



W.P.(MD)No.21749 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2022

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21749 of 2017
and
W.M.P.(MD)No.18037 of 2017

M.Nidhayanantham

... Petitioner

Vs.

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai – 09.
2. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 04.
3. The Superintendent of Police,
Tanjore District,
Tanjore.
4. The Commandant,
TSP – 1 Battalion,
Trichy – 12.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.A.2/44901/2015, dated 24.12.2015 and further direct him to fix the petitioner's service period commencing from 09.06.1993 and to give promotion and other benefits for the same.

For Petitioner : Mr.K.Vinayagam

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil side)

ORDER

This writ petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order, dated 24.12.2015 and further direct the respondents to fix the petitioner's service period commencing from 09.06.1993 and to give promotion and other benefits.

2. The petitioner was serving as Police Constable Grade II from 09.06.1993. On 06.11.1995, when the petitioner was serving as



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Police Constable at Vellore, the petitioner was asked to go Trichy on Tapal duty. On 07.11.1995, the petitioner reached Trichy and handed over the Tapal. While the petitioner was proceeded to Vellore, the petitioner fell ill suddenly due to Jaundice and he was forced to go to his native place for treatment and he could not recover in time from the illness. The petitioner was not in a position to inform his Superiors in time regarding the absence of duty. The respondents, vide proceedings, dated 14.10.1995, declared the petitioner as a “deserter” because of his unauthorized absence and dismissed the petitioner from service. Challenging the same, the petitioner had preferred an appeal and the same was dismissed. Thereafter, the petitioner had filed a Mercy Petition and the same was dismissed. Thereafter, the petitioner had filed O.A.No. 2873 of 2003 which has been converted in W.P.No.16738 of 2007 and this Court, vide judgment, dated 16.08.2011, allowed the writ petition directed the respondents to reinstate with continuity of service but denied backwages. Thereafter, the respondent, vide order, dated 18.10.2011, allowed the petitioner to join duty with effect from 19.10.2011.



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3. The contention of the petitioner is that the petitioner's batchmate who joined service on 09.06.1993 were awarded promotion and the petitioner preferred a petition to the fourth respondent on 21.05.2012, requesting to fix the service from 09.06.1993 and grant promotion, but the same was rejected on 10.09.2012 by citing that the service could be fixed from 19.10.2011 and not from 09.06.1993. In the meanwhile, the petitioner was transferred to Armed Reserve, Tanjore. The petitioner's batchmates who were promoted are in the rank of Special Sub Inspectors. Aggrieved over the order of rejection, the petitioner has preferred this writ petition.

4. The learned Counsel appearing for the respondent submitted that since the petitioner was admitted in service from 2011 onwards, the petitioner has not completed 10 years of service to consider him for promotion. On perusal of the service records, it is seen that the petitioner had completed only six years of service. Hence, the petitioner is not entitled for promotion and prayed to dismiss the writ petition.



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5. Heard Mr.K.Vinayagam, learned Counsel appearing for the petitioner, Mr.P.Thambudurai, learned Government Advocate appearing for the respondents and perused the records.

6. It is an admitted fact that the petitioner was deserted and he was awarded with a punishment which was challenged before this Court in W.P.(MD)No.16738 of 2007. The Learned Single Judge had considered relied on the judgment rendered by the Hon'ble Division Bench in W.A.No.58 of 2011 in the case of R. Ramesh Vs The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and Another, wherein it is held as under:

“3. After hearing the learned Senior Counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court. We therefore, allow this writ appeal, set aside the impugned judgment passed by the learned Single Judge and remit back the matter to the disciplinary authority, viz. The second respondent herein, to reconsider the matter with regard to the quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant is reduced, he shall not make any claim with



regard to the wages for the period he has not his performed his duty, but the continuity in service will not be affected.”

In a similar case, the order was passed as stated above. Therefore, the Learned Single Judge had passed an order dated 16.08.2011, directing the respondents to pass orders in the light of order dated 27.01.2011 passed in W.A.No.58 of 2011. Based on the direction of the Learned Single Judge the respondents have passed an order, dated 18.10.2011, wherein it has been stated as under:

Taken back for duty – Orders Issued

“In accordance with orders issued by the Hon'ble High Court of Madras in W.P.No.16738 of 2007, dated 16.08.2011 in which was filed by the Ex.PC 2037 N.Nithyanantham of TSP 1 Bn., Trichy and based on this in accordance with orders issued in Proceedings Rc.No.A2 Appeal/24/2011, dated 10.10.2011 of Inspector General of Police, Armed Police, Chennai – 10 i/e AP, Trichy ordered to “The punishment of removal from service is modified in to two stages reduction in pay for two years with cumulative effect and he is taken back to duty.”

2) The period of absence from the date of removal from service till the date of rejoining of duty by the delinquent is treated as “Out of employment period” based on “no work and no pay policy”. Without



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doing duty he is not entitled to claim any salary (or) service benefits for further promotion.

3) The Ex.PC 2037 N.Nithyanantham is directed to report before the Commandant, TSP I Bn., Tichy at once for duty.”

7. The respondents after terminating the petitioner from service has reduced the punishment and has modified as reduction in pay for two stages for two years with cumulative effect and granted continuity of service. The respondents have not granted monetary benefits based on “No Work No Pay” principle. Since the respondent have granted continuity of service, the said period should be taken for granting promotion as well. The issue of granting continuity of service without monetary benefits was considered by Hon’ble Division Bench vide order dated 03.02.2022 in W.A.No.2302 of 2021 in the case of the Management of TNSTC Vs the Special Deputy Commissioner of Labour and others, wherein, it has been held as under:

“8. On conjoint consideration of the above leads to the conclusion that, on the face of the approval petition of the appellant /Management qua the termination of service of the respondent /workman having been rejected by the competent authority by a speaking order and further the



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said order having been confirmed by this Court in writ petition and this writ appeal, the next question is, what would be the consequence thereof. Since learned Single Judge attempted to balance the equities between the parties and for that purpose concession was given on behalf of the workman that he forgoes the actual payment of arrears towards back wages for the said period, we find that, the said concession cannot be stretched to the extent that the said period is to be counted as non-pensionable service. The Management cannot be heard contending that, in absence of any actual payment of arrears, there will not be any payment to Pension Trust Fund and that is how that period has to be excluded as non-pensionable service. We are of the view that the concession on behalf of the workman cannot be understood to that extent. As noted in order dated 01 December 2021, at one stage, we had also thought of relieving the workman from that concession, however it would result in additional liability on the public exchequer, therefore we have thought it proper not to do so. This is because, even if it would not have been on the basis of concession, but on the basis of adjudication by the competent court, it cannot be said that the period during which the workman was not in actual employment will automatically be excluded from consideration as non-pensionable service. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting / not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where backwages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had



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remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10(e) as quoted above, permitting the Management or the Pension Trust to exclude the said period as non-pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman cannot be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties cannot be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman.”

Whenever, an employee was not granted monetary benefits for the period of absence that is considered as continuity of service, the continuity of service will include all benefits and the period should be taken for promotion as well. If that is not granted, then it will amount to illegality fasten on the employee.



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8. Therefore, this Court is of the considered opinion that the petitioner is entitled to such relief. The respondents are directed to grant promotion by taking into service from the year 09.06.1993 and grant periodical promotions. However, it is made clear that the petitioner is not entitled to monetary benefits for the promoted post from the year 1993. However, the monetary benefits shall be granted from the date of filing of the writ petition that is 23.11.2017.

9. With the above said direction, this Writ Petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2022

Index : Yes / No
Internet : Yes / No
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S.SRIMATHY, J

jbr

Order made in
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