

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.3289 of 2019
and
C.M.P.No.20980 of 2019

(Through Video Conferencing)

1. The Director (HR),
Oil & Natural Gas Corporation Ltd.,
124, Connaught Palace,
Indira Gandhi Chowk,
New Delhi - 110 001.
 2. GGM- BM (Cauvery),
Oil & Natural Gas Corporation Ltd.,
No.1, Gandhi Irwin Road,
CMDA Tower-1,
Chennai - 600 008.
- ...Appellants

Vs.

B.Uma ...Respondent

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 24.04.2019 passed by the learned Single
Judge in W.P.No.20106 of 2011.

WP NO.20106 OF 2011: Writ Petition filed under Article 226 of
the Constitution of India, praying to issue a Writ of mandamus,
to direct the respondents to release to pay the full backwages
for the entire period from 21.05.2002 the date of termination,
to the date of reinstatement on 06.07.2009 with al attendant
benefits including time bound promotions to E-1 and E-2 with
effect from 2003 & 2007 respectively at par with other
colleagues.

For Appellants : Mr.M.Vijayan

For Respondent : Mr.Yogesh Kannadasan

J U D G M E N T
(Judgment of the Court was delivered
by C.SARAVANAN, J.)

The appellants are aggrieved by the impugned order dated 24.04.2019 passed by the learned Single Judge in W.P.No.20106 of 2011. By the impugned order, the learned Single Judge has allowed the writ petition filed by the respondent for a mandamus to direct the appellants (respondents therein) to release back wages for the period between 21.05.2002 and 06.07.2009 with all attendant benefits including promotions during which the services of the respondent was terminated.

2. The respondent joined the services of the appellants in the year 1982 as the Grade III Steno under the quota for the candidates belonging to Scheduled Castes. Thereafter, the respondent was promoted as a Steno Grade II and Steno Grade I in the year 1987 and 1993 respectively.

3. When the respondent was due for promotion as E.O-I with effect from 01.01.1999, the respondent's scheduled caste community certificate was subjected to verification. By an order dated 19.07.2000, the District Level Committee cancelled the scheduled caste community certificate of the respondent. Further, an appeal filed by the respondent before the State-Level Scrutiny Committee was also dismissed vide order dated 29.04.2002. Under the circumstances, the respondent was dismissed from service on 21.05.2002.

4. Aggrieved by the order of the State-Level Scrutiny Committee confirming the cancellation of the community certificate of the respondent by the District Level Committee and termination from service, it was challenged successfully by the respondent before this court in W.P.Nos.18114 and 18115 of 2002.

5. By an order dated 27.09.2004 these two writ petitions were allowed. The appellants were directed to not only reinstate the respondent within a period of 15 days together with all back wages and attendant benefits as if the respondent was in continuous service from the date of termination of service but also appellants were also directed to report compliance thereof within a period of 7 days thereafter.

6. Aggrieved by the aforesaid order of this Court in W.P.Nos.18114 and 18115 of 2002, the appellants preferred SLP which was re-numbered as C.A.No.2036 of 2006 after its admission. By a Final order dated 29.07.2008, the Hon'ble Supreme Court remitted the case back to the District Level Vigilance Committee to really do of the exercise afresh.

7. Thereafter, elaborate enquiry was conducted by the District Level Vigilance Committee and this time, it was found that the community certificate issued to the respondent was genuine. Accepting the aforesaid finding of the District Level Vigilance Committee, the appellants reinstated the respondent on 02.07.2009.

8. However, while reinstating the respondent, she was placed below her juniors without back wages. It appears that almost 375 employees Junior to the respondent superseded her during the period when the respondent was not in service.

9. Under the circumstances, the respondent filed W.P.No.20106 of 2011 which came to be disposed by the impugned order dated 24.04.2019. The operative portion of the impugned order of the learned Single Judge reads as under:-

14. This Court is in agreement with the submission made on behalf of the learned counsel for the petitioner that once the petitioner's termination is ultimately found to be unjustified, notwithstanding the fact that the original order of the Corporation in terminating the service of the petitioner cannot be faulted with, nevertheless, it has to be held that once the caste status has been declared in her favour by the duly constituted District Level Vigilance Committee, the petitioner is entitled to all benefits of career progression as if she continued in service, without interruption. The one exception that could be made out in this case is that regarding restriction of backwages of 50% and nothing else.

15. In view of the above, this Court is of the considered view that the petitioner is entitled to be paid 50% of the backwages during the period of non-employment and she is entitled to be promoted to the next higher grades by counting the period of non-employment for all purpose by the respondent Corporation. The petitioner is also entitled to the fixation of pay and other allowances admissible in the higher grades by counting the entire service when the petitioner was kept out of employment. The respondent Corporation is directed to implement the direction of this Court, within a period of eight weeks from the date of receipt of a copy of this order.

10. It is the case of the appellants that the respondent was terminated from her service as consequence to cancellation of the community certificate by the District Level Committee which was also affirmed by the State-Level Scrutiny Committee. Therefore, there was no question of payment of back wages as the respondent was not in service. It is further submitted that the termination of service of the respondent was not consequent to any disciplinary proceedings and that there is a difference between misconduct and illegal termination of service.

11. Reference was made to the decision of the Hon'ble Supreme Court in JK Synthetics Ltd Vs. K.P.Agarwal, (2007) 2SCC 433. It is submitted that since the respondent was not in the service of the appellants for no fault of theirs, question of granting back wages and promotion cannot be countenanced. It is further submitted that granting of automatic promotion and back wages was contrary to service law jurisprudence and therefore the impugned order of the learned Single Judge is liable to be set aside. It is further submitted that the court is required to take a pragmatic view of the matter and that the employer cannot be compelled to pay the employee for the period during which the employee contributed nothing to be employer. Reference was made to the decision of the honourable Supreme Court in U.P.State Brassware Corporation Ltd Vs. Uday Narayan Pandey, (2006) 1SCC 479.

12. It is further submitted that as per the appellants ONGC's Modified Recruitment and Promotion Regulations, 1980, there is no scope for automatic promotion to E1 level and that the respondent was due for consideration for promotion only after completing six years functional experience.

13. Per contra, the learned counsel for the respondent submitted that the impugned order was well reasoned and requires no interference. It was therefore prayed for dismissal of the present writ appeal.

14. We have considered the arguments advanced by the learned counsel for the appellants and the respondent.

15. In the year 1982 when the respondent was appointed, the law relating to verification of community certificate had not fully crystallised. Perhaps, that explain why the community certificate of the respondent was not subjected to verification earlier. As a prudent employer, it was the duty of the appellants to have the community certificate verified at the time of initial employment. However, the certificate was sent for verification at the time 3rd promotion of the respondent.

16. In Hon'ble Supreme Court in JK Synthetics Ltd Vs. K.P.Agarwal, (2007) 2SCC 433, the Hon'ble Supreme Court held as under:-

17. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed. We may in this behalf refer to the decisions of this Court in A.P. SRTC v. S. Narsagoud [(2003) 2 SCC 212 : 2003 SCC (L&S) 161], A.P. SRTC v. Abdul Kareem [(2005) 6 SCC 36 : 2005 SCC (L&S) 790] and Rajasthan SRTC v. Shyam Bihari Lal Gupta [(2005) 7 SCC 406 : 2006 SCC (L&S) 67] .

17. The respondent missed promotion not because of any misconduct or any disciplinary proceedings against her. The respondent was removed from service purely on account of a wrong conclusion arrived by the District Level Committee vide order dated 19.07.2000. The said order though challenged unsuccessfully before the State-Level Committee, it was eventually set aside by this Court on 27.09.2004.

18. Though the respondent had successfully challenged the orders before this court in W.P.Nos.18114 and 181115 of 2012 vide order dated 27.09.2004, yet, the respondent was not reinstated. Instead, the appellants took up the issue before the Hon'ble Supreme Court. The Hon'ble Supreme Court remitted the case back to the District Level Vigilance Committee vide its order dated 29.07.2008. Thus, there was a further delay of another four years. The respondent was forced to be in litigation for a period of six years.

19. Thereafter, a fresh enquiry was conducted pursuant to the directions of the Hon'ble Supreme Court. The District Level Vigilance Committee vide its order dated 17.04.2009 found that the scheduled castes community certificate of the respondent to be genuine.

20. Fact remains that the status genuineness of the schedule caste community of the respondent stands confirmed vide order dated 17.04.2009 of the District Level Committee. This has been accepted by the appellants also. They have also reinstated the respondent. However, while reinstating the respondent, they did it without back wages and promotions which the respondent missed during the period when she was not in service.

21. While reinstating, the Courts have to apply their mind and decide whether "continuity of service" and/or "consequential benefits" should also be directed. In our view, this is a fit case for ordering continuity of service and attendant benefits to the respondents.

22. In our view, there was no scope for denial of promotion or back wages to the respondent as this is not a case where the respondent was guilty of any misconduct, as a result of which the service of the respondent was terminated. In our view, the learned Single Judge has come to a correct conclusion in the facts of the case. We therefore find no merits in this Writ Appeal filed by the appellants. This Writ Appeal is thus liable to be dismissed

23. Accordingly, this Writ Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director (HR),
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AJS (CO)
RV(02/11/2020)