

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A.No.408 of 2013

M.Arumugam

...Petitioner

Vs.

The Commissioner,
Coimbatore Municipal Corporation
Coimbatore.

...Respondent

PRAYER:Writ Appeal filed under Clause 15 of the Letters Patent against the orders passed by this Court in WP.No.15689 of 2011 dated 17.10.2012 and prays that the same may be modified.

Prayer in W.P.No.15689 of 2011:

Petition filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in order bearing Na. Ka. No. 25300/2000/ K.7(6) dt 3.6.2011 and quash the same and consequently directing the respondent to post the petitioner as Junior Assistant with all attendant benefits and promotions with effect from 24.10.2000.

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For Appellant : Mr.A.Saravanan

For Respondent : Mr.K.Magesh

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal.

2. The appellant was appointed as a Watchman in the services of the respondent/Corporation and gave him promotion as Junior Assistant.

3. The relationship between the appellant and his wife was not cordial, which resulted in filing of Divorce Petition in H.M.O.P.No.169 of 1995 on the file of the Family Court at Coimbatore and his wife in-turn launched a criminal prosecution under Sections 498-A and 307 of Indian Penal Code and as a consequence of registration of criminal case, the appellant was arrested by the jurisdictional Police and later on, he came out on bail on 27.11.2000.

4. The respondent / Corporation, on account of involvement of the petitioner in the criminal case, suspended him from service with effect from 24.10.2000, vide order dated 16.11.2000. The criminal case, after investigation, has culminated into a charge sheet, which is taken on file in S.C.No.121 of 2001, on the file of the III Additional District and Sessions Judge, Fast Track Court, Coimbatore and after full fledged trial, the Trial Court had concluded the same, vide judgment dated 07.06.2002. In the interregnum, the appellant was faced with disciplinary proceedings and after full fledged domestic enquiry, the Enquiry Officer had concluded the enquiry and the charges framed against the petitioner have not been proved. However, the disciplinary authority, namely the respondent has disagreed with the findings of the Enquiry Officer and issued a second show cause notice and thereafter, the appellant was demoted from the post of Junior Assistant to the post of Record Clerk for a period of ten years. The appeal filed by him before the Corporation office had also ended in dismissal and challenging the legality of the same, WP.No.15689 of 2011 has been filed and it was entertained and notices were ordered and the respondent / Corporation has also filed a counter affidavit.

5. The learned Judge has taken note of the fact that the criminal case, after full fledged trial, has ended in acquittal and after that the Enquiry Officer has also concluded that the enquiry in disciplinary proceedings wherein, the charges framed against the appellant have not been proved and however, the

disciplinary authority has disagreed with the findings and issued show cause notice to the appellant and on the facts and the circumstances of the case, found that since sole reliance has been placed upon the order of acquittal passed by the Criminal Court, no further witnesses have been examined and found that the impugned order of demotion warrants interference and accordingly, the learned Judge has set aside the order of demotion and however made it clear that the appellant is not entitled for backwages for the period in question and therefore, it would be taken into account only for computing the total service and for giving pensionary benefits. The appellant aggrieved by the portion of the impugned order dated 17.10.2012 passed in WP.No.15689 of 2011 has come forward to file this writ appeal, praying for back wages.

6. Mr.A.Saravanan, learned counsel appearing for the appellant would submit that the alleged involvement of the appellant in the criminal case has nothing to do with the discharge of his duties, but on account of the false prosecution launched against him. The full fledged trial in criminal case has also ended in acquittal and no further appeal / revision has been preferred against the said order of acquittal either by the State or by the defacto complainant and the learned Judge, taking note of the said fact, has rightly set aside the impugned order of demotion and however has not awarded any backwages. It is further averred by the learned counsel appearing for the appellant but for the criminal prosecution, suspension, demotion, he would have remained in service and earned salary and therefore, such denial of back wages is not at all justifiable and prays for interference.

7. Mr.K.Magesh, learned Standing Counsel appearing for the respondent / Corporation would submit that admittedly, the petitioner was involved in commission of offenses and though the criminal case has ended in acquittal and that the Enquiry Officer has also concluded that the charges framed against the petitioner have not been proved, the disciplinary authority, in the light of the judgment of acquittal, has defaulted from the said conclusion and passed an order of demotion and subsequently, the order of demotion was set aside by the Court. The learned Standing Counsel appearing for the respondent/Corporation would further add that the question of back wages does not arise at all for the reason that the petitioner admittedly did not perform his duty as Junior Assistant and the said fact has been taken note by the learned Judge and has rightly denied the backwages and prays for dismissal of the writ appeal. The learned Standing Counsel appearing for the respondent, in support of his submission, has placed reliance upon the judgment in U.P.SRTC Vs.Mitthu Singh [2006 (7) SCC 180].

8. As rightly pointed out by the learned counsel appearing for the appellant, the petitioner did not face any criminal prosecution on account of the lapse or misconduct on his part while performing his duty, but has been allegedly implicated on account of complaint lodged by his wife under Sections 498-A and 307 of Indian Penal Code. After full fledged trial, the criminal case has ended in acquittal and no further challenge has been made to the said order of acquittal and therefore, it has become final. It is also to be noted at this juncture that the Enquiry Officer has concluded the domestic enquiry holding that the charges against the petitioner have not been proved. However, the Disciplinary Authority, disagreeing to the said findings, has passed an order of demotion, demoting the petitioner from the post of Junior Assistant to Record Clerk for a period of ten years and it was put on challenge in WP.No.15689 of 2011 and it was partly allowed and however, the appellant has been denied backwages for the entire period. It is to be pointed out that the appellant but for the demotion could have continued in service and earned his wages and as already pointed out, the criminal misconduct is not in connection with the conduct of the employee, but only on account of the complaint made by his wife for the alleged commission of offences under Sections 498 A and 307 of Indian Penal Code. The judgment relied on by the learned Standing Counsel appearing for the respondent has no application to the case on hand, for the reason that the service of the respondent therein were never found to be satisfactory and therefore, the ground of back wages has been denied. In Paragraph No.16 of the said judgment, legal position has been succinctly stated and it is relevant to extract Paragraph No.16 of the judgment:

'16. Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate Court / tribunal''.

9. In the result, the Writ Appeal is partly allowed and a portion of the order dated 17.10.2012 made in W.P.No.15689 of 2011, denying back wages, is set aside. The petitioner is entitled to 50 % of back wages as Junior Assistant and however, it should be payable from the judgement of acquittal dated 07.06.2002 in S.C.No.121/2002 on the file of the III Additional District and Sessions Judge, Fast Track Court, Coimbatore. It is also brought to the knowledge of this Court that the appellant has retired from service as Junior Assistant on 31.03.2013. Therefore, the respondent is directed to pay 50% of the back-

wages to the appellant in his capacity as Junior Assistant from 07.06.2002 to 31.03.2013, within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Coimbatore Municipal Corporation
Coimbatore.

+1cc to Mr.A.Saravanan, Advocate Sr.61116
+1cc to Mr.K.Magesh, Advocate Sr.61589

W.A.No.408 of 2013

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srg 05/10/2018

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