC,
Jeevan Bharathi Tower-II,
No.124, Indira Gandhi Chowk,
New Delhi-110 001.
2. The Director (Finance),
Directorate of Finance and Accounts,
ONGC,
Jeevan Bharathi Tower-II,
No.124, Indira Gandhi Chowk,
New Delhi-110 001.
3. The General Manager (HR),
ONGC,
Neravi Complex,
Karaikal 609 604,
Puducherry.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to revise the scale of pay of the petitioner on par with his juniors and to disburse the arrears of back-wages with allowances and increments to him and consequently to promote him as Senior Finance and Accounts Officer with retrospective effect.

For Petitioners : Mr.Yogesh Kannadasan
For Respondents : Mr.P.Srinivasan

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to revise the scale of pay of the petitioner on par with his juniors and to disburse the arrears of back-wages with

allowances and increments to him and consequently to promote him as Senior Finance and Accounts Officer with retrospective effect.

2. It is the case of the petitioner that he belongs to Hindu Koodan Community, which is one of the communities listed as a Scheduled Caste. He was selected and appointed as Junior Accountant in the year 1987 in the office of the respondents in Mumbai under the quota reserved for Scheduled Castes. At the time of appointment, he produced a valid Community Certificate issued by the Tahsildar to the effect that he belongs to SC community and the same was verified by the authorities concerned and only after their satisfaction, he was appointed to the said post. Thereafter, the petitioner was promoted as Accountant with effect from 01.01.1992 and was again promoted as Finance and Accounts Officer with effect from 01.01.1994. Thereafter, the petitioner was transferred to Karaikkal during July 1995. When the petitioner was promoted, his service records, including his Community Certificate, were verified and only on proper satisfaction, the promotions were ordered.

3. It is further stated by the petitioner that even though he is eligible to be promoted as Senior Finance and Accounts Officer (Sr. F.& A.O) with effect from 01.01.1998, at the instance of certain employees who are serving in the respondents-Department and who are inimically disposed of towards the petitioner without any valid reason, the petitioner's Community Certificate was referred for verification. The then District Collector, Kanyakumari has passed an erroneous order on 30.04.1998, cancelling the petitioner's Community Certificate, pursuant to which, the petitioner was suspended and his services were terminated on 06.11.1998. Challenging the order cancelling the Community Certificate and also the order of his termination, the petitioner filed a Writ Petition before this Court and this Court quashed the order of cancellation passed by the District Level Committee consisting of two members, cancelling the petitioner's Community Certificate. The said Writ Petition was allowed, quashing the order cancelling the Community Certificate, passed by the District Level Committee consisting of two members. Since the termination order was not set aside in the Writ Petition, the petitioner filed Writ Appeal in W.A.No.1645 of 1999, in which, a Division Bench of this Court has set aside the termination order and consequently directed the respondents to reinstate the petitioner within two weeks from the date of receipt of a copy of the order in the last post held by him on the date of termination with a right to claim last drawn salary from the date of reinstatement. The Division Bench also observed that the back-wages for the period from the date of termination till the date of reinstatement would depend upon the outcome of the decision which is likely to be taken by the Committee to be newly constituted as per G.O.Ms.No.111, Adi

Dravidar and Tribal Welfare (ADW-10) Department, dated 06.07.2005. However, the Division Bench also gave liberty to the respondents by stating that the order passed by the Division Bench will not come in the way of the validity of the Community Certificate of the writ petitioner being put to test before the Committee newly constituted as per the terms of the abovesaid G.O., dated 06.07.2005.

4. It is further stated that by the petitioner that as against the said order passed by the Division Bench, the respondents/Department preferred appeal before the Supreme Court and the Supreme Court, by order dated 26.02.2016 in S.L.P.(C). Nos.17084 of 2005, 19505-19506 of 2005, etc., held that there is no infirmity in the order passed by this Court and consequently, directed the respondents to reinstate the petitioner and other similarly terminated employees within four weeks with further direction to give 50% back-wages within the said period.

5. Pursuant to the above said order of the Supreme Court, the petitioner was reinstated into service on 29.03.2016 and 50% of the back-wages was paid to him. It is the grievance of the petitioner that even though the back-wages were paid to the petitioner by the respondents-Department, the order of the Supreme Court was not strictly complied with in letter and spirit. The respondents have paid 50% of back-wages of the petitioner's basic pay and Dearness Allowance only and not on his full pay and allowances. It is the petitioner's further grievance that he was treated as a newly recruited employee, inasmuch as he was allotted new Contributory Provident Fund (CPF) No.132090 without permitting him to use the old C.P.F.No.71650. The above CPF number is the identify number of an employee in the respondent-organisation, which was allotted to treat him as if he is a newly recruited employee. The petitioner further states that in view of the sanction of the new number, he was not able to avail the benefit of getting 90% loan from his P.F. account and other benefits.

6. It is the further case of the petitioner that his basic salary was fixed as Rs.30,070/- instead of Rs.55,839/- as on 01.01.2016. There will be a pay revision of all other employees in the organisation once in ten years. If the said criterion is followed, his salary should have been fixed as indicated above. He is also eligible for promotion as Sr.F. & A.O with effect from 01.01.1998, after his reinstatement, he was not given the said promotion by giving all retrospective benefits and fixation of his seniority. He was also denied the advance of Rs.1.25 lakhs for purchase of house-hold articles, by treating him as a newly recruited employee. Even though all his juniors have been allotted cabins (rooms), the respondents denied such allotment to him, though he had put in 23 years of service as F & A.O. The petitioner sent various representations setting out his above said grievances to the respondents. As there was no response, he finally sent lawyer's notice, dated 12.06.2016 to the respondents 2 and 3 and inspite of the same, his grievances

were not settled till date. As no action has been taken, the petitioner has filed this Writ Petition for the relief stated supra.

7. When the Writ Petition is taken up for consideration, learned counsel for the petitioner has made detailed arguments by adverting to the averments made in the affidavit, and mainly contended that the Supreme Court has directed to reinstate the employees who were terminated and to give them 50% of the back-wages from the date of termination till the date of reinstatement. Hence, it is implied that the employees would be reinstated into service, without break in service, and therefore, the service benefits would include all allowances to which they are normally entitled to and therefore, he prayed for allowing the Writ Petition.

8. Learned counsel for the respondents, by filing detailed counter affidavit, made his submissions with regard to the factual background of the earlier Writ Petition, Writ Appeal and the orders passed thereunder and also on the orders passed by the Supreme Court in the SLPs., all of which have been discussed supra. Learned counsel for the respondents further submitted that as per the directions of the Division Bench of this Court in the said Writ Appeal and also as per the order of the Supreme Court in the said S.L.P., the petitioner was reinstated into service with effect from 29.03.2016 in the same post, same scale and same pay which he was holding on the date of his termination from service. He further submitted that the pay of the petitioner was re-fixed considering the periodical revision of pay, i.e. 01.01.1997 and 01.01.2007 and was accordingly paid 50% of back-wages from the date of his termination till the date of his reinstatement. He further contended that as per the provisions contained in the Recruitment and Promotion Regulations, 1980 of the respondent-Corporation, promotion is based on functional experience of minimum required years of service in a particular post and also based on related performance appraisal reports. He further contended that the petitioner will be considered for promotion to the post of Sr. F & A.O as per the Rules with the minimum required years of service in a particular post.

9. With regard to the other allowances as alleged by the petitioner, learned counsel for the respondents submitted that the said allowances are paid only to such of those employees who are in service to meet the exigencies of service and also to the special nature of the work. Since the petitioner was not in service, he is not entitled for those allowances which are payable to the serving employees, as the same is paid only because of the nature of the work involved and to meet other incidental expenses, etc. With regard to the allotment of C.P.F. number, loan availing facility from P.F. account, etc., the issues are resolved before the authorities concerned.

10. Learned counsel for the respondents further submitted

that the petitioner was paid 50% back-wages taking into account the basic pay as well as Dearness Allowance he was drawing at the time of termination. As the petitioner was not in service to earn increment every year (normally annual increment is to be earned on completion of one year), the pay was kept as static (giving effect to the pay revision with effect from 01.01.1997 and 01.01.2007) from the date of termination to the date of reinstatement. However, the petitioner would start earning increments in future. Learned counsel further stated that as the petitioner was not in service during the period, there was pay parity with his juniors. Hence, the question of junior getting more pay, will not arise on reinstatement, since the petitioner was rightly given the same scale and post with same pay, which he was holding at the time of his termination. Learned counsel for the respondents further submitted that the action of the respondents in fixing the pay and reinstatement, is as per the Rules and there is nothing arbitrary or illegal and hence, for all the above reasons, he prayed for dismissal of the Writ Petition.

11. Keeping in mind the above submissions of the learned counsel appearing for both parties, I have considered the same and perused the materials available on record.

12. It is seen that the petitioner herein joined as Junior Accountant in the year 1987 in the office of the respondent-organisation. According to the petitioner, only after satisfying with the Community Certificate produced by the petitioner, he was appointed. Thereafter, he was promoted as Accountant with effect from 01.01.1992 and further as Finance and Accounts Officer on 01.01.1994. It is stated by the petitioner that at the instance of certain employees who are serving in the respondent-organisation, the petitioner's Community Certificate was referred for verification, subsequent to which, the District Collector, Kanyakumari has passed order dated 30.04.1998 cancelling the petitioner's Community Certificate. It is further seen that the petitioner was suspended and terminated from service on 06.11.1998. The cancellation order of the Community Certificate and the termination order, were challenged by him by filing Writ Petition before this Court. Subsequently, a Division Bench of this Court in W.A.No.1645 of 1999, by judgment dated 01.08.2005, observed and directed as follows:

"Heard the learned counsel for the petitioner, Mr.M.Suresh Kumar and the learned counsel for the respondent, Mr.A.R.Nagarajan. The writ petition filed by the writ petitioner challenging the order passed by the District Level Committee consisting of two members alone cancelling the writ petitioner's community certificate was allowed in his favour. The order impugned in this writ petition is the order of termination of the petitioner, which is based on the order cancelling the writ petitioner's community certificate. Since the order of the District Level

Committee cancelling the petitioner's community certificate stands quashed, the order of termination based on such cause of action also has no legs to stand. Accordingly, the order impugned in this writ petition is quashed. No costs. W.P.M.P.No.10957 of 1999 is closed.

2. The Writ Petitioner would be reinstated into service within two weeks from the date of receipt of a copy of the order in the last post held by him on the date of termination with a right to claim last drawn salary from the date of reinstatement. The back wages for the period from the date of termination till the date of reinstatement would depend upon the outcome of the decision which is likely to be taken by the committee to be newly constituted as per G.O.Ms.No.111, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 06.07.2005. However, our order will not come in the way of the validity of the community certificate of the writ petitioner being put to test before the Committee newly constituted as per the terms of the abovesaid G.O. dated 06.07.2005."

(emphasis supplied)

13. The above said order of the Division Bench, was challenged before the Supreme Court and the Supreme Court, by judgment dated 26.02.2016 in S.L.P.(C).No.17084 of 2005, etc. batch, observed as follows:

"... In course of hearing, we have been apprised that some of the respondents-employees have been superannuated and some are not allowed to continue and some have some years of service. Regard being had to the facts of the case, we direct that the respondents who have been kept out of service shall be given 50% back wages. The employees who have retired as per the rules/regulations/circulars on attaining the age of superannuation, shall also be paid 50% back wages. The persons whose services have been terminated, but they have not attained the age of superannuation, they should be reinstated within four weeks and be given 50% back wages within the said period.

With the aforesaid modification in the order of the High Court, the special leave petitions stand disposed of. There shall be no order as to costs."

(emphasis supplied)

14. Thereafter, in compliance of the above said order of the Supreme Court, the petitioner was reinstated into service with effect from 29.03.2016 in the same post with same scale of pay, which he was holding on the date of his termination from service. The pay of the petitioner was re-fixed considering the

periodical revision of pay, i.e. 01.01.1997 and 01.01.2007 and he was paid 50% back-wages from the date of his termination till the date of his reinstatement.

15. It is the grievance of the petitioner that even though the back-wages were paid to him by the respondents, the order of the Supreme Court was not strictly complied with in letter and spirit, as the respondents have paid 50% of the back-wages of his basic pay and Dearness Allowance only and not on his full pay and allowances. Hence, the petitioner has come forward with the present Writ Petition for issuance of a Writ of Mandamus to direct the respondents to revise the scale of pay of the petitioner on par with his juniors and to disburse the arrears of back-wages with allowances and increments to him and consequently to promote him as Senior Finance and Accounts Officer with retrospective effect.

16. It is the assertive submission of the learned counsel for the respondents that by the order of Division Bench of this Court, the petitioner was directed to be reinstated in the same post which he was holding before termination and this order of the Division Bench of this Court was confirmed by the Supreme Court, and hence, the petitioner cannot seek for revision of the pay on par with his juniors. But, on a perusal of the judgment of the Supreme Court, I find that though the Division Bench has directed to post him in the same post in the same pay before his termination, the Supreme Court has ultimately modified the said order by observing as follows:

" ... The persons whose services have been terminated, but they have not attained the age of superannuation, they should be reinstated within four weeks and be given 50% back wages within the said period.

With the aforesaid modification in the order of the High Court, the special leave petitions stand disposed of. "

17. Therefore, from the above observations/directions of the Supreme Court, it is clear that the order of the Division Bench of this Court was modified by the Supreme Court. Hence, it is incorrect to state, as alleged by the learned counsel for the respondents, that the order of the Division Bench was confirmed by the Supreme Court, when the fact remains that it came to be modified by the Supreme Court, as noted above. Hence, the contention of the learned counsel for the respondents that the order of the Division Bench of this Court was confirmed by the Supreme Court, cannot be countenanced. The Supreme Court has directed the petitioner should be reinstated with 50% of the back-wages from the date of termination till the date of reinstatement.

18. Thus, from the above modification order passed by the

Supreme Court, it is crystal clear that without break in service, he should be reinstated in service and his pay should be re-fixed on par with his juniors, taking into consideration the post which he was holding and drawing pay prior to his termination.

19. In view of the above modification order of Supreme Court, modifying the judgment of Division Bench of this Court, this Court now directs that petitioner should be reinstated into service with 50% of back-wages on his full pay, without break in service, in the same post which he was holding before termination and his pay should be re-fixed on par with his juniors and also taking into consideration his last drawn pay in the post which he was holding before termination. Consequent to above reinstatement, 50% of arrears of back-wages on his full pay and necessary allowances, etc., shall be disbursed by respondents to petitioner, within a period of one week from the date of receipt of a copy of this order.

20. So far as the prayer of the petitioner for promotion is concerned, the petitioner is directed to give a representation to the respondents, within a period of two weeks from the date of receipt of a copy of this order, by enclosing a copy of this order, and on receipt of such representation, the respondents are directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of three weeks from the date of receipt of such representation from the petitioner. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioner with regard to his promotion and it is for the respondents to decide the same at the time of disposing of the said representation.

21. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

Copy to

1. The Director (HR),
Directorate of Finance and Accounts,
ONGC,
Jeevan Bharathi Tower-II,
No.124, Indira Gandhi Chowk,
New Delhi-110 001.

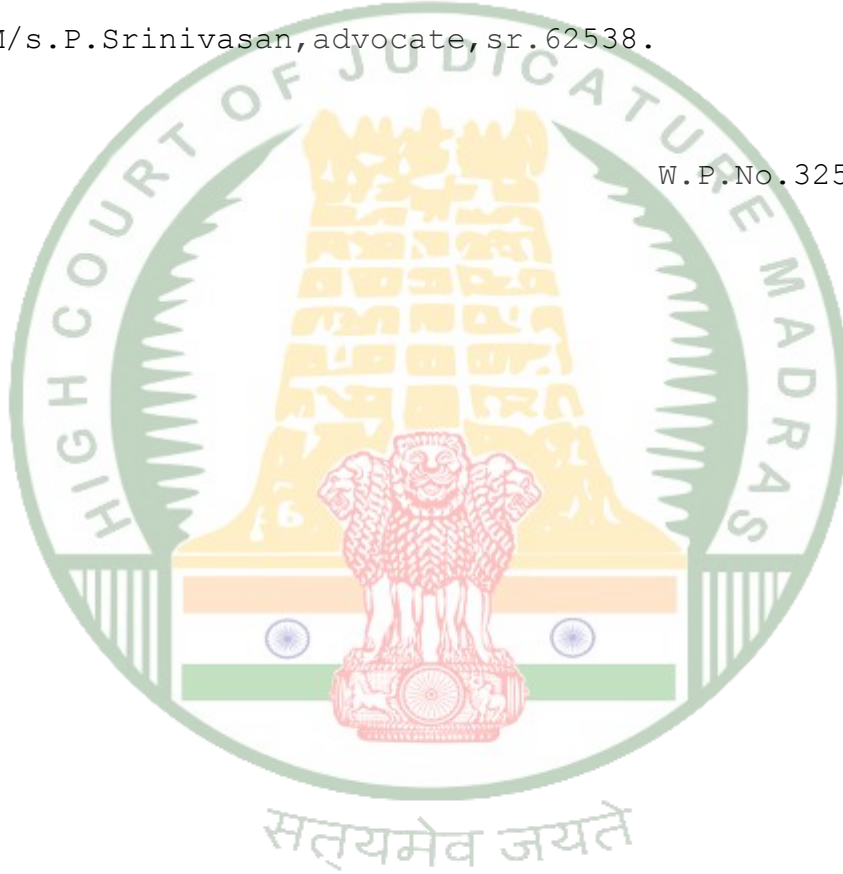
2. The Director (Finance),
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No.124, Indira Gandhi Chowk,
New Delhi-110 001.

3. The General Manager (HR),
ONGC,
Neravi Complex,
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+1 cc to M/s.P.Srinivasan, advocate, sr.62538.

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