



W.P.(MD)No.77 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.77 of 2020
and
W.M.P.(MD).No.46 of 2020**

Hamsa Manoharan

... Petitioner

Vs.

1. The Executive Officer,
HPBP – BHEL,
Tiruchirapalli – 620 014.
2. The Assistant General Manager / HR – WR,
HPBP – BHEL,
Tiruchirapalli – 620 014.
3. The Manager (HR – NEE),
BHEL - Tiruchirapalli – 620 014.
4. The Deputy General Manager (HR – Estt),
BHEL - Tiruchirapalli – 620 014.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records issued by the third respondent in his communication No. TP:HR



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2092743, dated 29.04.2019 and quash the same and consequently direct the respondents to disburse all the amounts payable to the petitioner viz., notional promotion and fixation of the pay and increments, payment of arrears and other benefits etc., within the time stipulated by this Court.

For Petitioner : Mr.B.Jameel Arasu
For Respondents : Mr.A.V.Arun,
Senior Counsel

ORDER

This Writ Petition has been filed to call for the records of the third respondent, vide communication No.TP:HR 2092743, dated 29.04.2019, quash the same and consequently, direct the respondents to disburse all the amounts payable to the petitioner, viz., notional promotion, fixation of the pay, increments, payment of arrears and other benefits etc.

2. The case of the petitioner is that the petitioner was engaged as Key Punch Operator at BHEL, Trichy on 12.12.1974 and thereafter, she was transferred to Power Project Division BHEL-Madras on 23.08.1977. After subsequent promotions, she was promoted as EDP Operator Grade-I on 24.07.1987. On 04.02.1999, CBI issued a charge sheet to the petitioner for



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possession of disproportionate wealth and finally, on 23.03.2005, she was convicted by CBI Court, Chennai, to undergo three years rigorous imprisonment with fine of Rs.6,000/-. Challenging the conviction order, the petitioner filed an appeal before the Principal Seat of this Court in Crl.A. No.334 of 2005. The Principal Seat of this Court suspended the sentence and the petitioner was released on bail. Based on the above conviction order, BHEL initiated disciplinary proceedings against the petitioner for the misconduct of "conviction by Court in a criminal offence involving moral turpitude". The petitioner participated in the departmental enquiry and finally, the Disciplinary Authority issued penalty of "dismissal from service" on 22.06.2006. Based on the said order, the petitioner made a representation to BHEL seeking notional promotion, payment of arrears and all other monetary benefits from the date of termination till the date of her retirement. However, the same has not been considered. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that though the respondents denied the backwages and payment of arrears,



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the petitioner is entitled to other benefits in toto and accordingly, he prayed for appropriate orders.

4. The learned Senior Counsel appearing for the respondents would submit that the petitioner is not entitled for backwages, increment and notional promotion since a criminal case has been initiated against the petitioner and the same was ended in acquittal subsequent to her retirement. The issue that arises in the present Writ Petition is no longer *res integra* and the same was decided by the Hon'ble Apex Court in the case of ***Banshi Dhar vs. State of Rajasthan and another*** reported in (2007) 1 SCC 324 and the relevant portion of the judgment reads as under:

"9. No hard-and-fast rule can be laid down in regard to grant of backwages. Each case has to be determined on its own facts. A grave charge of criminal misconduct was alleged against him. He was also found guilty of the charges levelled against him by the Special Judge. The High Court while delivering its judgment dated 16-1-2001 in SB Criminal Appeal No.68 of 1985 inter alia held that the prosecution has not been able to prove that any demand had been made by him.



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10. It is now a trite law that judgment of acquittal itself would not have exonerated him of the charges levelled against him. He could have been proceeded against in a departmental proceeding. (See Manager, Reserve Bank of India v.s. Mani and Commr. of Police v. Narender Singh)"

5. The learned Senior Counsel further submitted that in any event, the acquittal of the petitioner does not have the effect of altering the last drawn pay as she is not entitled for any backwages or arrears by applying the principle of 'No Work No Pay'. Further, when a person has not actually worked, he / she will not be entitled for any pay or increment or promotion. The petitioner has already received all the terminal benefits from the respondent Company and she has already crossed the age of superannuation. Accordingly, he prayed for the dismissal of this Writ Petition.

6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. The facts in the present case are not in dispute. Admittedly, the petitioner joined as Key Punch Operator in the year 1974. On 04.02.1999,



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the petitioner was issued with a charge sheet by CBI for possession of disproportionate wealth. Thereafter, the petitioner preferred an appeal before the Principal Seat of this Court in CrI.A.No.334 of 2005 and the Principal Seat of this Court, by judgment, dated 02.07.2018, set aside the judgment of conviction and sentence passed by the learned Additional Special Judge for CBI Cases, Chennai, in C.C.No.42 of 1998 dated 23.03.2005. Subsequent to the conviction, the respondents initiated disciplinary proceedings against the petitioner and the same was ended against the petitioner imposing the penalty of dismissal from service on 22.06.2006.

8. The fact remains that as per the decision of the Hon'ble Apex Court (supra), the petitioner was not entitled for notional benefits, backwages and fixation of pay, but the petitioner is entitled for other admissible benefits and the same has not been considered by the respondents, but the third respondent has mechanically passed the impugned order. Hence, the impugned order passed by the third respondent in TP:HR 2092743, dated 29.04.2019 is set aside and the matter is remanded back to



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the third respondent for fresh consideration with regard to other admissible benefits except backwages, payment of arrears, increments, notional promotion and fixation of pay.

9. Accordingly, this Writ Petition is disposed of. No costs.
Consequently, connected Miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

vji

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