

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.20106 of 2011 and
M.P.Nos.1 & 2 of 2012

B.Uma

... Petitioner

Vs

1. The Director (HR),
Oil & Natural Gas Corporation Ltd.,
124, Connaught Palace,
Indira Gandhi Chowk,
New Delhi 110 001.
2. GGM-BM (Cauvery),
Oil & Natural Gas Corporation Ltd.,
No.1, Gandhi Irwin Road, CMDA Tower-1,
Chennai 600 008.

... Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to direct the respondents to release to pay the full backwages for the entire period from 21.05.2002 the date of termination, to the date of reinstatement on 06.07.2009 with all attendant benefits including time bound promotions to E-1 and E-2 w.e.f. 2003 & 2007 respectively at par with other colleagues.

For Petitioner : Mr.Yogesh Kannadasan for
Mr.R.Subramanian

For Respondents : Mr.M.Vijayan for
M/s.King & partridge

O R D E R

The present writ petition has been filed to direct the respondents to pay the full backwages for the entire period from 21.05.2002, the date of termination, to the date of reinstatement on 06.07.2009 with all attendant benefits including time bound promotions to E-1 and E-2 w.e.f. 2003 & 2007 respectively on par with other colleagues.

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

(i) The petitioner was appointed as Steno Grade III in the respondent Corporation in 1982 against the quota reserved for Scheduled Caste community. She was subsequently promoted as Steno Grade II and Steno Grade I. She was further promoted from Steno Grade I to E-0 with effect from 01.01.1999. At that time, her community certificate was sent for verification by the respondent Corporation on the basis of the complaint received from the third party.

(ii) on 19.07.2000, the District Level Vigilance Committee which consisted of two members, verified the caste status of the petitioner and passed an order cancelling the community certificate granted to the petitioner. The said cancellation order was also confirmed by the State Level Committee. In view of the cancellation of the community certificate by the District Level Vigilance Committee which was further confirmed by the State Level Committee, the petitioner was terminated from service on 21.05.2002. As against the cancellation of the Community Certificate and also her termination, the petitioner approached this Court in W.P.Nos.18114 & 18115 of 2002, challenging the adverse orders suffered by her. This Court allowed both the writ petitions vide its order dated 27.09.2004, one by setting aside the cancellation of the community certificate and another by setting aside the termination order issued against the petitioner by the respondent Corporation.

(iii) While setting aside the order of termination, this Court has ordered reinstatement of the petitioner with continuity of service with full backwages and also with all attendant benefits as if the petitioner continued to be in service. As against the order passed by this Court, the respondent Corporation filed a Special Leave Petition which was converted into Civil Appeal in C.A.No.2036 of 2006. The Hon'ble Supreme Court of India by order dated 29.07.2008, remitted the matter back for fresh enquiry by the duly constituted District Level Vigilance Committee consisting of three members. The Hon'ble Supreme Court of India has held that the original two member District Level Vigilance Committee has no jurisdiction to decide the caste status of the petitioner and in that circumstances, the matter is remitted back to the three member District Level Vigilance Committee.

(iv) The three member District Level Vigilance Committee after adverting to various materials produced by the petitioner and after appreciating the various circumstances of the case, declared that the petitioner belonging to Scheduled Caste community and held the community certificate issued to her as a valid one. In view of the declaration by the duly constituted three member District Level Vigilance Committee, the respondent

Corporation reinstated the petitioner in service on 06.07.2009 in the same cadre as Steno Grade I. Thereafter, by proceedings dated 24.02.2010, the petitioner came to be promoted as E-0 retrospectively with effect from 01.01.1999. Thereafter, she came to be promoted as E-1 on 01.01.2013.

(v) The grievance of the petitioner in this writ petition is that while reinstating the petitioner in service on 06.07.2009, the petitioner was not paid the backwages during the period of non-employment and also the attendant benefits which are admissible to the petitioner including the time bound promotion from the appropriate dates as E-1 and E-2. Since the grievance of the petitioner has not been addressed by the respondent Corporation, the petitioner is before this Court.

3. The learned counsel for the petitioner would vehemently submit that this Court while disposing of the writ petition, has clearly held that the petitioner is entitled to full backwages with attendant benefits as if the petitioner continued to be in service from the date of the termination. He would particularly draw the attention of this Court to the findings of this Court in paragraph No.iii of the result portion of the order passed in W.P.Nos.18114 & 18115 of 2002, which reads as follows:-

"iii. The third respondent herein is directed to reinstate the petitioner into service within 15 days from the day that this order copy is made ready with all backwages and attendant benefits as if the petitioner continued to be in service from the date of her termination and report compliance to this Court in seven days thereafter."

4. According to the learned counsel for the petitioner, the Hon'ble Supreme Court finally remitted the matter back to the three member District Level Vigilance Committee, yet it has not upset the findings of this Court passed by the learned Single Judge of this Court. What was set aside by this Court is the order passed by the two member District Level Vigilance Committee which according to the Hon'ble Supreme Court, is not competent to decide the caste status of the petitioner. In the said circumstances, the petitioner is entitled to be paid full backwages during the period of her non-employment.

5. The learned counsel would also submit that the petitioner ought to have been considered for promotion to the higher grades from E-0 to E-1 and E-1 to E-2 etc., after counting the period of service during the non-employment period of the petitioner. Since the termination of the petitioner was ultimately found unjustified, in view of the declaration of the competent District Level Vigilance Committee about the caste status of the

petitioner, the petitioner by all means is entitled to all the benefits including promotions to the next higher grades at the appropriate times along with the next immediate junior who was promoted to next higher grades.

6. On behalf of the respondents, Mr.M.Vijayan, entered appearance and filed a detailed counter affidavit.

7. The learned counsel for the respondent Corporation would submit that the order passed by this Court in W.P.Nos.18114 & 18115 of 2002, has been merged with the order passed by the Hon'ble Supreme Court and the Hon'ble Supreme Court has not only set aside the order passed by the two member District Level Vigilance Committee, has also set aside all other orders relating to the issue. Therefore, it is not open to the petitioner to claim for entire backwages as granted by this Court.

8. The learned counsel would further submit that in regard to the promotion to higher grades, it was granted by excluding the non-employment period, since from the recruitment rules, actual service is required to be rendered by the petitioner for considering for promotion to E-0 to E-1 and E-1 to E-2 etc. Therefore, by exclusion of the period of non-employment i.e., from the date of termination from 21.05.2002 and till the date of reinstatement on 06.07.2009, the promotion was granted to her by counting the actual service rendered by the petitioner in terms of the recruitment rules.

9. Moreover, the learned counsel for the respondents would submit that the grant of full backwages does not arise in this case, since the Corporation has not initiated disciplinary action against her and kept her out of employment unlawfully. It is a case where the original District Level Committee had cancelled the community certificate of the petitioner and therefore, the Corporation had no choice except to terminate the services of the petitioner. Therefore, the Corporation cannot be faulted for taking action against the petitioner. Once the community certificate of the petitioner has been declared in her favour, the Corporation immediately took steps to reinstate her. In the said circumstances, the Corporation cannot be fastened with liability of backwages of the petitioner during the long period of non-employment.

10. The learned counsel for the petitioner by way of reply would draw the attention of this Court to the unreported judgment of the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No.17084 of 2005, he would particularly draw the attention of this Court to the following paragraphs:-

"When the initial composition of the Committee was illegal, the affirmance of its order by the State Level Committee, needless to say, would not legalize the original order. Therefore, we do not find any infirmity in the order passed by the High Court.

In course of hearing, we have been apprised that some of the respondents -employees have been superannuated and some are not allowed to continue and some have some years of service. Regard being had to the facts of the case, we direct that the respondents who have been kept out of service shall be given 50% backwages. The employees who have retired as per the rules/regulations/circulars on attaining the age of superannuation, shall also be paid 50% backwages. The persons whose services have been terminated, but they have not attained the age of superannuation, they should be reinstated within four weeks and be given 50% back wages within the said period."

He would submit that the petitioner is entitled to 50% of the back wages, if not for full backwages as per the observation of the Hon'ble Supreme Court of India. He would submit that in any event, the period of non-employment of the petitioner cannot be completely ignored by the Corporation, since the termination ultimately became unjustified as the competent District Level Vigilance Committee has declared the community status of the petitioner in her favour.

11. This Court has considered the submissions made on behalf of the petitioner as well as the respondent Corporation. As rightly contended by the learned counsel for the petitioner that once the petitioner's community status has been declared in her favour by the duly constituted District Level Vigilance Committee after intervention of the Hon'ble Supreme Court of India, the petitioner is entitled to all benefits of further promotion to the next higher grades. In fact, the objection as raised by the respondent Corporation that the actual rendering of service is required for promotion to the next higher level, cannot be accepted for the simple reason that once the competent District Level Vigilance Committee has declared the community status of the petitioner, the petitioner is deemed to have continued in service for all purpose. However, one exception could be carved out from such conclusion is towards the payment of backwages for the period of non-employment. The Hon'ble Supreme Court while considering the similar circumstances, has held that such claims could be considered by granting 50% backwages as an equitable solution.

12. This Court is of the considered view that in view of the petitioner being non employed and having not worked during the period from 21.05.2002 to 06.07.2009, she is not entitled to full backwages. However, as per the observations of the Hon'ble Supreme Court as extracted above, the petitioner is entitled to 50% of the backwages during the period of her non-employment.

13. The learned counsel for the petitioner in regard to the rendering of actual service for gaining future promotion, has relied on the order passed by the Hon'ble Division Bench of this Court in W.P.No.1305 of 2010 dated 28.04.2010. He would particularly draw the attention of this Court in regard to the above submission in paragraph No.36, which reads as under:-

"36. The submission made by the learned counsel appearing for the petitioner that the first respondent should have the actual service and not notional service in the considered opinion of this Court lack substance for the reason that once the first respondent was appointed to service on 16.03.1987 in pursuant to the orders passed by the Tribunal as confirmed by this Court, the natural corollary being that he is entitled to all consequential benefits flow from that orders. As rightly stated above, G.O.Ms.No.171, dated 14.06.2006 passed by the third respondent also makes it very clear the said position as well as the subsequent communication dated 27.06.2007."

He would therefore submit that the actual service need not be rendered in such case, otherwise it will amount to punishing the employee for no fault of hers.

14. This Court is in agreement with the submission made on behalf of the learned counsel for the petitioner that once the petitioner's termination is ultimately found to be unjustified, notwithstanding the fact that the original order of the Corporation in terminating the service of the petitioner cannot be faulted with, nevertheless, it has to be held that once the caste status has been declared in her favour by the duly constituted District Level Vigilance Committee, the petitioner is entitled to all benefits of career progression as if she continued in service, without interruption. The one exception that could be made out in this case is that regarding restriction of backwages of 50% and nothing else.

15. In view of the above, this Court is of the considered view that the petitioner is entitled to be paid 50% of the backwages during the period of non-employment and she is entitled to be promoted to the next higher grades by counting

the period of non-employment for all purpose by the respondent Corporation. The petitioner is also entitled to the fixation of pay and other allowances admissible in the higher grades by counting the entire service when the petitioner was kept out of employment. The respondent Corporation is directed to implement the direction of this Court, within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above observation, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Director (HR),
Oil & Natural Gas Corporation Ltd.,
124, Connaught Palace,
Indira Gandhi Chowk,
New Delhi 110 001.
2. GGM-BM (Cauvery),
Oil & Natural Gas Corporation Ltd.,
No.1, Gandhi Irwin Road, CMDA Tower-1,
Chennai 600 008.

+1cc to M/s.King & partridge , Advocate, S.R.No.40293
+1cc to Mr.Yogesh Kannadasan, Advocate, S.R.No.39296

W.P.No.20106 of 2011

BR(CO)
CS/01/07/2019

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