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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.7.2021

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.NO.2997 of 2020

S. Ganesan, S/o. Sabapathy

...Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government
Forest and Environment (FR-2) Department
Fort. St. George, Chennai 600 009.

2.The Principal Chief Conservator of Forest
(Head of the Forest Force)
Pangal Building, Chennai 600 015.

3.R. Muralidharan
"W" Section, Superintendent
O/o. Principal Chief Conservator of Forest,
Panagal Building, Chennai 15.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the order in Ref. No.M1/50604/2018 dated 02.05.2019 to quash the same and to issue consequential direction to the 2nd respondent to grant the service benefits such as pay, increments, etc., due to the petitioner for the period of absence from the date of dismissal to the date of reinstatement other than monetary benefits/back wages.

For Petitioner : M/s. T. Dharani

For R1 & R2 : Mr. K. Tippu Sulthan
Government Advocate.

ORDER

The petitioner herein was originally appointed as Office Watcher on 25.09.1985 and subsequently he was promoted to the post of Office Assistant on 08.02.1990 and thereafter as Record Clerk on 03.12.1993. On a set of proven charges, after enquiry, the petitioner herein was dismissed from service on 23.04.2002 and the same was confirmed on appeal on 29.08.2002. When the



petitioner herein had challenged the order of dismissal before this Court in W.P. No. 20031 of 2012, this Court, by order dated 28.11.2016, had quashed the order of dismissal dated 23.04.2002 and 29.08.2002 and subsequently directed reinstatement of the petitioner back into the service. While passing the order of reinstatement, this Court had observed as follows:

"6. Normally, it would be appropriate that whenever it is found that the punishment is disproportionate to the charges, the respondents should be directed to impose a lessor punishment. Nevertheless, at this juncture, the learned counsel for the petitioner would submit that this Court may consider for a direction to the respondents to reinstate the petitioner without any back wages or other service benefits. In my opinion, the reinstatement of the petitioner without back wages would not cause any serious prejudice to the respondents. Admittedly, the petitioner has already put in 17 years of service till the date of dismissal. Directing the respondents to reinstate the petitioner without any benefits would meet the ends of justice.

7. Accordingly, the impugned orders passed by the second respondent, dated 23.04.2002 and 29.08.2002 are quashed and the second respondent is directed to reinstate the petitioner without any monetary benefits within a period of six weeks from the date of the receipt of a copy of this Order."

A combined reading of paragraphs 6 and 7 would show that the petitioner had offered to forego his rights to claim both back wages and other service benefits if he is reinstated back into the service. This Court had taken into consideration of the submissions made by the learned counsel for the petitioner and while ordering reinstatement, the observation made was that the petitioner would not be entitled for monetary benefits. The entitlement of service benefits was not referred to in the operative portion of the order. Incidentally, the order passed on 28.11.2016 in W.P. No.20031 of 2016 was by me. When I had not substantiated as to why the petitioner is entitled for service benefits, it seems to be a plausible omission to include the denial of service benefits also in the operative portion of the order at paragraph 7. However, while paragraph 7 is read in continuation of paragraph 6, the intention was only to direct reinstatement of the petitioner without monetary and service benefits.



2. It is now stated by the learned counsel for the petitioner that when the respondents had passed the order of reinstatement dated 18.09.2017, the respondents have treated the petitioner as a fresh entrant. His request for treating his period of absence of duty during the dismissal period as duty was rejected by a subsequent order dated 02.05.2019 by quoting the order of this Court passed in W.P. No.20031/2012 dated 28.11.2016. Now that this Court has clarified the earlier order dated 28.11.2016 passed in W.P. No.20031/2012, the consequences of the order would be that the petitioner cannot claim monetary benefits as well as service benefits during his period of non employment i.e. between the date of his dismissal on 29.08.2002 till the date of his reinstatement on 18.09.2017. For the sake of further clarify, it is held that the petitioner would be entitled for all the service benefits which he was entitled from the date of his initial appointment as Office Watcher from 25.09.1985 till the date of his dismissal on 29.08.2002, when he was holding the post of record clerk, and thereafter he will also be entitled for the service and monetary benefits from the date of reinstatement on 18.09.2017 onwards. Hence treating the petitioner as a fresh entrant, as alleged by the petitioner herein, is impermissible in law.

3. Though this Court does not find any infirmity in the impugned order dated 02.05.2019, the aforesaid clarification to the effect that the petitioner would be entitled for all the service and monetary benefits from the date of his original appointment till the date of his dismissal and from the date of reinstatement thereafter would satisfy the petitioner's interest.

4. In case the petitioner is deprived of any monetary benefits for the service for which he was entitled to as clarified above, it is open to the petitioner to make appropriate application seeking for such relief and on receipt of the same, the second respondent herein shall consider the same in the light of the observations made in this order and pass appropriate order within a period of six(6) weeks from the date of receipt of the application from the petitioner.

5. Accordingly, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Forest and Environment (FR-2) Department,
Fort. St. George, Chennai 600 009.

2.The Principal Chief Conservator of Forest
(Head of the Forest Force)
Pangal Building, Chennai 600 015.

W.P. NO.2997 of 2020

JPL(CO)
RVM(04/08/2021)