



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 3340 of 2013

P.Kumaresan

... Petitioner

-VS-

1. The District Collector,
Kanyakumari District,
Nagercoil.
2. The Commissioner,
Thovalai Panchayat Union @ Boothapandy,
Kanyakumari District.
3. The Commissioner,
Kurunthencode Panchayat Union,
Kurunthencode,
Kanyakumari District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the First Respondent made in Proceedings No: D5/35930/2011 dated 02.04.2012 and the consequential orders of the Second Respondent made in Na. Ka. No. A1/0975/2012 dated 11.02.2013 to quash the same and consequently direct the Respondents to extend all benefits both service and monetary to the Petitioner during the period from 08.05.2000 to 03.04.2012.

For Petitioner : Mr. R. Thangasamy

For Respondents : Mr. R. Murugan,
Additional Government Pleader

O R D E R
(through video conference)

Heard Mr. R. Thangasamy, Learned Counsel for the Petitioner and Mr. R. Murugan, Learned Additional Government Pleader for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.



2. The Petitioner had joined in the services of the Third Respondent, which is a Panchayat Union, as driver on 23.11.1998 and on completion of probation, his services had been regularized with effect from 23.11.1999. As he had been detained in custody on a criminal charge for a period exceeding 48 hours, the Third Respondent by Order No. A1/2509/2000 dated 23.05.2000 held that the Petitioner is deemed to have been placed under suspension from services with effect from 08.05.2000 under Rule 7(2) of the Tamil Nadu Panchayat Union Establishment (Appointment and Punishment) Rules, 1965. The Additional Sessions Court, Nagercoil, by judgment dated 25.11.2002 in S.C. No. 194 of 2001 convicted the Petitioner and sentenced him to undergo life imprisonment with fine. The Third Respondent relied on the said decision of that Criminal Court and dismissed the Petitioner from service with effect from 25.11.2002 by Order No. A1/1377/2003 dated 21.11.2003. According to the Third Respondent, the vacancy that arose due to the dismissal of the Petitioner was filled up by proceedings No. A1/4068/09(2) dated 19.08.2010, and the Petitioner had not preferred any appeal challenging his termination from service, which had attained finality. Subsequently, the Division Bench of this Court by judgment dated 01.03.2011 in C.A. Nos. 29 and 62 of 2003 set aside the conviction of the Petitioner by the Criminal Court and acquitted him of all the charges. In that backdrop, the Petitioner had made representation dated 16.07.2012 to the First Respondent for reinstatement into service and had executed an undertaking on 29.03.2012 that he would not claim any pay and allowances or other benefits for the period from 08.05.2000 to the date of re-posting as driver. The First Respondent thereafter by proceedings no. D5/ 35930/2011 dated 02.04.2012 permitted the Petitioner to join duty in an vacant post of driver sanctioned to the Second Respondent on the following terms and conditions:-

"1. He will not entitle to draw any pay and allowances for the period from 08.05.2000 to till the date of rejoining duty at Thovalai Panchayat Union, in view of this undertaking submitted on 28.03.2012.

2. He is permitted to rejoin duty without prejudice to the criminal proceedings, if any, initiated against him with regard to the acquittal from S.C. No. 194 of 2001 filed by the Inspector of Police, Manavalakurichy Police Station, in due course."

After the Petitioner joined duty on 04.04.2012, he made representations for regularizing his service during the intervening period from 08.05.2000 to 03.04.2012 by relying on Rule 54-B (3)(1) (a) and (d) of the Fundamental Rules which was not accepted by the Second Respondent in Order No. A1/0975/2012 dated 11.02.2013. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the aforesaid orders passed by the First and Second Respondent and has sought consequential directions to extend the monetary and other benefits for the period from 08.05.2000 to 03.04.2012.



3. On a plain reading of Rule 54(B)(3)(1)(a) and (d) of the Fundamental Rules, it would show that it relates to a situation where a Government Servant has undergone the sentence of imprisonment pending the decision in the disciplinary action to be taken against him, unlike the present case. As could be noticed, the Petitioner had already been dismissed from service by Order No. A1/1377/2003 dated 21.11.2003 passed by the Third Respondent in furtherance to the conviction by the Criminal Court on 25.11.2002 and the post of driver that he had held in the office of the Third Respondent had also been filled up on 19.08.2010. In view of that incontrovertible fact situation, the Rule quoted by the Petitioner for regularizing his service would not be applicable and the Respondents cannot be faulted for not extending the benefit of the said Rule to him.

4. It is also not possible to accept the contention of the Petitioner that the undertaking dated 29.03.2012 executed by him that he would not claim any backwages for the period from 08.05.2000 till his reinstatement in service would not bind him as it had been made under compulsion to secure employment. As already noticed earlier, the Petitioner had not challenged his termination from service in the manner recognized by law and the vacancy that arose had also been filled up by the Third Respondent on 19.08.2010. In any event, the Third Respondent could not be expected to wait indefinitely and the Petitioner had been accommodated in a vacancy in the office of the Second Respondent relying on the aforesaid undertaking that he would not claim any backwages.

5. Even in the absence of such undertaking, the legal position in this regard has been considered by the Hon'ble Supreme Court of India in **Ranchhodji Chaturji Thakore -vs- Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat)** [(1996) 11 SCC 603], where it has been held as follows:-

"3.The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later



acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail...."

The same issue again came up before the Hon'ble Supreme Court of India in **Union of India -vs- Jaipal Singh** [(2004) 1 SCC 121] where it has been observed as follows:-

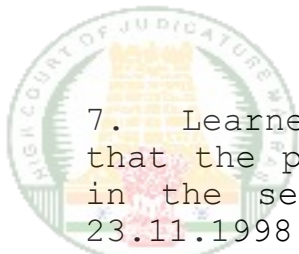
"4.If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent...."

While reiterating the same view, the Hon'ble Supreme Court of India in **Baldev Singh -vs- Union of India** [(2005) 8 SCC 747] has held as follows:-

"7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service...."

The said views have been restated by the Hon'ble Supreme Court of India in **Corp. Mithilesh Kumar alias Mithilesh Singh -vs- Union of India** [(2020) 12 SCC 423].

6. As the impugned action of the Respondents in in conformity with the dictum laid down by the Hon'ble Supreme Court of India in the aforesaid decisions, there does not appear to be any infirmity in the decision-making process of the Respondents warranting interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.



7. Learned Counsel for the Petitioner lastly made a fervent plea that the pay protection from the past employment of the Petitioner in the services of the Third Respondent during the period from 23.11.1998 to 03.04.2012 may be reckoned for the limited purpose of extending notional benefit of fixing scale of pay and confine the disbursement of monetary benefits only from the date on which he actually rejoined duty in the services of the Second Respondent. Since that claim had not been made earlier, it is made clear that no view has been expressed by this Court on its correctness or entitlement and if any representation is made by the Petitioner to the concerned authorities in that regard, the same shall be decided on its own merits in accordance with law following the prescribed procedure in consonance with the principles of natural justice.

In the upshot, the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: (i) Issue order copy by 15.09.2021.

(ii) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The District Collector,
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2. The Commissioner,
Thovalai Panchayat Union @ Boothapandy,
Kanyakumari District.
3. The Commissioner,
Kurunthencode Panchayat Union,
Kurunthencode, Kanyakumari District.

+1 CC to M/s.SPL GP (SR-16319[F] dated 17/04/2021)

sm/SRM

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