

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.29442 of 2012

V.Gunasekaran

... Petitioner

Vs

The Principal Conservator of Forests,
'Panagal Building',
Saidapet, Chennai-15.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in connection with the impugned order passed in Na.Ka.No.AA1/1885/12, dated 27.08.2012 and quash the same and further direct the respondent to sanction the salary for the promotional post of Forester from 12.12.2003 to 30.06.2011, along with interest @ 12% p.a. and further direct the respondent to draw and disburse the salary within a reasonable time.

For Petitioner : Mr.K.Venkatramani
(Senior Counsel for
Mr.M.Muthappan

For Respondent : Mr.M.Santhanaraman,
Additional Government Pleader(forest)

O R D E R

Heard Mr.K.Venkatramani, learned Senior counsel for the petitioner and Mr.M.Santhanaraman, learned Additional Government Pleader (Forest) appearing for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in connection with the impugned order passed in Na.Ka.No.AA1/1885/12, dated 27.08.2012 and quash the same and further direct the respondent to sanction the salary for the promotional post of Forester from 12.12.2003 to 30.06.2011, along with interest @ 12% p.a. and further direct the respondent to draw and disburse the salary within a reasonable time. "

3. The case of the petitioner is as follows:-

The petitioner entered the service of the Police Department as Watcher on 01.04.1976. On 01.09.1998, he was promoted as Guard and further promoted as Forester notionally from 12.02.2003. On attaining the age of superannuation, the petitioner retired from service on 30.06.2011. According to the petitioner, his entire service was meritorious without any blemish whatsoever.

4. According to the petitioner, while in service, he was falsely implicated in a criminal case in connection with an allegation of demand and acceptance of illegal gratification from the complainant. The petitioner was placed under suspension on 17.03.1995 and subsequently, on the basis of the orders passed by the then Tamil Nadu Administrative Tribunal, the petitioner was reinstated into service on 20.01.1998. As regards the criminal case is concerned, the petitioner was prosecuted under certain provisions of the Prevention of Corruption Act. On the eve of his retirement on 30.06.2011, the petitioner was once again placed under suspension on 24.06.2011, in view of the pendency of the criminal case against him.

5. The criminal case which was pending before the Chief Judicial Magistrate, Chengalpattu, ended in acquittal vide judgment of the Criminal Court on 01.07.2011. According to the petitioner, the acquittal was on merits. After being acquitted on merits, the petitioner submitted a representation on 02.09.2011 and another representation on 16.11.2011 to the Deputy Director, Arignar Anna Zoological Park, Vandalur, seeking to revoke the order of suspension. Thereupon, an order was issued on 22.12.2011, allowing the petitioner to retire from service. The petitioner however was not proceeded departmentally after the acquittal in the criminal case, the acquittal has also become final.

6. According to the petitioner, he came under the zone of consideration for promotion to the post of Forester for the panel year 2003-04 and the panel for the said year was published on 24.11.2003. However, the name of the petitioner was not included in the panel only on the ground that he was facing criminal prosecution. After being acquitted on merits in criminal case, the petitioner submitted a representation seeking notional promotion as Forester at the appropriate time. The respondent accepted the claim of the petitioner and by his proceedings dated 06.03.2012, promoted the petitioner as Forester by including his name in the panel for the year 2003-04, the petitioner was granted promotion notionally. However, the order further stated that the petitioner was entitled to get the salary fixed only for pensionary benefits and not arrears.

7. The grievance of the petitioner is that since non-promotion for the panel year 2003-04, was only due to the fact that the criminal case was pending against him and the criminal case having ended in complete acquittal and the petitioner having promoted notionally for the panel year 2003-04, he ought to have been granted salary during the said period as he was prevented from discharging his duties in the higher post by the Administration. In the said circumstances, the petitioner submitted a representation seeking for payment of arrears of pay on the basis of his notional promotion as Forester. However, the respondent by his proceedings dated 27.08.2012, rejected the claim of the petitioner on the ground that he was not entitled to receive the same as per the provisions of the fundamental rules, particularly, fundamental rule 27.

8. According to the petitioner, the ruling 17 of Rule 27 of the fundamental rules, cannot be made applicable to his case that the denial of promotion is only on account of pending criminal case. The criminal case which was filed in the year 1995, after protracted trial, ended in acquittal only in the year 2011 and all those years the petitioner suffered because of the pendency of the criminal prosecution and was denied due promotions when other colleagues of the petitioner were promoted to higher post during the said period. Therefore, the petitioner is before this Court, challenging the rejection order passed by the respondent on 27.08.2012, with the consequential prayer for payment of salary as admissible to the post of Forester from 12.12.2003, from the date of his notional promotion, till 30.06.2011, the date of the superannuation.

9. The learned counsel for the petitioner would submit that the denial of actual salary to the petitioner in the facts and circumstances of the case is unreasonable and arbitrary and cannot be countenanced both in law and on facts. The learned counsel in support of his contention would rely on the decision of the Hon'ble Supreme Court of India in the case of Union of India and others Vs. K.V.Jankiraman and others, reported in (1991) 4SCC 109. He would draw the attention of this Court to paragraph Nos.25,26 of the judgment of the Hon'ble Supreme Court of India, which are reproduced below:-

" 25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

10. In the above case, the Hon'ble Supreme Court of India

has also held that in such cases like the petitioner herein, the normal rule of "no work no pay" would not be applicable and proceeds to hold that when an employee is completely exonerated and not found blameworthy and is not visited with any penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. In the instant case, the ratio laid down by the Hon'ble Supreme Court of India in the above decision squarely applies to the facts and circumstances of the instant case.

11. The learned senior counsel for the petitioner would submit that after the acquittal of the petitioner which had become final, the Department did not initiate any action against the petitioner and therefore, the denial of salary for the period when the petitioner was not promoted from 2003 to 2011, is without any justification. In such case, the denial of salary for the period would in fact amount to punishment for the employee concerned without proceeding against him departmentally. Such situation is not envisaged in any service rules and therefore, the petitioner is entitled to the claim for salary for the period in question.

12. Upon notice, learned Additional Government Pleader appearing for the respondent, entered appearance and filed a detailed counter affidavit. The facts as stated above have not been disputed by the respondent. However, the learned counsel appearing for the respondent would rely on the following decisions in support of his contention, stating that the petitioner is not entitled to salary for the period when he was not actually promoted, but, only notionally promoted.

1. In the case of Ranchhodji Chaturji Thakore Vs. Superintendent Engineer and another, reported in (1996) 11 Supreme Court Cases 603, the learned counsel would refer to paragraph No.3 of the order passed by the Hon'ble Supreme Court of India, which is reproduced below:-

"3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law

and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference."

2. In the case of Union of India and others Vs. Jaipal Singh, reported in (2004) 1 SCC 121, the learned counsel would draw the attention of this Court to paragraph No.4 of the judgment, which is also reproduced below:-

"4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could

not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside."

13. The learned counsel appearing for the respondent would therefore submit that as per the above decisions, the petitioner once found involved in the criminal case, cannot claim for the back wages or salary for the period when he was out of employment and not considered for promotion during the relevant period.

14. This Court has gone through the judgments relied on by the learned counsel appearing for the respondent. However, is of the considered view that the facts of the two decisions are completely different from the facts of the present case. In any event, the Hon'ble Supreme Court of India did not lay down any definite law in the above two decisions. However, had chosen to adjudicate the claim of the parties on the basis of the facts of those cases. In any event, the facts of those cases would disclose that in those cases, the employees therein were convicted by the Criminal Court and thereafter, in appeal, the same was reversed and the bone of contention was whether in such circumstances, the employee on being acquitted, subsequently, was entitled to back wages. But, as far as the present case on hand is concerned, the petitioner herein was acquitted on merits by the Trial Court itself and the same had become final, admittedly the petitioner was not proceeded against departmentally. Therefore, the ratio laid down by the Hon'ble Supreme Court of India, in the above decision, cannot be held against the petitioner.

15. As rightly contended by the learned senior counsel for the petitioner that the ratio laid down in the case of Union of India Vs. K.V.Janakiraman and others, is directly on the issue raised in the writ petition and the claim of the petitioner is also covered by the said ratio of the Hon'ble Supreme Court of India. At the risk of repetition, it is reiterated that the petitioner had been acquitted by the Trial Court itself which has become admittedly final without any appeal and the reason for his non promotion for the year 2003, was only because of the fact that he was facing criminal prosecution and after the authority accepted the case of the petitioner and promoted him notionally with effect from 12.12.2003, it is without any justification to deny the petitioner the salary due for the period in the promoted post. The denial of salary for the said period would tantamount to punishment by the Department without any disciplinary action

initiated against him. Such position is not envisaged in any service rules and therefore, the petitioner has made out a clear case for grant of relief.

16. It is made clear that this order is passed on the basis of the peculiar facts and circumstances of the case. The impugned order in Na.Ka.No.AA1/1885/12, dated 27.08.2012, is hereby set aside and the respondent is directed to sanction salary to the petitioner in the post of Forester from 12.12.2003 to 30.06.2011, by passing a separate order. The direction shall be complied with by the respondent, within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above direction, the writ petition stands allowed. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Principal Conservator of Forests,
'Panagal Building',
Saidapet, Chennai-15.

+1cc to the Special Government Pleader SR.No.19115

+1cc to Mr.M.Muthappan Advocate SR.No.19423

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SDR 13.04.2018

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