

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :14.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. Nos. 327 of 2014 & 3915 of 2018

and

W.MP.No.4813 of 2018

M.Mohan

..Petitioner in both WPs

- Vs -

Government of Tamil Nadu

Rep. By its Principal Secretary
Environment and Forest Department,
Fort. St. George, Chennai 600 009

...R-1 in WP.No.3915/2018

Tamil Nadu Pollution Control Board

Rep. By its Member Secretary

No.76, Mount Salai,
Guindy, Chennai 600 032.

...R-1 in WP.No.327/2014 and
R-2 in WP.No.3915/2018

Prayer in WP.No.327/2014:Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the concerned records from the respondent, quash the order of the respondent dated 13.04.2013 bearing proceedings No.Pani/P3/29801/12 in so far as not granting selection grade with effect from 01.07.2003, Special Grade from 01.07.2013 and personal pay at 5% from 01.09.1998 and the order of the respondent dated 05.08.2013 bearing Proceedings No.Pany/P3/29801/13 and consequently direct the respondent to grant the selection grade with effect from 01.07.2003, Special Grade from 01.07.2013 and personal pay at 5% from 01.09.1998 and further taken into account of the entire service of the petitioner in the cadre of Typist by fixing seniority and by considering the petitioner for promotion on the basis of the seniority so fixed to the post of General Assistant.

Prayer in WP.No.3915 of 2018:Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, after calling for the concerned records from the respondent, quash G.O.(Nilai) No.151, Environment and Forest (Su.Soo.2) Department, dated 04.12.2017 of the 1st respondent in so far as regularising the services of the petitioner only with effect from 28.11.2012 and the consequential orders of the 2nd respondent dated 04.01.2018 bearing Proc.No.TNPCB/Per/P3/29801/2012 and Proc.No.TNPCB/Per/P3/29801/2012 dated 02.02.2018 as illegal,

arbitrary and contrary to law and consequently direct the respondents to restore the pay fixed in the order of the 2nd respondent dated 13.04.2013 bearing proceedings No.Pani/P3/29801/12.

For Petitioner : M/s.Balan Haridas in both WPs.
For Respondents: Mr.N.Ponraj in WP.No.327/2014
: Mr.M.Elumalai,
AGP for R1 in WP 3915/2018
: Mr.N.Ponraj for R2 in WP 3915/2018

COMMON ORDER

As the relief sought for in these petitions are similar in nature, they are disposed of by this common order.

2.The case of the petitioner is that he was appointed as Typist in a regular time scale of pay in the year 1989 and, thereafter, he was asked to resign on the ground that he was not sponsored through the employment exchange and accordingly he had resigned on 29.02.1992 and further he was assured by the respondent that the petitioner will be employed shortly and thereafter the respondent by its order dated 12.07.1992 engaged the petitioner once again as typist, however, on Non Muster Roll basis. Subsequently his employment was terminated on 08.07.1993. It is averred by the petitioner that in similar manner the services of the several employees were terminated on the ground that their names were not sponsored by the Employment Exchange. In respect of them, the Government issued G.O.No.312, dated 21.07.1997 reinstating them in regular service, however the petitioner name was not included in the said G.O. Even thereafter several employees were reinstated, but a different stand has been taken insofar as the petitioner is concerned. Aggrieved against the same, the petitioner raised an industrial dispute before the learned III Additional Judge, Labour Court, Chennai, and by an award dated 15.09.2012 in I.D.NO.548 of 2006 it was held that the termination of the services of the petitioner is illegal and directed the respondents to reinstate the petitioner with continuity of service, however, the benefits of the back wages and other benefits were denied. As a result, the respondent reinstated the petitioner by an order dated 26.11.2012, while fixing the pay with effect from 09.07.1993, but the respondent failed to give the selection and special grade pay, personal pay and seniority in the post of Typist. It is the grievance of the petitioner that the respondent passed the impugned order stating that the other benefits which has been disallowed by the Labour Court. Challenging the said impugned order he filed a writ petition in W.P.NO.327 of 2014 and, thereafter, during the pendency of the petition, the respondents has not passed any orders fixing the salary of the

petitioner from 28.11.2012 and also ordered recovery, which made the petitioner to file another writ petition in WP.No.3915/2018 challenging the impugned order dated 04.12.2017, 14.1.2018 and 2.2.2018 wherein the petitioner was given only continuity of service with no other benefits by issuing G.O.Ms.NO.151 and the other benefits granted in terms of the Government orders were sought to be recovered.

3.Learned counsel for the petitioner submitted that the services of the petitioner and similarly situated persons, which were terminated, but by issuance of G.O. Ms. No.312 dated 21.7.97, many of the persons similarly placed like the petitioner were reinstated in service to the exclusion of the petitioner, which resulted in the petitioner raising an Industrial dispute in I.D.No.548/2006, and the III Additional Labour Court passed an award for reinstatement of the petitioner with continuity of service and, therefore, the petitioner for all practical purposes is to be treated as a person who is continuously working from 09.07.1993 onwards and no other interpretation, as made by the respondents is permissible and any other interpretation would be against the ratio laid down by the Hon'ble Apex Court relating to reinstatement. It is also submitted that on reinstatement the petitioner is entitled for all service benefits, including counting of his past services rendered by him along with monetary benefits. However, the increment and other benefits, which were awarded on the earlier occasion to the petitioner were sought to be recovered by the subsequent proceedings, which is wholly unsustainable.

4.In support of his contention he relied upon the judgements reported in 2013(10) SCC 324 [Deepali Gundu Surwase Vs. Krantijunior Adhyapak Mahavidyai Aya (D.ED) and others], more especially paragraph no.21, which ratio has been followed in 2014 SCC OnLine Del 3757 [Mahabir Prasad Vs. Delhi Transport Corporation (W.P.(C).No.2216/2014).

5.Per contra, learned standing counsel appearing for the respondents, referred the counter affidavit filed and contented that no interpretation is required in the present case as these writ petitions arise on the basis of the award passed in the I.D.No.458/2006, wherein the award of Labour Court makes it clear that the petitioner is entitled only for reinstatement with continuity of service and further the award passed by the Labour Court has very clearly spelt out that the petitioner is not entitled to other benefits. Therefore, the order passed by the respondents is in consonance with the order passed by the Labour Court and, therefore, no interference is warranted with the order impugned herein.

6.This Court paid its best attention to the contentions and counter contentions advanced by the learned counsel on either side and also perused the materials available on record.

7.Before embarking upon deciding the issue as to the entitlement of the petitioner consequent upon his reinstatement, the law on reinstatement as propounded by the Courts, in the judgments relied on by the learned counsel for the petitioner requires to be looked into.

8.In Deepali Gundu Surwase's case (supra), the Hon'ble Supreme Court has considered about the meaning of the word 'reinstatement' and has held as under:-

"21.The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.2, 3rd Edn., the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word "reinstatement" means to place again (as in possession or in a former position) to restore to a previous effective state. As per Black's Law Dictionary, 6th Edn., "reinstatement" means:

"To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed"

9.In Mahabir Prasad 's case (supra), reiterating the ratio laid down in Deepali Gundu Surwase's case (supra), the Hon'ble Supreme Court observed as under :-

13.In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule. This was the observation of the Hon'ble Supreme Court in Deepali Gundu Surwase V. Kranti Junior Adhyapak mahavidyalaya (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

"17.The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer"
"

10. In the case on hand, admittedly the petitioner was working as NMR and his services were terminated only to be reinstated on the basis of the award passed by the Labour Court at the instance of the petitioner. The Labour Court, in the award, has clearly spelt out that the petitioner is entitled to reinstatement with continuity of service, while denying the other benefits to the petitioner. Though reliance has been placed on decisions of the Hon'ble Apex Court by the learned counsel for the petitioner, however, a perusal of the same reveals that in those decisions, on reinstatement, the person was reinstated in service and is only entitled for loss of wages while denying the other benefits.

11.It is to be pointed out that the present case stands on a different footing and cannot be equated to the case relied on by the petitioner, other than the fact that the matter pertains to reinstatement. In the case on hand, it is to be pointed out that initially the petitioner was not a regular employee, but only a NMR, who was ousted from service, only to be reinstated at the behest of the order passed by the Labour Court. Therefore, the petitioner cannot compare himself with the case of a regular employee and claim entitlement to last drawn wages at the time of regularization, when his service in fact was not regularized. In such a backdrop, the question of continuity of service itself does not arise. However, it is to be noted that the award of the Labour Court has not been challenged before this Court, but the award has been complied with by reinstating the petitioner and, therefore, this Court is not entering into the same and merely confirms the award of reinstatement. However, for better clarity with regard to the award of the Labour Court, it is to be pointed out that on reinstatement the petitioner is entitled for salary of NMR only till the time of his ousting from service and on and from the date of regularisation pursuant to the order passed by the Labour Court, the petitioner would not be entitled for any monetary benefits, as he was not in the regular service as on the date, when he was directed to be reinstated by the award of the Labour Court. Therefore, it is made clear that the petitioner would not be entitled for the salary or other any monetary benefits during the period in which he was out of employment, but only eligible to have continuity of service, as the said benefits would stand accrued only insofar as regular employees are concerned and not in the case of the petitioner.

12.In the above circumstances, this Court directs the respondents to fix the salary of the petitioner upon reinstatement, i.e., from 12.7.1992 and grant continuity of service and all other notional benefits, but the petitioner would not be entitled for any monetary benefits, as held by the Labour Court and any arrears, due and payable to the petitioner during his service as NMR, the petitioner would be entitled for the same. However, it is also made clear that any amount paid to the petitioner by way of arrears for any period as computed by the respondents, which is sought to be recovered, the same shall not be recovered by the respondents from the petitioner in view of the decision of the Hon'ble Supreme Court in State of Punjab & Ors - Vs - Rafiq Mashri (White Washer) & Ors. (2015 (4) SCC 334) as the said amounts have been paid to the petitioner not due to the fault committed by the petitioner and, therefore the same cannot be recovered from the petitioners in the absence of misrepresentation or fraud on their part.

13.In the result, these writ petitions are disposed of with the above observations and directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs

To

1.The Principal Secretary
Government of Tamil Nadu
Environment and Forest Department,
Fort. St. George,
Chennai 600 009.

2.Tamil Nadu Pollution Control Board
Rep. By its Member Secretary
No.76, Mount Salai,
Guindy, Chennai 600 032.

+1 CC to Mr. Balan Haridas, Advocate sr 40898.

+1 CC to The Special Government Pleader(Forest) sr 40850.

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W.MP.No.4813 of 2018

AD(CO)
SP(10/02/2021)