

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.545 of 2015
and M.P.No.1 of 2015

The General Manager (P&A)
Madras Fertilizers Ltd.
(A Govt. of India Undertaking)
Manalai, Chennai 600 068.

... Appellant/Respondent

Vs

S.Vijayakumar

...Respondent/Petitioner

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.1922 of 2009 dated 04.12.2013.

W.P.No.1922 of 2009:

Petition under Article 226 of the constitution of India praying for the issuance of A Writ of Certiorarified Mandamus to call for the proceedings of the respondent in D.P. 20/2006 dated 10.01.2007 and quash the same and consequently direct the respondent to re-instate the petitioner back into service with all attendant benefits.

For Appellant : Mr.G.Jeremiah
For Respondent : Mr.V.Vijayashankar

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The appellant initiated disciplinary proceedings against the respondent on account of his unauthorised absence. The respondent defended the proceedings on the ground that he met with an accident and the follow up treatment took considerable time. According to the respondent, on account of the continuous treatment, he could not join duty. The respondent defended the proceedings also on the ground that he made a request to allot him office work instead of deputing him as a marketing executive. The disciplinary authority, after conducting enquiry, removed the respondent from service. The said order was challenged before the Writ Court in W.P.No.1922 of 2009.

The learned Single Judge after setting aside the order dated 10 January, 2007 directed the appellant to reinstate the respondent in service forthwith along with back wages and continuity of service. Feeling aggrieved, the appellant has come up with this intra court appeal.

2. This Court admitted the appeal only in respect of the question with regard to the back wages. The plea made by the appellant to stay the execution of the order in its entirety was rejected by the Division Bench. The Division Bench made it clear that the stay shall be confined to the grant of back wages alone. It is a matter of record that after the order passed by the Division Bench dated 10 April, 2015, the appellant reinstated the respondent on 18 December, 2015.

3. The scope of the present appeal is limited to the consideration of the question as to whether the learned Single Judge was correct in awarding back wages to the respondent.

4. We have heard this matter on 08 February, 2018. After hearing the learned counsel for both the parties, we put a question to the learned counsel for the respondent, as to how the respondent is entitled to back wages notwithstanding the fact that he was absent during the period in question. The learned counsel fairly submitted that he would take instructions from the respondent and file an affidavit.

5. When the appeal is taken up for hearing today, the learned counsel for the respondent filed the affidavit of the respondent dated 15 February, 2018 indicating that he is prepared to forego the back wages. According to the respondent, in spite of the limited stay granted by this Court on 10 April, 2015, he was reinstated into service only on 18 December, 2015 and as such, he is entitled to the back wages for the said period alone.

6. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

7. The factual matrix indicates that in spite of the request made by the respondent for medical leave and thereafter, to give him a light work at the office, the disciplinary authority initiated disciplinary proceedings. The learned Single Judge scanned the entire materials and arrived at a conclusion that the appellant was not correct in imposing the major punishment on the respondent. The punishment was accordingly set aside by the learned Single Judge.

8. The other question is as to whether the learned Single Judge was correct in awarding the entire back wages to the

respondent. The respondent having realised the situation, fairly agreed that he would not press for the back wages for the period from 2007 to 2015. The affidavit dated 15 February, 2018 is taken on record.

9. The appellant ought to have reinstated the respondent into service within a reasonable period after receiving the order dated 10 April, 2015. The appellant kept the matter till 18 December, 2015. The order of reinstatement was passed only on the said date. We are, therefore, of the view that the respondent is entitled to back wages at least from 01 May, 2015 to 17 December, 2015.

10. In the result, the order passed by the Writ Court directing back wages is set aside. The salary payable by the appellant shall be fixed taking into account the crucial date as 01 May, 2015. The respondent is entitled to all other statutory benefits including continuity of service, except back wages for the period from 2007 to 31 May, 2015. The order passed by the learned Single Judge is modified to the extent indicated above.

The intra court appeal is allowed in part as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

gms

To

The General Manager (P&A)
Madras Fertilizers Ltd.
(A Govt. of India Undertaking)
Manalai, Chennai 600 068.

+1 CC to Mr.G.Jeremiah, Advocate sr 11559.
+1 CC to Mr.V.Vijayashankar, Advocate sr 12245.

W.A.No.545 of 2015

SP(08/03/2018)