IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.03.2017

CORAM

THE HONOURABLE MR. HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

W.A. NO. 524 OF 2015
AND
M.P. NOS. 1 & 2 OF 2015

P.Soundararajan .. Appellant

- Vs -

The Managing Director
SPICOT Ltd., Chennai 600 008. .. Respondent

Appeal filed under Clause 15 of the Letters Patent, against the order dated 9.3.2015 passed by the learned Single Judge in W.P. No.33275 of 2014.

Writ Petition filed u/a.226 of the Constitution of India, to directing a Writ of mandamus to the respondent to forthwith reinstate the petitioner back to service as Assistant Executive Engineer SIPCOT pursuant to his acquittal in Crl.RC.No.1378 of 2012 dated 28.10.2014.

For Appellant : Mr. R.Singaravelan, SC, for
Mr. A.Irudhayam

For Respondent : Ms. Sudarshana Sundar

JUDGMENT
(DELIVERED BY THE HON'BLE ACTING CHIEF JUSTICE)

This appeal is directed against the order of the learned single Judge in not granting backwages while setting aside the order of punishment imposed by the management on the ground that the conviction suffered at the hands of of the trial court, which was subsequently confirmed by the Appellate Court, was set aside by this Court in revision.

2. It transpires from the typed set of documents that the petitioner was working as Manager in the respondent institution. Whileso, in a private transaction between the appellant and a third party, a complaint under Section 138 of the Negotiable Instruments Act was said to have been filed in which proceeding the appellant sustained conviction before the trial court, which was confirmed by the Appellate Court. On the same being taken

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up in revision before this Court, the said conviction was set aside. The learned single Judge, while setting aside the conviction and sentence imposed on the appellant and directed reinstatement of the appellant, however declined to grant backwages against which the present appeal is preferred.

3. It is the contention of the appellant that while the learned single Judge had directed reinstatement of the petitioner/appellant on the ground that the conviction suffered by the appellant/petitioner was set aside in revision, however, has failed to order backwages, by virtue of the statutory provision under FR 54-A (3). Hence, in exercise of appellate jurisdiction, this Court has to rectify the error in the order passed by learned single Judge by ordering backwages as it thinks fit in the circumstances of the case. Learned senior counsel for the appellant placed reliance on the judgment of the Apex Court in O.P.Gupta - Vs - Union of India & Ors. (AIR 1987 SC 2257) to submit that it is necessary that while ordering reinstatement, it is necessary to make a specific order regarding the pay and allowances to be paid to the said individual for the period of absence from duty.

4. Per contra, learned counsel appearing for the respondent placed reliance on the judgment of the Apex Court in S.Bhaskar Reddy & Anr. - Vs - Superindent of Police & Anr. (2015 (2) SCC 365), to contend that it is within the discretion of the Court to allow backwages and it is not a condition precedent on reinstatement.

5. Heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available in the typed set of documents as also the relevant rules and the judgments on which reliance has been placed by the learned counsel for the parties.

6. There is no quarrel between the parties with regard to reinstatement. However, the issue before this Court only pertains to payment of backwages for which learned senior counsel for the appellant placed reliance on FR 54-A (3). for better clarity, the said rule is extracted hereinbelow :-

> "F.R. 54-A. .....
>
> (3) If the dismissal, removal or compulsory retirement of a Government Servant is set aisde by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired

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or suspended prior to such dismissal, removal or compulsory retirement as the case may be."

7. FR-54-A (3), which is the pivotal rule, as regards backwages in the backdrop of reinstatement, contemplates that on the setting aside of the order of dismissal, removal or compulsory retirement by the Court on merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement, including the period of suspension preceding such act shall be treated as duty for all purposes and that full pay and allowances shall be paid for the said period. Therefore, it is unambiguously clear that the employee, on being reinstated in service in the above context is entitled to full backwages.

8. In the case on hand, there is no quarrel that the conviction has been set aside on revision and, therefore, the learned single Judge had ordered reinstatement, however, without backwages. In the course of arguments, learned senior counsel for the appellant submitted that concedes that atleast the Court may consider giving 50% backwages for the intervening period.

9. It is evident from the record that the conviction sustained by the appellant is not for moral turpitude in the course of employment, but is on account of a private transaction in which the appellant suffered the punishment. The said punishment suffered, which has subsequently been set aside, is no account of any misconduct of the appellant during the course of discharge of duties. Moreover, it is evident from the record that no enquiry was contemplated before issuance of such punishment of removal/dismissal of the appellant. In the overall circumstances, applying the ratio laid down by the Supreme Court in O.P.Gupta's case (supra) coupled with FR 54-A (3), this Court deems it appropriate that award of backwages at the rate of 25% for the period when the appellant was not in employment, viz., from 7.5.2012 to 9.4.2015 would meet the ends of justice.

10. In the result, this writ appeal is allowed in part. The appellant is entitled for backwages at the rate of 25% for the period when the appellant was not in employment, viz., from 7.5.2012 to 9.4.2015 and the respondents are directed to calculate the amount and pay the same to the appellant within a period of three months from the date of receipt of this order. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (J)

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Sub Asst. Registrar

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To
The Managing Director
SPICOT Ltd.
Chennai 600 008.

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