

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A. No. 164 of 2013

Ramesh @ Rameshkumar Appellant/Petitioner

Vs.

The Commissioner,
Corporation of Chennai
Chennai Respondent/Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 01.08.2008 in W.P. No. 17097 of 2004 on the file of this Court, filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari and Mandamus calling for the records of the respondent in connection with the impugned order issued by him in Z.O.I.R.D.Na.Ka.No.E1/7089/2003 dated 11.02.2004 and quash the same and direct the respondent to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Appellant : Mr. R. Venkataramani, Senior Counsel
for Mr. T. Ayngaraprabhu

For Respondent : M/s. Karthikaa Ashok

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J U D G M E N T
(Delivered by M.M.Sundresh,J.)

This appeal is preferred by the appellant being aggrieved against the order of the learned Single Judge with respect to restriction of the back wages for the period between 11.2.2004 and 15.2.2008.

2. There was a criminal case registered against the appellant for an offence under Section 306 IPC. The appellant was dismissed from the service pursuant to the conviction rendered by the Trial Court. However, it was reversed by the Appellate Court. As the order of dismissal from service was passed based upon the conviction of the Trial Court, the appellant approached this Court seeking appropriate relief. The learned Single Judge allowed the writ petition by setting aside the impugned order of dismissal and ordered reinstatement with continuity of service. However, back wages for the period between 11.2.2004 and 15.2.2008 was denied.

3. Learned Senior Counsel appearing for the appellant would submit that the denial of back wages is not correct. Even the order of the learned Single Judge was given effect to after a period of one year, though it was brought to the notice of the respondent way back on 22.08.2008. Curiously, the order of the learned Single Judge was not given effect with respect to continuity of service by treating the above said period as leave without pay. Therefore, appropriate orders will have to be passed.

4. Learned counsel appearing for the respondent submitted that though the order of learned Single Judge is not appealed against, the appellant is not entitled to back wages as a matter of right. Since he has not worked, the absence was taken as leave without pay, and, therefore, no interference is required.

5. Coming to the issue of back wages, it is not as if the order of dismissal was set aside on merit by this Court. In fact the order of dismissal was passed only based upon the conviction rendered by the Trial Court. Therefore, we are of the view that there is nothing wrong in the order passed by the learned Single Judge, inasmuch as granting or denial of back wages is discretionary.

6. However, we find force in submission made by the learned Senior Counsel appearing for the appellant with regard to continuity of service. The learned Single Judge has rightly held that the appellant is entitled to count the aforesaid period for the purpose of continuity of service. Therefore, in law he was deemed to have been in service for the period between 11.02.2004 and 15.02.2008. Thus, he cannot be treated as on leave without pay. Denial of back wages is different from counting of service. Therefore, we direct the respondent to treat the aforesaid period as continuity of service with premise that the appellant was deemed to have been in service between 11.02.2004 to 15.02.2008. Consequently, he is entitled to all promotions, if he is otherwise entitled to as per the Rules.

7. Though the order of the learned Single Judge was passed as early as on 01.08.2008 and communicated by the appellant on 22.08.2008, the same was only partially given effect to by passing an order on 11.08.2009, which is after one year. Even otherwise, as per the Order of the learned Single Judge, the appellant is entitled to salary from 16.02.2008 onwards. The order of the learned Single Judge has not been appealed by the respondent and, therefore, they are bound by it. Thus, we make it clear that the appellant is entitled to salary from 16.02.2008 onwards.

8. Accordingly, the writ appeal stands disposed of by directing the respondent to pay the arrears of salary within a period of two weeks from the date of receipt of a copy of this order by treating the period between 11.02.2004 and 15.02.2008 as continuity of service and his seniority will be fixed as per the Rules. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The Commissioner,
Corporation of Chennai
Chennai

+1 cc to Mr.M.Muthappan, Advocate Sr.No.84311

+1 cc to M/s.Karthikaa Ashok, Advocate Sr.No.83980

सत्यमेव जयते

W.A. No. 164 of 2013

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