

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.15778 of 2004

ORDER:

This writ petition is filed seeking the following relief:

“to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ (i) declaring the action on the part of the respondents in denying upgradation to wage group 9 w.e.f 2.6.95 including the promotion to wage group 10 w.e.f.2.6.98 on the basis that the petitioner was not physically attended to duty is illegal and arbitrary, (ii) declaring the proceedings no.Ref.BDL/C-P & A/PLG&ED/2003 dated 7.5.2003 including the proceedings No.BDL/C-P&A/PLG&ED/2003 dated 8.12.2003 is illegal and arbitrary, (iii) declare that in pursuance of the Judgment in WP.No.14173 of 86 as confirmed by the Hon'ble Supreme Court in SLP.(Civil).No.8650 of 95 dated 24.8.95, the petitioner is deemed to have put in physical attendance of 205 days in preceding three years as on 2.6.95 and 2.6.98 for promotion to the post of wage group 9 and 10 respectively in terms of circular No.10 of 1995 dated 4.4.95 with further direction to the respondents to fix the petitioner in wage ground 9 and 10 respectively w.e.f.2.6.95 and 2.5.98 respectively together with arrears, (iv) direct the respondents to pay the salary of the petitioner from 1.9.1986 to 23.9.1986 together with interest, (v) direct the respondents to treat the period from August 1988 as on duty for the purpose of vacation leave in terms of B.D.L Leave Rules and pass other order or orders in the interest of justice.”

Heard Smt, K.Udaya Sri, learned counsel for the petitioner and

Sri K.Sinivasa Murthy, learned standing counsel for the respondents.

It has been contended by the petitioner that he was initially appointed as Inspector Grade-C on 1.9.1972 under the control of the respondents. While he was working as Senior Technical Assistant, he was subjected to disciplinary proceedings and as a measure of punishment, he was discharged from service vide proceedings dated 24.9.1986. Aggrieved by the orders of discharge, the petitioner filed W.P.No.14173 of 1986. This Court vide orders dated 19.8.1988 allowed the writ petition setting aside the orders of discharge. Thereafter, the respondents have filed W.A.No.1693 of 1988 and the same was dismissed by order dated 4.7.1994. The respondents carried the matter to the Hon'ble Supreme Court by filing SLP.(Civil) No.8650 of 1995 and the Hon'ble Supreme Court vide orders dated 24.8.1995 had modified the orders to the effect that the petitioner is entitled only for full back wages from the date of the orders passed by this Court on 19.8.1988. Thereafter, the petitioner was taken into service vide orders dated 19.9.1995. The grievance of the petitioner is that from the date of discharge till the date of reinstatement he should be deemed to be in service for all purposes as his original order of discharge was set aside by this Court and confirmed by the Hon'ble Supreme Court. Therefore, for all purposes he should be deemed to be in service and he should be given promotions to wage group nos.9 and 10 with effect from 2.6.1995 and 2.6.1998 respectively but the respondents had not granted the said benefit to him on the ground that the petitioner had not physically worked. Challenging the same, the present writ petition is filed.

Learned standing counsel for the respondents had contended that the criteria for promotion to wage group no. 9 is the minimum physical attendance of 205 days and unless and until a person puts in 205 days in wage group no.8, he/she cannot not be considered for promotion to wage group no.9 and so is the case in respect of wage group no.10. Since the petitioner had not completed 205 days, the case of the petitioner cannot be considered for promotion to wage group nos.9 and 10. Learned standing counsel further contended that the case of the petitioner was rejected and no illegality is committed by the respondents in denying promotion to the petitioner to wage group nos.9 and 10 and, therefore, the writ petition is liable to be dismissed.

This Court having considered the submissions made by both the parties is of the considered view that when rules specifically contemplate that one has to put in 205 days of physical attendance for promotion to the higher groups and since the petitioner had not put in 205 days, the case of the petitioner was rightly rejected. However, in respect of the relief for payment of salaries from 1.9.1986 to 23.9.1986 and to treat the period from August, 1988 as on duty for the purpose of vacation leave in terms of B.D.L. Leave Rules, the petitioner is directed to submit a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order and on receipt of such representation, the respondents shall consider the same and pass appropriate orders in accordance with rules, within a period of four weeks thereafter.

With the above directions, the Writ Petition is disposed of. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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ABHINAND KUMAR SHAVILI, J

Date: 17/09/2018

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