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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR
W.P.No. 37745 of 2015

Dr.C.Soosaipandi

..Petitioner

Vs

1.The General Manager,
Personal Department,
The National Insurance Company Limited,
Head Office, No.3, Middleton Street,
Kolkatta-700071.

2.The Deputy General Manager,
The National Insurance Company Limited,
Chennai Regional Office,
No.190, Anna Salai,
Chennai-600006.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the order of the second respondent dated 28.10.2014 confirmed by the first respondent dated 07.10.2015 which was communicated vide letter of the second respondent on 12.10.2015 and direct the respondents to provide backwages, attendant benefits, continuity of service including promotions to the petitioner from the date of suspension i.e 04.11.2011 till the date of disbursement.

For Petitioner : Mr.P.Suresh Babu
For Respondents : Mr. Anand Gopalan.

O R D E R

The case of the petitioner is that the petitioner was suspended from service on 04.11.2011 by the 2nd respondent since he was involved in a criminal case in C.C.No. 2 of 2012 for the alleged offence under Sec 13(23) r/w 13(1)(d) of Prevention of Corruption Act. The II Additional District Judge, Coimbatore has passed judgment dated 03.09.2013 convicting the petitioner for the aforesaid offences alleged against the petitioner.



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Pursuant to the said judgment, the petitioner was dismissed from service on 25.09.2013 by the 2nd respondent. During the intervening period no disciplinary proceedings were initiated against the petitioner. The petitioner, challenging the aforesaid conviction has filed an appeal before this Court in CrI.Appl. No.610 of 2013 and the same was allowed by this Court by its order dated 29.11.2013. Being aggrieved by the order of this Court, the SLP preferred by the respondent was dismissed by the Hon'ble Supreme Court by its order dated 30.07.2014. Subsequently, the petitioner was reinstated into service on 21.03.2014. After reinstatement into service, the petitioner made a representation 28.10.2014 claiming back wages, promotion and other consequential benefits and the same was rejected by the 2nd respondent by relying upon the Rule 22 (b) of NIC (Conduct, Discipline and Appeal) Rules, 2012. Hence the petitioner preferred appeal before the 1st respondent and the said appeal was also dismissed by the 1st respondent. Challenging the same, the present writ petition is filed.

2. Heard both sides and perused the documents available on record.

3. The learned counsel for the petitioner would submit that the impugned order passed by the Appellate Authority is a non speaking order and further this Court in CrI.Appl.No. 610 of 2013 filed by the petitioner, has set aside the conviction and sentence passed against the petitioner and acquitted the petitioner from all the charges levelled against the petitioner by observing that there are no material evidence implicating the petitioner in the said charges. The learned counsel for the petitioner further submitted that the 1st respondent while passing the impugned order, has failed to consider the Rule 22 of the NIC (Conduct, Discipline & Appeal) Rules 2012, which is extracted hereunder;

" 22.Treatment of the period of suspension:

When the suspension of an employee is held to be unjustified or not wholly justified, or when an employee who has been dismissed, removed or suspended is reinstated, the Competent Authority, whose decision shall be final, may grant to him for the period of his absence from duty:

(a) If he is honorably acquitted, the full pay allowance which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance;

(b) If otherwise, such proportion of pay and allowance as the Competent Authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as period spent on duty. In a case falling under clause (b), the period of



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absence shall not be treated as period spent on duty, but the Competent Authority may, at its discretion, grant leave for the period to the extent admissible to the employee under the rules. Any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these rules but will not constitute break in service."

4. According to the learned counsel for the petitioner, since this Court by its order dated 29.11.2013 has acquitted the petitioner from all the charges by setting aside the order of suspension dated 03.11.2011 passed by the 2nd respondent, as per Rule 22 of NIC(Conduct, Discipline & Appeal) Rules 2012, the Competent Authority, who is the 1st respondent herein shall grant the back wages together with all the attendant benefits. Therefore, rejecting the claim of the petitioner is not a reasonable one as per the above Rules.

5. The learned counsel for the respondents on the other hand submitted that the original authority has properly considered the claim made by the petitioner and rejected the same and thereafter the said order has been confirmed by the Appellate Authority as per the existing rules. Therefore nothing survives for reconsideration of the claim made by the petitioner.

6. On a perusal of the records, it is clear that the petitioner was acquitted from all the charges and the conviction and sentence passed against the petitioner was also set aside by this Court by its judgment in CrI.Appl.610 of 2013 dated 29.11.2013 preferred by the petitioner. Against the said acquittal, the SLP preferred by the respondents was dismissed by the Hon'ble Supreme Court. Thereafter, the petitioner was reinstated into service. It is clear from the Rule 22 of the NIC (Conduct, Discipline & Appeal) Rules 2012 that the discretion power is vested with the Authority concerned to consider the claim of the petitioner for granting back wages, continuity of service, etc., Hence this Court is of the opinion that once the petitioner came to be reinstated into service, he is entitled for the benefits. Therefore, the Competent Authority, who is the 1st respondent herein having discretion power shall grant all the benefits to the petitioner which he is actually entitled to as per the above Rules.

7. In view of the above, it is clear that the impugned order dated 12.10.2015 passed by the 2nd respondent is not a reasonable one and the same is liable to be set aside. Accordingly, the impugned order dated 12.10.2015 passed by the 2nd respondent is set aside and matter is remitted back to the Appellate Authority and the Appellate Authority/1st respondent is directed to consider the request of the petitioner and pass appropriate



orders as per Rule 22 of the NIC (Conduct, Discipline and Appeal) Rules, 2012 on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this Order.

With the above, the Writ Petition is disposed of. No costs

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
Personal Department,
The National Insurance Company Limited,
Head Office, No.3, Middleton Street,
Kolkatta-700071.

2.The Deputy General Manager,
The National Insurance Company Limited,
Chennai Regional Office,
No.190, Anna Salai,
Chennai-600006.

+1cc to Mr.P.Suresh Babu , Advocate SR.No. 10283

W.P.No. 37745 of 2015

A.SK(17/12/2019)