



W.P.No.15695 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.07.2022**

**CORAM :**

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

**Writ Petition No.15695 of 2018**

N.Antony

.... Petitioner

-Vs-

1.Chennai Port Trust  
Rep.by its Chairman  
Rajaji Salai, Chennai 600 001.

2.Chief Mechanical Engineer  
Chennai Port Trust, Rajaji Salai  
Chennai 600 001.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus after calling for the concerned records from the 1<sup>st</sup> and 2<sup>nd</sup> respondent and quash the order of the 1<sup>st</sup> respondent dated 23.03.2016 bearing CME/A1/5506/95/MEE insofar as treating the period from 27.04.2004 till the reinstatement of the petitioner viz., 23.03.2016 as "Dies Non" and declining promotional benefits and the order of the 2<sup>nd</sup> respondent dated 22.05.2018 bearing No.CME/A1/5506/95/MEE as illegal, arbitrary and contrary to law and consequently direct the respondents to pay the back wages from 27.04.2004 onwards till 23.03.2016 being the date when the order of reinstatement was issued with continuity of service, attendant benefits and by granting due promotion to the post of Assistant Executive Engineer (Mechanical), Executive Engineer (Mechanical) and Superintending Engineer (Mechanical) from the date when the junior of the petitioner was granted



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promotion with all monetary benefits.

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For Petitioner : Mr.Balan Haridas

For Respondents : Mr.R.Karthikeyan  
Central Government Standing Counsel

### **ORDER**

The prayer sought for herein is for a Writ of Certiorarified Mandamus after calling for the concerned records from the 1<sup>st</sup> and 2<sup>nd</sup> respondent and quash the order of the 1<sup>st</sup> respondent dated 23.03.2016 bearing CME/A1/5506/95/MEE insofar as treating the period from 27.04.2004 till the reinstatement of the petitioner viz., 23.03.2016 as "Dies Non" and declining promotional benefits and the order of the 2<sup>nd</sup> respondent dated 22.05.2018 bearing No.CME/A1/5506/95/MEE as illegal, arbitrary and contrary to law and consequently direct the respondents to pay the back wages from 27.04.2004 onwards till 23.03.2016 being the date when the order of reinstatement was issued with continuity of service, attendant benefits and by granting due promotion to the post of Assistant Executive Engineer (Mechanical), Executive Engineer (Mechanical) and Superintending Engineer (Mechanical) from the date when the junior of the petitioner was granted promotion with all monetary benefits.



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2. The petitioner joined in the service of the respondent Port Trust as Assistant Engineer on 25.11.1986. In the year 1995, the petitioner was placed under suspension by an order of the Port Trust dated 12.12.1995 followed by a charge memo dated 17.10.1996 issued against the petitioner. The charges relate to the period of the year 1995. Two charges were framed against the petitioner, pursuant to which departmental enquiry was conducted. Simultaneously that was reported before the police for prosecuting the case against the petitioner and on the criminal side prosecution had taken place, where charge sheet was filed against the petitioner. In the meanwhile, the departmental proceedings concluded, where the charges framed against the petitioner were proved following which the disciplinary authority inflicted penalty against the petitioner by order dated 22.03.1998 under which the penalty of cutting increment for three years was imposed against the petitioner. That punishment also was undergone by the petitioner.

3. Subsequently, after trial the criminal case was completed, where the petitioner was convicted by the judgment of the criminal Court dated 04.02.2004. In view of the said conviction, the petitioner's services was terminated ie., he was dismissed from service with effect from 27.04.2004.

4. As against the said conviction against the petitioner, he preferred an



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appeal before this Court, where this Court has allowed the appeal filed by the petitioner by order dated 25.03.2015, under which the petitioner was given clear acquittal based on merits.

5. Pursuant to the allowing of the criminal appeal filed by the petitioner, whereby the Trial Court judgment of conviction was set aside and the petitioner was acquitted, he had requested the respondent Port Trust to reinstate him, which was accepted. However, only on 22.03.2016 the reinstatement order was passed by the respondents and pursuant to which, he joined the duty and had been working.

6. However, the grievance of the petitioner is that while passing the order on 23.03.2016 reinstating the petitioner, the respondent Chennai Port Trust had declared the non-working period ie., from 27.04.2004 to 22.03.2016 as *dies non* and thereby, the petitioner would not be entitled to get any monetary or financial benefits like back wages etc., Challenging the said condition imposed by the respondents through order dated 23.03.2016 at the time of reinstatement declaring the non working period as *dies non*, the present writ petition has been filed.

7. Assailing the said condition imposed by the Chennai Port Trust, Mr.Balan



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Haridas learned counsel for the petitioner would submit that, insofar as the period between 27.04.2004 and 23.03.2016 is concerned, the petitioner had been out of service because he was dismissed from service following the conviction made by the Trial Court by judgment dated 04.02.2004. However, when appeal was allowed, the conviction was set aside by the order of this Court dated 25.03.2015, immediately reinstatement should have been made. Moreover, when such reinstatement was made in favour of the petitioner, as the dismissal was only because of the conviction which has now been set aside, the petitioner's non duty period should have been treated as duty period at least for a proportionate payment of back wages, which only is suggested or mandated under the relevant rule viz., Chennai Port Trust (Pay and Allowances etc.,) Regulations, 2001 (In short 'the Rule').

8. In this context, by relying upon the Rule especially Rules 41, 42 and 43, the learned counsel for the petitioner would contend that, the respondent Chennai Port Trust cannot declare the non-working period of the petitioner as *dies non* as that kind of declaration would not be possible under the relevant Rule, which ought to have been applied in the case of the petitioner. Therefore, the declaration of non-working period as *dies non* through the impugned order is against the very Rule itself.



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9. He would also submit that, since for the same set of charges departmental proceedings had already been concluded by inflicting punishment against the petitioner by order dated 22.03.1998 and that punishment had also been undergone by the petitioner, the present declaration of the non-working period as *dies non* is nothing but a double jeopardy and hence for that reason also, such a condition imposed against the petitioner through the impugned order is liable to be interfered with, he contended.

10. Learned counsel further submits that, even though acquittal order was passed on 25.03.2015, the respondent Port Trust had taken almost one year to pass the order of reinstatement on 23.03.2016 and therefore for the said period of one year, the petitioner is entitled for full back wages.

11. Per contra, Mr.R.Karthikeyan, learned Standing Counsel for the Chennai Port Trust has submitted that, insofar as the order of dismissal made against the petitioner in the year 2004 is concerned, it is because of the clear conviction of the Trial Court against the petitioner and once the petitioner has been convicted, there was no scope for the petitioner to continue in the job. Hence, it became necessitated to immediately remove him from service and accordingly the order of dismissal was passed in the year 2004.



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12. Thereafter only in the year 2015, on appeal he was acquitted.

Hence, that acquittal was considered by the respondents and after having gone through the Rule position, the reinstatement order was passed on 23.03.2016, where the non-working period was declared as *dies non*. In this context, the learned Standing Counsel relies upon Clause 3(c) of the Clarification to Rule 41 of the said Rules and would contend that, it is the competent authority's discretion to decide to pay the proportionate pay and allowances and to treat the period as duty period for any specific purpose and it is not the discretion to pay the full pay and allowances when the period is treated as non-duty. Based on this clarification only, by using the discretion the competent authority has imposed such condition, declaring the non-working period as *dies non* and denying the benefit of back wages to the petitioner for the non-working period of course by invoking the theory of 'No Work No Pay' which is justifiable and strictly in consonance with the Rule. Hence, the condition imposed in the impugned order does not require any interference from this Court, he contended.

13. He would also submit that even insofar as the High Court acquitting the petitioner by order dated 25.03.2015 is concerned, nothing was stated about the non-working period of the petitioner and unless there is a specific order from the Court of law, it cannot be mandated that the authority shall treat the non-



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working period for the purpose of back wages, as it is only the discretion of the competent authority to decide as to what shall be the amount to be paid for the non-working period or to decide otherwise. Therefore, for that reason also the learned Standing Counsel would submit that, the condition imposed in the impugned order is to be protected and hence he wants to sustain the order impugned.

14. I have heard the submissions made by the learned counsel for both sides and have perused the materials placed on record.

15. Insofar as the facts are concerned, the same are not in dispute because, disciplinary proceedings were initiated, which ended in punishment by order dated 22.03.1998, which the petitioner had already undergone.

16. Parallely for the same set of charges, criminal case was conducted, which ended in conviction by order dated 04.02.2004 which only triggered the respondents to dismiss the petitioner from service by order dated 27.04.2004. Thereafter, after long years the conviction was reversed by the appellate Court by order dated 25.03.2015 and only pursuant to which he was reinstated through the order dated 23.03.2016.



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17. In this context, two aspects have to be decided; first one is that, though the order of acquittal was made on 25.03.2015 why the respondent Port Trust had taken almost one year to pass the orders reinstating the petitioner and therefore for the one year period what shall be the benefits that can be extended to the petitioner monetarily also to be decided.

18. Second aspect is that, insofar as the period between 27.04.2004 and 25.03.2015 is concerned, in that period admittedly the petitioner was not in service as he was removed from service pursuant to the conviction and treating the said period as a non-working period, the authority decided to declare it as a *dies non* by thus denying all the monetary benefits.

19. In this context, if we peruse the relevant rule ie., Rule 41(4) of the Chennai Port Trust (Pay and Allowances etc.,) Regulations, 2001, the said Rule reads thus,

" **41(4)** *In cases other than those covered by sub-regulation (2), the employee shall subject to the provisions of sub-regulation (6) and (7) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed removed or compulsorily retired or suspended prior to such*



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*dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.”*

20. Sub-rule(1) of 41 speaks about the situation where the employee has been dismissed or compulsorily retired, reinstated as a result of appeal or review. Sub-rule (2) of Rule 41 states that where the authority competent to order reinstatement is of opinion that the employee who had been dismissed, removed or compulsorily retired has been fully exonerated, the employee shall be paid pay and allowances etc., Sub-rule (3) of Rule 41 states that, in a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

21. None of the situations is available for the petitioner herein. His case therefore would fall under sub-rule (4), which says that, in cases other than those covered by sub-rule(1) and (2), the employee shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired.



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22. Therefore, all other cases than sub-rule (1) and (2) would fall under sub-rule (4). In the present case the petitioner was dismissed from service pursuant to the conviction he earned and he was subsequently reinstated because of the acquittal he obtained from the appellate court. Therefore, this case necessarily would fall under sub-rule (4) and in that case, the petitioner or the persons like the petitioner who got reinstatement certainly would not be entitled for full back wages. But at the same time, such an incumbent like the petitioner on reinstatement is eligible to get the pay and allowances not being the whole and the same shall be decided and paid to such persons who fall under sub-rule (4) of Rule 41.

23. Insofar as the clarification which has been heavily relied upon by the learned Standing Counsel for the respondent Chennai Port Trust is concerned, the clarification (c) even though states that, the competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specific purpose means the discretion only relates to the proportionate pay and not to deny the entire back wages. Therefore the clarification should be read in consonance with the main Rule and the clarification cannot destroy the main Rule. Hence, the interpretation sought to be given by relying upon clarification (c) by the learned Standing Counsel for the Port Trust that based on this clarification it is the full discretion of the competent



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authority even to deny the benefit of back wages by declaring the period as *dies non* cannot be countenanced.

24. Therefore the competent authority, of course by using his discretion only should have decided the proportionate pay and allowances payable to the petitioner during the non-working period. Instead, the competent authority in the case in hand, has declared the entire non-working period as *dies non* by thus denying the entire back wages to the petitioner. Therefore, the said condition imposed which is the impugned order of the respondents dated 23.03.2016 since is not in consonance or in tune with the relevant Rule viz., 41(4) of the Rules, it is liable to be set aside.

25. That apart, the petitioner had already suffered with the punishment through the disciplinary proceedings by order dated 22.03.1998. Therefore, the present condition declaring the non-working period as *dies non* thereby denying the entire back wages to the petitioner certainly would amount to double jeopardy as claimed by the learned counsel for the petitioner.

26. The another reason cited by the respondents that the order of the appellate Court dated 25.03.2015 does not speak anything about the past period of the employee is concerned, such kind of expectation on the part of the



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respondents by citing the appellate Court order in the criminal case is no way helpful to the respondents to sustain the impugned condition in the order dated 23.03.2016. The reason being that, the order dated 25.03.2015 of the appellate Court is only with regard to the conviction made by the Trial Court as to whether the conviction is correct or not and that was decided on merits. Insofar as the service benefits of the petitioner is concerned, nothing could be made by the appellate Court in the order dated 25.03.2015. Therefore, that reason cited by the respondents also could not be sustained.

27. In the result, the following orders are passed in this writ petition.

- That the impugned condition of the order of the first respondent dated 23.03.2016 and the second respondent / appellate authority's order dated 22.05.2018 declaring the non-working period of the petitioner between 27.04.2004 and 23.03.2016 as *dies non*, are hereby set aside.
- As a sequel, the petitioner would be entitled to get proportionate pay and allowances for the period from 27.04.2004 till 24.03.2015 and in respect of such proportionate payment, even though the discretion has been vested with the authority concerned, in view of the decision already been taken by the



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respondent, which is reflected in the impugned order and the same has been confirmed by the appellate authority which are subject matters before this Court, after testifying the veracity of the condition imposed by both the authorities in their respective impugned orders, this Court wants to fix such quantum so that further or future quarrel in this regard between the parties can be avoided. Hence, the back wages for the non-working period as such from 27.04.2004 to 25.03.2015 shall be paid at 30% of the back wages.

- Insofar as the period from 25.03.2015 till 23.03.2016 is concerned, it is the delay caused on the part of the respondents in passing the order reinstating the petitioner into service despite the order of the appellate Court is concerned, and hence for the said period ie., between 25.03.2015 to 23.03.2016, the petitioner is entitled to get full back wages.
- As afore stated, the back wages shall be calculated and be paid to the petitioner. That apart, the petitioner would be entitled for continuity of service and other service benefits had he not been dismissed from service on 27.04.2004 and had been continuously working in the respondent Port Trust.
- The needful as indicated above with regard to the



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calculation and payment of the back wages and arrears shall be undertaken by the respondent Port Trust within a period of eight weeks from the date of receipt of a copy of this order.

28. With the above directions, this writ petition is disposed of. No costs.

**26.07.2022**

Index : Yes  
Internet : Yes  
KST  
To

- 1.The Chairman  
Chennai Port Trust  
Rajaji Salai, Chennai 600 001.
- 2.Chief Mechanical Engineer  
Chennai Port Trust, Rajaji Salai  
Chennai 600 001.



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**R. SURESH KUMAR, J.**

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