



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2016

CORAM:

WEB COPY

**THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU**

W.A. (MD) .No.922 of 2015
and
M.P. (MD) No.1 of 2015

1.Indian Rare Earths Ltd.,
Sherbanoo, 6th Floor,
No.111, Maharasi Karve Road,
Bombay - 400 020.
rep. by its Managing Director.

2.The Chief General Manager (Unit Head),
Indian Rare Earths Ltd.,
Manavalakurichi - 629 252,
Kanyakumari District.

: Appellants/
Respondents 1 and 2

Vs.

N.Selvaraj

: Respondent/
Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Appeal against the order dated 28.02.2014 made in W.P.No.37224 of 2002 on the file of this Court.

Prayer in WP.No.37224/2002:-

Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the Order in Ref.No.HRM-IR/MK/Legal /NS/2002, dated 30.7.2002, and quash the same as illegal and directing the respondents to give the Petitioner backwages, Promotion, allowance and other benefits etc., to the petitioner.

For Appellants : Mr.C.Muthusaravanan,
for Mr.S.Ramasubramanian

For respondent : Mr.R.Thangasamy

JUDGMENT

[Judgment of the Court was made by
The Hon'ble The Chief Justice]

The only question which arises for consideration is whether an employee, who was terminated from service on account of conviction in a criminal case, is entitled to back-wages, in case of reversal of conviction order in appeal.

2.The learned Single Judge, by the impugned order, found in favour of the respondent by grant of partial relief of 25% of backwages from the date of termination till date he rejoined duty.

3.The learned counsel for the appellants drawn our attention to the judgment of the Hon'ble Supreme Court in Ranchhodj Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and another, reported in (1996) 11 SCC 603, in similar circumstances, where the petitioner therein was acquitted was reinstated after acquittal and was held not to be entitled to backwages. It was observed that the question of backwages would be considered only if action by way of disciplinary proceedings has been taken against him and that action was found to be unsustainable in law and thus, he was unlawfully prevented from discharging the duties. In the similar vein, opinion was expressed in the State Bank of India and another Vs. Mohammed Abdul Rahim, reported in (2013) 11 SCC 67, opining that the grant of backwages is not an automatic on reinstatement and has to be judged in the context of totality of the facts. In view of the conviction, since the employee could not have remained employed, he could not be held entitled to salary for that period till reversal of his conviction.

4. In view of the aforesaid, the impugned order is set aside. The Writ Petition is, accordingly, dismissed with the appeal being allowed. Parties left to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

To

Sub-Assistant Registrar

1.The Managing Director, Indian Rare Earths Ltd.,
Sherbanoo, 6th Floor, No.111, Maharasi Karve Road,
Bombay - 400 020.

2.The Chief General Manager (Unit Head),
Indian Rare Earths Ltd., Manavalakurichi - 629 252,
Kanyakumari District.

+One cc to M/s.C.Muthu Saravanan, Advocate, SR.No.78376

+One cc to M/s.R.Thangasamy, Advocate, SR.No.79282

gcg/gb

<https://hcservices.court.gov.in/MS/DR/23.12.2016>

JUDGMENT MADE IN

W.A.(MD).No.922 of 2015

Dated: 01.12.2016