

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.33027 of 2013

and

MP No.1 of 2013

Dr.C.P. Geevan

...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 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the Official Respondents to reinstate the petitioner into the services of the 1st respondent with full service benefits after granting the notional promotions the petitioner was entitled to between 30.01.1996 and 16.12.2010 in terms of the order dated 23.08.2002 of this Court in W.P. No.1784 of 1996 and confirmed by the Division Bench of this Court in its common order in W.A. No.2837 and 2838 of 2002, dated 25.02.2010 directing the reinstatement of the petitioner in the services of the respondent with full service benefits.

For Petitioner : Mr.R.Sunil Kumar
For Respondents : Mr.Abishek Jenasenan
for R1 & R2

ORDER

Petitioner has come with this writ petition seeking a direction to the official respondents to reinstate him into the services of the 1st respondent with full service benefits after granting him notional promotion for the period between 30.01.1996 and 16.12.2010, in the light of the order dated 23.08.2002 passed by this Court in W.P. No.1784 of 1996, as

confirmed by a Division Bench of this Court in the common order dated 25.02.2010 made in W.A.Nos.2837 and 2838 of 2002.

2. Brief facts leading to filing of this writ petition, are as follows :

2.1. The 1st respondent Society is a registered body under the Societies Registration Act and it is organised and controlled by the Central Government, Ministry of Environment and Forest. As per the by-laws of the Society, the Governing Council is solely in charge of framing rules relating to creation of post, tenure, emoluments, allowances, Rules of Discipline and other conditions of Officers and staff of the Society.

2.2. The petitioner initially served as a Scientist in the National Information Centre attached to the Planning Commission, Government of India and subsequently, he joined as a System Analyst in the 1st respondent Society on 01.05.1992. Subsequently, the said post was re-designated as Senior Scientist and he was placed under probation for a period of two years. While in service, the 1st respondent issued the order of termination, dated 30.01.1996 to him. Aggrieved over the same, he filed W.P. No.1842 of 1996 and similarly placed two other Scientists have also filed Writ Petitions, viz. W.P. Nos.1454 and 1784 of 1996. By way of a common order, this Court allowed those writ petitions and directions were issued to reinstate them with service benefits alone, but without back wages. Challenging the same, 1st respondent filed Writ Appeal in W.A.Nos.2837 and 2838 of 2002 and the Division Bench of this Court dismissed both Writ Appeals.

2.3. Accordingly, after getting approval from the Governing Council and as per the directions of this Court, the 1st respondent issued order of reinstatement, dated 16.12.2010 with service benefits only, but without back wages. In the meanwhile, it came to light that one of his colleagues, who filed writ petition along with him has re-joined the services, however his service benefits were settled only after issuance of directions by this Court by way of another writ petition. Hence, he sent letters to the 1st respondent seeking clarification as regards his promotion on par with his juniors, fixation of scale of pay and requested some more time to re-join the services. However, it is his case, that in spite of series of correspondence, there is no response from the 1st Respondent. Subsequently, on filing of application under RTI, he came to know that the respondents arrived at a decision on 04.10.2013 as per the approval of the Governing Council, but the said decision was not communicated. Hence this writ petition.

3. Learned counsel for the Petitioner contended that, the 1st respondent failed to comply with the orders of this Court in W.P. No.1784 of 1996, which was confirmed by the Division Bench

by an order dated 25.02.2010 in W.A.Nos.2837 and 2838 of 2002, reinstating the Petitioner into service with service benefits, i.e. seniority on par with his junior, which he is legally entitled to. Further, he drew the attention of this Court to the fact that, the petitioner was discharged from his services with effect from 30.01.1996 and subsequently, the order of reinstatement was issued by the 1st respondent only on 16.12.2010. Thus, the petitioner was put to an unbearable loss of service for no fault on his part. He further contended that, after termination from service, the petitioner suffered a lot and due to financial constraints, he undertook various contractual works. Hence, the learned counsel pleaded that, it would suffice if an appropriate direction is issued to the respondents to settle the service benefits to the Petitioner till the date of the order of reinstatement, in the light of the order passed by this Court in the writ petition and writ appeals stated supra, within a time frame.

4. Per contra, Mr.Abishek Jenasenan, learned counsel appearing for the respondents submitted that, though the petitioner completed the period of probation, being unsatisfied with his character and conduct, the termination order was issued to him by the respondents on 30.01.1996. He further submitted that, in compliance of the orders of this Court, the 1st respondent ordered reinstatement of the petitioner into service with service benefits, but without back wages, vide order dated 16.12.2010. In spite of such reinstatement order, the petitioner failed to rejoin duty, whereas his colleague one Mathew K.Sebastian has joined duty and subsequently service benefits were extended to him.

5. Reiterating the counter affidavit, learned counsel appearing for the respondents vehemently contended that, though the petitioner expressed interest in rejoining duty, even after a lapse of nearly three years from the date of issuance of the order of reinstatement, he requested further extension of time to rejoin duty. As the respondent Society is governed under by-laws, before taking any decision, they need to get approval from the Governing Council. Therefore, he prays that the claim of the petitioner on par with juniors for fixation of notional promotion with service benefits is unsustainable and the writ petition is liable to be dismissed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. Facts of the case are not in dispute. It is an admitted fact that, the 1st respondent issued an order of reinstatement on 16.12.2010 to the petitioner. Admittedly, the petitioner did not join duty, whereas, he submitted his

willingness to join duty and sought for extension of time by ventilating his grievances, and he has retired from service on 08.04.2014. It is to be borne in mind that, two decades had passed from the date of termination of service, i.e. from 30.01.1996 till the date of his superannuation and in order to make both ends meet, during the non-employment period, the Petitioner has taken up projects on contractual basis and he has suffered a lot. Also, it has to be noted that, the resolution taken by the Governing council at their 65th Meeting in favour of the petitioner has not been communicated by the respondents. In such a scenario, the rights of the petitioner cannot be deprived, moreso, when there is no fault on his side. Hence, this Court is inclined to issue a direction to the respondents to settle the service benefits alone from the date of discharge till the date of reinstatement of the petitioner.

8. For the aforesaid reasons, this Court, without going into the merits of the case, directs the respondents herein to consider the claim of the petitioner in the light of the order dated 23.08.2002 made in W.P. No.1784 of 1996, and the common judgment dated 25.02.2010 passed in W.A.Nos.2837 and 2838 of 2002, and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that, the petitioner is not entitled to backwages from the date of the order of reinstatement, i.e. from 16.12.2010 till the date of superannuation, on the concept of 'No work No pay'.

With the aforesaid directions, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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.

+2cc to M/s.Abishek Jenasenan, Advocate, S.R.No.39275

+1cc to Mr.R.Sunil Kumar, Advocate, S.R.No.39720

W.P.No.33027 of 2013

ln(CO)
rv(18/01/2021)



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