

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.01.2021

CORAM:

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.1149 of 2020

1. The Principal Secretary to Government,
Public Department,
Secretariat,
Chennai - 600 009.
 2. The Secretary to Government,
Personnel and Administrative Reforms
(U.Special) Department,
Secretariat, Chennai - 600 009.
 3. The Pay and Accounts Officer,
O/o Pay and Accounts Office,
Secretariat, Chennai - 600 009.
- ...Appellants/Respondents
- Vs.
- M.Karikalan ...Respondent/Petitioner

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 08.01.2021 passed in W.P.No.25302 of 2017.

Prayer in WP.No.25302 of 2017: Petition filed under Art 226 of the constitution of India, to issue a writ of Certiorarified Mandamus calling for the records relating to the orders passed by the Second respondent in G.O.(2D) No.151 Public (Establishment.III Department) dated 01.09.2017 OP.No.2328 Public (Establishment.III Department) dated 01.09.2017 and G.O. (2D) No.152 Public (Establishment.III Department) dated 01.09.2017 and in the Government Letter No.19538/ Estt.III/ 2017-3 Public (Estt.III) Department dated 01.09.2017 and quash the same and consequently direct the respondents to pay the Pay and Allowance as per the G.O.(2D) No.15 Public (Estt.III) Department dated 29.05.2013 O.P. No.1775 to 1777 Public (Estt.III) Department dated 25.09.2013 and G.O.(3D) No.3 Public (Estt.III) Department dated 29.05.2013 with all consequential benefits in the promotional posts within a stipulated period as fixed by this Hon'ble Court.

For Appellants : Mr.P.H.Arvind Pandian
Addl. Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
State Government Pleader

For Respondent : Mr.G.Justin

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

There is no merit in the appeal and it ought to be appreciated that not much has been made of it on behalf of the appellants.

2. The writ petitioner, a Government employee who retired as Joint Secretary to the State Government, complains of the withdrawal of certain benefits conferred to the writ petitioner in terms of a Government Order of May 29, 1998 pertaining to rectification of anomalies.

3. According to the appellants, in terms of Clause 12(6) of the relevant Government Order of May 29, 1998, an employee against whom a charge-sheet has been filed before any Criminal Court will not be entitled to the usual consideration but the matter of anomaly would be dealt with on a case to case basis and, depending on the subjective satisfaction of the State, the concerned employee will be entitled to the benefits as conferred.

4. There is substantial anomaly in the relevant Government Order seeking to redress the issue of anomalies. The relevant Clause 12(6) of the Government Order makes an exception, inter alia, for employees who have suffered punishment at any stage, employees who have been overlooked for promotion at any stage and employees against whom an inquiry is pending in departmental proceedings or a charge-sheet has been filed pursuant to a criminal complaint. Though it is not relevant in the present context, prima facie, it appears that to deny a person the opportunity for the anomalies pertaining to his pay to be rectified because he had suffered any punishment would amount to double jeopardy and a further punishment in addition to the punishment already meted out. It would be similar in the case of promotion; the employee would have been denied promotion and, subsequently, denied the benefit of rectification of the anomaly pertaining to his pay. Most importantly, an employee may lose the benefit of the rectification if a false criminal charge is levelled against him by the investigating officer notwithstanding a subsequent acquittal. It may do well for the State to re-consider the particular clause and the prejudice that is likely to be suffered by an innocent but diligent

employee based on the private criminal complaint of a rank outsider in a matter not pertaining to the employee's line of duty.

5. In the present case, it appears that following the consideration of the petitioner's case and to rectify the anomaly pertaining to his pay, certain benefits were conferred to the petitioner with retrospective effect, notwithstanding the later date of the petitioner being given the seniority. Subsequently, however, such retrospective effect was attempted to be undone by providing only for the notional promotion of the petitioner without offering him the benefit of the actual pay that was initially perceived to have been wrongfully denied to the petitioner.

6. In the normal course, if there was an anomaly in pay that was noticed in respect of the petitioner, the employer ought to have dealt with the same as in every other case, particularly since the criminal charge against the writ petitioner in the present case did not pertain to any official activity. Merely because there is an enabling provision does not give the employer the authority to punish the employee or deny the employee the dues that he may otherwise command. The State has to be a model employer and when a criminal charge brought against the petitioner ultimately resulted in his acquittal and the charge did not pertain to the line of duty of the petitioner, the employer should not have used the same as an excuse to deny the rightful dues of the petitioner. In the present case, the employer did worse. Quite appropriately, the employer granted the rightful dues of the petitioner and only subsequently purported to withdraw the same by citing the highly suspicious provision pertaining to the filing of a charge-sheet as included in Clause 12(6) of the Government Order of 1998.

7. By the judgment and order impugned dated January 8, 2020 the Court of first instance has referred to all aspects, including the fact that the criminal case was brought against the petitioner in a matter not concerning the petitioner's official duties. Upon a threadbare analysis of the facts, the Court concluded that the withdrawal of the benefit once conferred was arbitrary and without basis. In a sense, the State may have been excused if the State had not conferred the benefits on the ground that the writ petitioner's conduct, in the context of the relevant Government Order, was unworthy of any monetary grant. However, once the benefit had been conferred upon perceiving the petitioner to be worthy thereof, the excuses included in Clause 12(6) of the relevant Government Order could not have been resorted to, to snatch away the pay revision extended to the petitioner.

8. For the reasons aforesaid and since the judgment has taken all relevant considerations into account, the same and the consequent order do not call for any interference.

9. W.A.No.1149 of 2020 is dismissed. The State is spared the costs. Consequently, C.M.P.No.14179 of 2020 is closed.

Sd/-

Assistant Registrar(CS II)

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BBR
To

Sub Assistant Registrar

1. The Principal Secretary to Government,
Public Department,
Secretariat,
Chennai - 600 009.
2. The Secretary to Government,
Personnel and Administrative Reforms
(U.Special) Department,
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3. The Pay and Accounts Officer,
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+1cc to the Government Pleader, S.R.No.4571

W.A.No.1149 of 2020

BS(CO)
rv(11/02/2021)

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