

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 25.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.29201 of 2011
and M.P.No.1 of 2011

Dr.Mathew K.Sebastian

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Petitioner

versus

1.Salim Ali Center for
Ornithology & Natural History,
Represented by its Member Secretary,
Anaikatty P.O.,
Coimbatore - 641 108.

2.The Director,
Salim Ali Center for
Ornithology & Natural History,
Anaikatty P.O.,
Coimbatore - 641 108.

....

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to grant the service benefits of the petitioner including the contribution to petitioner Earned Leave Account and Half Pay Leave Account and the arrears of Contributory Provident Fund, grant the notional promotions, petitioner entitled to between 30.01.1996 and 16.12.2010, disbursal of the back wages from 23.08.2002 to 30.04.2007 along with interest at 12%.

For Petitioner
For Respondents

सत्यमेव जयते
: Mr.R.Sunil Kumar
: Mr.A.Jenasenan

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O R D E R

The petitioner joined the respondent Institution as Extension Officer on 17.11.1993. By an order dated 30.01.1996, the petitioner was terminated from service, he challenged the same, by way of Writ Petition in W.P.No.1784 of 1996. This Hon'ble Court, by its order dated 23.08.2002, has set aside the termination and ordered reinstatement without back wages.

2. Against the said order, the respondent has preferred an Appeal in W.A.No.2837 of 2002 and obtained stay. The Hon'ble Division Bench has confirmed the judgment of the learned single Judge, by its order dated 25.02.2010. Since stay granted by the Hon'ble Division Bench on 30.10.2003, the petitioner was precluded from joining the services. He suffered without employment between 23.08.2002 and 30.04.2007. Thereafter, the petitioner got employment at Karunya University and was employed from 01.05.2007 to 20.01.2011. The petitioner seeks implementation of the order of the learned single Judge, directing the respondent to grant the service benefits including the contribution to earned leave account and half pay leave account for the period between 23.08.2002 and 30.04.2007 where he was made to sit outside despite the order of this Court. He also seeks the Contributory Provident Fund and other consequential benefits, with notional promotion along with back wages for the above said 5 years period with interest.

3. Learned counsel for the respondent would contend that after the order of the learned single Judge dated 23.08.2002, nothing prevented the petitioner from joining the services of the respondent. Even after the order, he has not joined and therefore, he cannot rejoin. By Official Memorandum issued by the Ministry of Environment, Forest and Climate Change dated 14.02.2017, the Fund given to the Institute has been stopped and therefore, they will not fall under the definition of Article 12 of the Constitution of India and the Writ Petition itself is not maintainable. Therefore, he seeks dismissal of the Writ Petition.

4. I have considered the rival submissions.

5. On challenge, the termination order was set aside by this Court by its order dated 23.08.2002 and consequential reinstatement was ordered with continuity of service and other benefits except back wages. However, the respondents have taken the order by way of appeal, obtained stay and thereby prevented the petitioner from joining duty.

6. The petitioner was fair enough to submit that he was employed gainfully from 01.05.2007 and therefore, he restricts his prayer for grant of salary as ordered by this Court for the period from 23.08.2002 to 30.04.2007 along with other service benefits. Similarly, the Writ Appeal preferred by the respondents was dismissed on 25.02.2010, confirming the order of reinstatement into service along with all other service benefits

except back wages. The petitioner may not be entitled to back wages upto 23.08.2002 but he is entitled for reinstatement and his salary for the service. But for the stay, the petitioner would have joined the service and would have earned the salary. Since he was prevented by the respondent, he is entitled to claim the salary for the period of his non-employment i.e. to say from 23.08.2002 to 30.04.2007. The service benefits shall also be paid by the respondents.

7. In such circumstances, I find that the prayer sought for by the petitioner is justifiable. In fact, the respondents have granted the service benefits of the petitioner including the contribution made by him to his earned leave account, half pay leave, account arrears of Contributory Provident Fund and other benefits except the back wages for the period as indicated above.

8. Therefore, I am inclined to allow the Writ Petition and direct the respondents to pay the back wages to the petitioner for the period from 23.08.2002 to 30.04.2007, within a period of six(6) weeks from the date of receipt of a copy of this order. Since the delay was caused on account of stay order obtained by the respondents, the petitioner is entitled to interest at the rate of 9% per annum.

9. Accordingly, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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sri

To

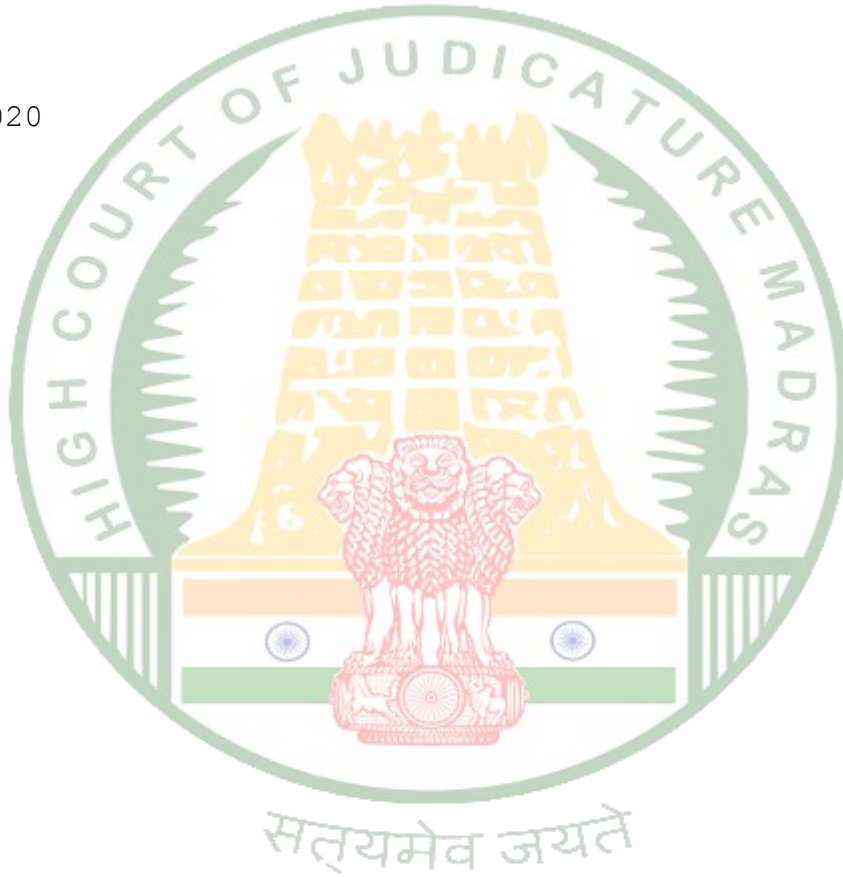
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+1 cc to Mr.Sundar Narayan Advocate sr16546
+2 ccs to Mr.A.Jenasenan Advocate sr16595

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