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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.330 of 2019
and CMP No.3134 of 2019

The Principal Chief Conservator of Forests
(Head of Department),
Panagal Maaligai,
Saidapet, Chennai - 600 015. ... Appellant

Vs.

G.Gunasekaran ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 14.03.2018 made in W.P.No.29442 of 2012.

Prayer in W.P.No.29442 of 2012:-

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 dt. 27.8.12 and quash the same and further direct the respondent to sanction the salary for the promotional post of the 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 Appellant : Mr.Rajendra Prasad
Special Government Pleader [Forests]

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

The Principal Chief Conservator of Forests, has filed the instant writ appeal, against the order dated 14.03.2018 passed by this Court in W.P.No.29442 of 2012.

2. The respondent/writ petitioner joined the appellant department as Watcher on 01.04.1976. He was promoted as Guard on 01.09.1998. While he was in service, on an allegation of



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illegal gratification, he was arrested and placed under suspension on 17.03.1995. The order of suspension was revoked and the respondent/writ petitioner was reinstated in service on 20.01.1998, as directed by the Tamilnadu Administrative Tribunal, Chennai, by its order dated 08.01.1998, in OA No.4437 of 1997.

3. Respondent/writ petitioner was acquitted by the Chief Judicial Magistrate, Chengalpet, vide judgment dated 01.07.2011 in Special Case No.2 of 1999. Pursuant to his acquittal, the respondent/writ petitioner submitted representations on 02.09.2011 and 16.11.2011 for allowing him to retire from service. It is pertinent to mention here that the respondent / writ petitioner was not proceeded departmentally after acquittal in the criminal case. The respondent / writ petitioner was allowed to retire on 22.12.2011.

4. Claiming that he came under the zone of consideration for promotion to the post of Forester for the panel year 2003-04, the respondent / writ petitioner approached the Government to notionally promote him as a Forester. The appellant passed an order on 06.03.2012, notionally promoting the respondent / writ petitioner, as a Forester for the year 2003-04. However the order does not grant the respondent / writ petitioner, the arrears of salary from the date of his promotion. Order dated 06.03.2012 is extracted hereunder

Proceedings of the Principal Chief Forest Conservator,
Chennai.

Se.Mu.B.No.AB-1/36508/2011

Sub : Promotion - case of Tr.G.Gunasekaran, Forest Protector, in the P.C. case

is in pendency in the Court - Judgment was given that he was

innocent - In the Forest Selection Committee, for the year 2003-

2004, in the selection list of the Forester, he was granted

promotion as Forester - Reg.

Ref : 1) Proceedings No.AB/1/3400/2003 dated 24.11.2003 of the Principal

Chief Conservator of Forest.

2) In the Court of the Special Judge-cum-Judicial Magistrate in the Special

Case No.2/1999 in the Chengalpet, the date of Judgment is

01.07.2011.

3) Tr.G.Gunasekaran, Forest Protector (under suspension), Arignar Anna



Zoological Park, Vandalur, date of his application is in
No.27.07.2011.

4) Na.Ka.No.Pa.2/7882/2010 dated 22.01.2012.

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Tr.G.Gunasekaran, Forest Protector, in his application dated 27.07.2011, has stated that, as there was a case under P.C.Act in pendency in the Court against him, that he was not given the promotion as Forest Protector, in this Special Case No.2/1999 in the Chengalpattu Special Judge-cum-Chief Judicial Magistrate Court, Judgment was given on 01.07.2011 that he was innocent and hence, he has sought to give him promotion as Forester in the selection list of the Forests in the year 2003-2003.

2) As regards this, on examining the related documents to grant promotion from the post of Forest Protector to the post of the Forester for preparing the selection list for the year 2003-2004, the date was fixed as 15.08.2002, and by the end of the date 31.12.1989, in the situation of examining the names of those who had joined duty as Forest Protector, 09.01.1988, Tr.G.Gunasekaran, against whom as Forest Protector, a case was filed by the department under P.C. Act and since the case in No.2/1999 was under pendency, in the Chengalpattu Special Court, as regards the Proceedings No.AB/1/34000 dated 24.11.2003, in the selection list in Serial No.84 for the Forester publicised on 2003-2004, his name was not selected.

3) As of now, Tr.G.Gunasekaran, Forest Protector has a special case 2/1999 in the Chengalpattu Special Judge-cum-Chief Judicial Magistrate Court, on the case filed against him A-2, the case was decided as per the Section 7 r/w.IPC Section 34 and Section 13(2) r/w.13 (1)(d) of the Prevention of Corruption Act r/w. Section 34 IPC that he was not guilty and the said A-2 was acquitted under 248 (1) of Cr.P.C and on the basis that, the Chengalpattu Judicial Magistrate Court had pronounced the Judgment. The Deputy Director, Arignar Anna Zoological Park, Vandalur in his Na.Ka.No.7882/2010/P2 dated 16.1.2011 in his order of Suspension had revoked the orders passed to treat his period of suspension as period of service, the Deputy Director, Arignar Anna Zoological Park, Vandalur in his Na.Ka.No.7882/2010/P2 dated 22.12.2011 has said that due to his superannuation, he was permitted to retire from his service from the afternoon of 30.08.2011. In the letter cited under reference-4, since there was no



conviction and sentence against him for his guilt, at present he has recommended that the aforesaid be given promotion as Forester from the pre-date onwards.

4) On the basis of the guidelines given in the Government Letter No.18824/S/2005-2 by the Employees and Administrative Reformation (S) Department dated 07.10.2005 in the situation that at present since, against Tr.G.Gunasekaran, the Forest Protector as on 15.08.2002 the date of decision, as there is no disciplinary action or sentence is in force u/s.17(B) of the Tamil Nadu Civil Service (Discipline and Appeal) as cited under reference-1, in the selection list for the Forester in Serial No.84 for the year 2003-2004 publicised by the Principal Chief Conservator of Forest in the P.O.B.No.AB/1, dated 24.11.2003, instead of informing the name of Tr.G.Gunasekaran, Forest Protector as "Not selected through the amendments made, selection made", it is hereby ordered that considerable promotion is granted. Because of his superannuation, he had retired from his post on 30.06.2011. As for his junior (in the selection list S.No.85) Tr.A.V.Tharsius, Forest Protector since the date of his joining duty as Forester, by fixing up his Notional Salary on that basis becomes eligible to get the retirement benefits.

sd/- xxx

Gowtham Dey,

Principal Chief Conservator of Forest.

To

Tr.G.Gunasekaran,
Forest Protector (Retired)
(Through Chief Conservator of Forest-cum-Director,
Arignar Anna Zoological Park, Vandalur).

Copy to:

The Chief Conservator of Forests-cum-Director,
Arignar Anna Zoological Park, Vandalur.

You are asked to serve this order to the Forest Protector, get his acknowledgment and to record the due details in the register.

sd./-xxx

Superintendent, 9.3.12

5. When the respondent / writ petitioner sought a clarification regarding the payment of arrears, the appellant by an order dated 27.08.2004, rejected his claim as hereunder.

Na.K.No.AB/1/18851/2012

Office of the Principal Chief Conservator of Forest



(Head of the Forest Department), Panagal Maligai,
Saidapet,
Chennai - 600 015 Dated 27.08.2012.

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Sub : Promotion - Tr.G.Gunasekaran, Forest
Conservator - Case under
P.C.Act was in pendency in the Court -
adjudged as innocent in
the list of selection in the year 2003-2004
promoted to Forest
Officer in the list of selection to Forest
Officer - Sought
clarification regarding granting of pendency
amount - Reg.
Ref : Na.Ka.No.7882/2012/Pa-2 dated 02.05.2012 of the
Chief Forest
Conservator - cum - Director, Arignar Anna
Zoological Park,
Vandalur.

xxx

Attention is sought to the letter cited under the
reference pertaining to the Chief Forest Conservator-
cum-Director. Since, Tr.G.Gunasekaran, Forest
Protector was adjudged innocent by the Chengalpet
Judicial Magistrate Court, his Junior Tr.A.V.Tharsius,
Forest Protector from the date of his joining duty on
12.12.2003 onwards, Tr.G.Gunasekaran, the Forest
Protector's Notional Salary was fixed. Because of
this, as he has the qualification, as regards the
pending amount to be given to him, since 12.12.2003
onwards, the Chief Conservator of Forest-cum-Director
has sought clarification with respect to give the
pendency amount.

2) The Chief Conservator-cum-Director is hereby
informed, that for G.Gunasekaran, who had retired from
his service due to his superannuation from his post,
since Tr.A.V.Tharsius, who is Junior to the said
Conservator, since his joining duty as Forester on
12.12.2003 for whom his notional salary was fixed
under basic Rule 27(17) could not be paid the pending
amount from 12.12.2003.

sd./-xxx

Ku.Kae.Chandrakumar,
Principal Chief Conservator of Forest,
(Head of the Conservator)

To
The Chief Conservator-cum-Director,
Arignar Anna Zoological Park, Vandalur.



This order has been challenged in the instant writ petition.

6. The learned Single Judge held that the respondent / writ petitioner was acquitted on merits by the trial Court, which has become final. Respondent/writ petitioner was not promoted only because he was facing criminal prosecution and admittedly, no departmental proceedings were initiated against him.

7. The learned Single Judge observed that after acquittal, when respondent / writ petitioner, was notionally promoted with effect from 12.12.2003, the authorities are not justified to deny the respondent / writ petitioner's salary due to him in the promotional post

8. The Department has come up by filing an appeal when respondent/writ petitioner filed a contempt petition against the department for non compliance of the order passed by the learned Single Judge.

9. Heard the learned Additional Government Pleader (Forests) appearing for the appellant.

10. The learned Additional Government Pleader (Forests) appearing for the appellant would vehemently contend that since the respondent/writ petitioner was facing criminal proceedings, for illegal gratification, he is not entitled for backwages on the principle of 'no work no pay'.

11. A perusal of the order passed by the learned Special Judge, Chief Judicial Magistrate in Spl.Case No.2 of 1999, would show that the respondent/writ petitioner has been honourably acquitted. It has been found by the criminal court that there is no evidence against the respondent / writ petitioner that he had demanded bribe and further that the charges framed against the respondent / writ petitioner have not been proved. The respondent / writ petitioner has not been given benefit of doubt. The respondent / writ petitioner, is therefore entitled to be put back in the same position as if he did not face any criminal charges. The learned Single Judge has placed strong reliance on Union Bank of India and Others Vs. Jankiraman and others, reported in 1991 (4) SCC 109. Paragraph No.26 of the said judgment, though quoted by the learned Single Judge is reproduced.

"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



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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."

12. Similarly the Hon'ble Supreme Court in Reserve Bank of India Vs. Bhopal Singh Panchal, reported in 1994 (1) SCC 541, observed as under.

"15. We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such



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employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."

[emphasis supplied]

13. Similarly the Hon'ble Supreme Court in the State of Kerala & Others Vs. E.K.Bhaskaran Pillai, reported in 2007 (6) SCC 524, held as hereunder.

"Learned counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15.6.1972. In support thereof, the learned counsel invited our attention to the decisions of this Court in Paluru Ramkrishnaiah & Ors. Vs. Union of India & Anr. [(1989) 2 SCC 541], Virender Kumar, G.M., Northern Railways Vs. Avinash Chandra Chadha & Ors. [(1990) 3 SCC 472] , State of Haryana & Ors. Vs. O.P. Gupta & Ors. [(1996) 7 SCC 533], A.K. Soumini Vs. State Bank of Travancore & Anr.[(2003) 7 SCC 238] and Union of India & Anr. Vs. Tarsem Lal & Ors. [(2006) 10 SCC 145]. As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors.[(1991) 4 SCC 109], State of A.P. Vs. K.V.L. Narasimha Rao & Ors. [(1999) 4 SCC 181], Vasant Rao Roman Vs. Union of India & Ors. [1993 Supp. (2) SCC 324] and State of U.P. & Anr. Vs. Vinod Kumar Srivastava [(2006) 9 SCC 621].

We have considered the decisions cited on behalf of both the sides. So far as the situation with



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regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

[emphasis supplied]

14. The Hon'ble Supreme Court therefore held that no hard and fast rule can be laid and each case has to be dealt with the facts and circumstances of that case. In the present case, the respondent/writ petitioner has been honourably acquitted. He was prevented from performing his duties i.e., in short, not allowed to work by the appellant. The respondent / writ petitioner has been given notional promotion. No reason has been put forward by the counsel for the appellant to deny him salary for the period, other than, invoking the principle of 'no work no pay'. The said principle as stated earlier, will not apply to the facts of this case. The order of the learned Single Judge directing payment of salary therefore, does not call for any interference. The appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



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To

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The Principal Chief Conservator of Forests
(Head of Department),
Panagal Maaligai,
Saidapet, Chennai - 600 015.

+1 cc to The Special Government Pleader, (Forest Cases),
Sr.No.10306

W.A.No.330 of 2019
and CMP No.3134 of 2019