



W.P.No.11728 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 10.01.2023

Orders delivered on 24 .03.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.11728 of 2015

P.Surya Rao

..Petitioner

Vs

1. Oil and Natural Gas Corporation Ltd.,
rep. By its Chairman cum Managing Director,
Jeevan Bharathi, Tower II,
124, Indira chowk,
New Delhi – 110 001.

2. The Oil and Natural Gas Corporation Ltd.,
rep. By its Director (Human Resource),
Jeevan Bharti Tower – 2,
124, Indira Chowk,
New Delhi 110 001.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue
a Writ of Certiorarified Mandamus to call for the records on the file of the
2nd respondent pertaining to the office order dated 23.02.2015 and quash the



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same insofar as it deprives the petitioner of full pay and allowance under Regulation 14(b)(iii)(b) and (d) of ONGC Pay & Allowances Regulations 1972 and other attendant benefits and consequently direct the respondents to pay the petitioner a sum of Rs.19,85,500/- (Rupees Nineteen lakhs eighty five thousand and five hundred only) towards full and allowances for the period under suspension i.e., 01.12.1990 to 29.10.1991 full pay and allowances as Superintending Engineer at E4 level with effect from 13.08.1999, including the promotion as Chief Engineer with effect from 01.01.1997 with all attendant benefits along with due seniority over his juniors among other reliefs as per his representation dated 15.12.2014.

For Petitioner : Mr.J.Ravikumar
For Respondents : Mr.M.Vijayan
for M/s. King & Padridge

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 23.02.2015 as it deprives the petitioner of full pay and allowance under Regulation 14(b)(iii)(b) and (d) of ONGC Pay & Allowances Regulations 1972 and other attendant benefits and



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consequently, direct the respondents to pay the petitioner a sum of Rs.19,85,500/- (Rupees Nineteen lakhs eighty five thousand and five hundred only) towards full pay and allowances for the period under suspension i.e., 01.12.1990 to 29.10.1991, full pay and allowances as Superintending Engineer at E4 level with effect from 13.08.1999, including the promotion as Chief Engineer with effect from 01.01.1997 with all attendant benefits along with due seniority over his juniors among other reliefs as per his representation dated 15.12.2014.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner was appointed as Assistant Executive Engineer (Civil) on 23.08.1980 with the respondent. He was promoted as Executive Engineer in 1985 and as Deputy Superintending Engineer in the year 1990. The petitioner has been conferred with rewards and citation for excellent service. On the basis of false complaint, the petitioner was prosecuted for alleged disproportionate asset based on sanction for prosecution by the Respondent. The petitioner was suspended without framing charges on



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01.12.1990, but he was directed to sign the attendance register and to attend work. The petitioner was convicted by Special Court on 01.12.1996 and on 30.07.1999, the petitioner was dismissed from service in view of the conviction. On 07.11.2001, the High of Andhra Pradesh acquitted the petitioner by holding that the prosecution failed to establish the guilt and further held that the petitioner have discharged the burden satisfactorily regarding accounting for possession of disproportionate assets. Thus, the petitioner was honourably acquitted by the High Court.

ii) The respondents reinstated the petitioner by imposing onerous conditions which was challenged in W.P.No.36399 of 2002. This Court vide order dated 04.09.2002 allowed the writ petition and reinstated the petitioner with full benefits with arrears of salary and all consequential benefits as per regulations 14(b)(iii)(b) & (d) of ONGC pay & allowances Regulations, 1972.

iii) The respondents challenged the said order in W.A.No.3056 of 2004 and the Hon'ble Division Bench gave a categorical finding that the regulation specifically states that the competent authority should first



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consider and make a specific order regarding reinstatement. Regulation 14(b)(iii)(b) states that while passing specific order, the competent authority should form his opinion with regard to the factual nature of the case i.e., the Respondent (petitioner herein) being exonerated in the case and decide the plea of full pay, allowances etc. Therefore, the specific order under 14(b)(iii)(b) should be based on opinion on consideration of relevant material. The Writ Appeal was allowed in part on 02.03.2009 with a direction to the 2nd respondent herein to pass orders in terms of regulation 14 and rules as may apply, keeping in mind the principles laid in the Apex Court decision in Hindustan Tin Works case reported in AIR 1979 SC 75 and Kapoor Vs. State of Tamil Nadu reported in 2001(7) SCC 231 and also the decision of the Hon'ble High Court acquitting the petitioner herein honourably with reasons that will form the basis of the opinion and the order.

iv) The respondents herein passed a cryptic order dated 29.06.2009 without following the direction of the Hon'ble Division Bench and granted only 50% basic and DA instead of full pay and excluded all other



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allowances. The respondent granted deemed promotion to the post of Superintending Engineer for the purpose of pension w.e.f.10.01.1995 instead of 01.01.1994 on par with his juniors. The petitioner filed W.P.No.8401 of 2011 against the deprivation of full pay and other consequential benefits as in violation of the direction of the Hon'ble Division Bench in W.A.No.3056 of 2004 and the said writ petition was allowed directing the respondents to pass orders as per the direction in the order passed in W.A.No.3056 of 2004 dated 02.03.2009.

v) To the shock and surprise, the 2nd respondent passed the impugned order rendering a perverse finding that in his considered opinion the acquittal by the High Court was not an honourable acquittal and that the disproportionate assets have been proved beyond reasonable doubt which is directly in contravention of the findings of the Andhra Pradesh High Court and specific direction of the Hon'ble Division Bench of Madras High Court to treat the petitioner herein as honourably acquitted. Based on such perverse findings, the 2nd respondent granted 70% of pay and applicable allowances and erroneously rejected the remaining 30% of full pay and



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allowances and also to the notional promotion to the post of Chief Engineer with effect from 10.01.1998. Hence, the present writ petition has been filed seeking full pay with all applicable allowances and consequential benefits such as notional promotion etc.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that the impugned order passed by the 2nd respondent is contrary to the findings of the Hon'ble Division Bench in judgment dated 25.06.2009 in W.A.No.3056 of 2004. In the said Judgment, it was authoritatively held that the 2nd respondent shall decide the case of the petitioner herein by keeping in mind the fact that the petitioner herein has been honourably acquitted in the criminal case. The 2nd respondent failed to follow the direction of the Hon'ble Division Bench judgment dated 25.06.2009.

ii) Learned counsel would further submit that the findings of the 2nd



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respondent that the petitioner was not fully exonerated is factually incorrect and also contrary to the judgment made in CrI.A.No.552 of 1996 dated 07.11.2001 . The finding of the 2nd respondent that the case of the petitioner has already been considered in compliance of the High Court order dated 02.03.2009 in W.A.No.3056 of 2004 clearly establishes the pre-determined notion of the 2nd respondent about the whole issue and proves that the respondents have failed to comply with the direction passed in W.P.No.8401 of 2014 dated 07.11.20014 to pass fresh and appropriate orders. He would further submit that the 2nd respondent cannot sit in appeal over the judgment of Andhra Pradesh High Court in CrI.A.No.552 of 1996 dated 07.11.2001 and therefore, the finding of the 2nd respondent that the Andhra Pradesh High Court has ignored the disproportionate assets was clearly erroneous.

iii) Learned counsel would further submit that the suspension and dismissal of the petitioner by the respondents was due to conviction in the criminal case. The Andhra Pradesh High Court in Appeal had acquitted the petitioner honourably and the Hon'ble Division Bench has also held in W.A.No.3056 of 2004 that the stigma attached on the petitioner stood



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completely wiped out and therefore, the petitioner is entitled for full pay and allowances as if there was no criminal case against him. The respondents are bound to pay all the benefits to the petitioner as per Regulations 14(b)(iii)(b) and (d) of ONGS Pay and Allowances Regulations, 1972.

iv) Learned counsel would further submit that the 2nd respondent erred in reopening the issue of acquittal of the petitioner in the criminal case and arrived at a wrong conclusion that the petitioner was not honourably acquitted in criminal case and the said erroneous finding formed basis of the impugned order. Hence, he would pray to set aside the impugned order.

v) Learned counsel for the petitioner would further submit that the petitioner is now aged 75 years and despite three rounds of litigation, the respondents have not obeyed the directions given by the Hon'ble Division Bench dated 02.03.2009 in W.A.No.3056 of 2004 to treat the petitioner as honourably acquitted so as to pay full arrears and consequential benefits as though he was on duty.

vi) In support of the above contentions, the learned counsel for the petitioner relied on the following decisions.



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a) V.Pitchai vs. Government of Tamil Nadu (W.A.(MD).No.355 of 2009 dated 09.09.2009)

b) Superintendent of Police vs. C.Govindan (W.A.No.1026 of 2016)

c) M.R.Kuppukrishnan vs. State of Tamilnadu (W.P.No.6038 of 2017 dated 30.03.2021)

d) Union of India vs. Bharat Forge Ltd., reported in Manu/SC/1002/2022= AIR 2022 SC 3821

e) Government of Tamil Nadu vs. S.Palayam reported in MANU/TN/0424/1994

5. i) Per contra, the learned counsel appearing for the respondents ONGC would submit that the criminal prosecution against the petitioner was initiated by CBI on its own and not to the behest of ONGC. The charges framed against the petitioner do not relate to his employment in ONGC nor was ONGC part at any stage of investigation/inquiry except ONGC being a Public Sector Undertaking was approached for grant of sanction by the authorities for prosecution of the petitioner in accordance with law. The



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allegation that ONGC gave sanction for prosecution without application of mind casually and mechanically and that on the basis of the said sanction CBI prosecuted the petitioner is completely false and improper. The petitioner was allowed to do work during the suspension period is false. Merely because ONGC ensured that the petitioner was available during the suspension period, it cannot be presumed that the petitioner was working during the suspension period.

ii) Learned counsel would further submit that the petitioner was suspended by the Competent Disciplinary Authority of ONGC vide office order dated 16.11.1990 and it was clearly mentioned in the order that the petitioner shall be entitled to payment of subsistence allowance as per ONGC Pay and Allowance Regulations, 1972 and during the relevant period the petitioner was paid subsistence allowance as per the said Regulation. The suspension period from 01.12.1990 to 29.10.1991 was treated as non-duty period by the competent authority of ONGC. The petitioner is not entitled to get any other amount except the subsistence allowance which has already been paid to the petitioner as per ONGC Rules.



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iii) Learned counsel would further submit that as soon as the petitioner was convicted by a competent court, ONGC has no other alternative except to dismiss him from service under Rule 34 of ONGC CDA Rules, 1994. As soon as he was acquitted by the Andhra Pradesh High Court as per law, consequently, the petitioner was reinstated in service by the competent authority vide office order dated 02.12.2002 with a condition that he will not be entitled to get benefits of past service. Since the prosecution was not at the behest of ONGC, the petitioner is not entitled to any benefits from the date of conviction to the date of reinstatement.

iv) Learned counsel would further submit that a perusal of the order passed by the Andhra Pradesh high Court would reveal that the High Court, after giving the benefit of margin of 10% in favour of the petitioner had considered the unexplained part of the disproportionate asset that still emerged as meager and marginal and set aside the order passed by the lower Court, convicting the petitioner. In the present case, the petitioner was not able to prove 10% of the disproportionate asset and therefore, it cannot be considered that the petitioner was honourably acquitted or that the



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suspension is wholly unjustified. He would further submit that there is no specific order for payment of full pay and allowance to the petitioner. In compliance of the order passed by this Court, ONGC passed the office order dated 29.06.2009 and no condition was imposed except the submission of sworn in affidavit by the petitioner that he was not employed elsewhere during the period as per the provisions under ONGC Pay and Allowance Regulations, 1972. ONGC has passed order in obedience to the order passed in the writ appeal and paid the amount due and payable. No other amount is due and payable to the petitioner. The petitioner was paid 50% of the basic pay plus dearness allowance. The payment of other allowance are payable subject to actual performance of the duty and in the instant case, the petitioner did not attend and performed the duty and therefore, allowances are not admissible to him, as per rules. The petitioner was suspended from 01.12.1990 to 29.01.1991 and this period was treated as non-duty by the decision of competent authority. As the suspension period was more than six months, the consideration period for the next promotion was shifted by one year as per the rules of ONGC and he was



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promoted to the post of Superintending Engineer (Civil) with effect from 01.01.1995 instead of 1.1.1994. Even after superannuation from service of ONGC, the arrears to that effect was paid accordingly to him. The petitioner is not entitled to any other relief including promotion and other relief as claimed in the writ petition. Hence, he would pray to dismiss the writ petition.

6. This Court considered the rival submissions made and perused the materials available on record.

7. While the petitioner was working as Deputy Superintending Engineer (Civil), a criminal case was registered against him by the Central Bureau of Investigation that he has acquired disproportionate wealth and after trial, the petitioner was convicted. Thereafter, High Court of Andhra Pradesh had set aside the conviction. During the pendency of the proceedings, the petitioner was suspended and thereafter, dismissed from service. The petitioner was paid 50% of salary during the suspension period



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and for certain period thereafter. After acquittal, the petitioner was reinstated into service and he filed a writ petition in W.P.No.36399/2002 claiming full salary, allowances and all other attendant benefits including promotion. The said writ petition was allowed and challenging the same, writ appeal in W.A.No.3056 of 2004 was filed by the ONGC/Employer, and the Division Bench of this Court allowed the writ appeal in part, directing the respondents herein to pass orders in terms of Regulation 14 of the Pay and Allowances Regulations, 1972 and also keeping in mind the decision of the Apex Court in Hindustan Tin Works vs. Its Employees reported in AIR 1797 SC 75 and Kapoor Vs. State of Tamilnadu reported in 2001(7) SCC 231 and also the decision of the Andhra Pradesh High Court acquitting the respondent honourably. The respondents passed the order, rejecting the request of the petitioner. Aggrieved over the same, the petitioner also filed W.P.No.8401 of 2011 and this Court, allowed the writ petition by set aside the impugned order and directed the respondents to pass fresh and appropriate order by applying Regulation 14(b) of ONGC Pay and Allowances, 1995 and in the light of the order passed in



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W.A.No.3056 of 2004. The 2nd respondent has passed the impugned order dated 23.02.2015, holding that the petitioner's acquittal was not honourable and ordered payment of 70% of pay and applicable allowance for the dismissal period. Challenging the same, the petitioner has filed the present writ petition stating that he is entitled to full benefits of all pay and allowances including promotion and seniority.

8. In the instant case, the petitioner was dismissed from service on 30.07.1999. The prosecution was initiated by the CBI and the petitioner was not dismissed on account of departmental enquiry. On 07.11.2001, the criminal appeal filed by the petitioner against the conviction made by the Special Judge in C.C.No.4 of 1994 came to be allowed by the High Court of Andhra Pradesh in Crl.Appeal No.552 of 1996. The Andhra Pradesh High Court has clearly held that "the appellant has discharged the burden satisfactorily regarding account of his possession of disproportionate assets". The fine amount paid by the petitioner was also directed to be refunded. If the appeal of the accused succeeds, the conviction is wiped out



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as if it had never existed and the sentence is set aside. The stigma of the offence is altogether erased. In the present case, the Hon'ble Division Bench directed the respondents to pass orders in terms of Regulation 14 of Pay and Allowance Regulations, 1972 keeping in mind the principles laid by the Hon'ble Apex Court in Hindustan Tin Works Case reported in AIR 1979 SC 75 and Kapoor case reported in 2001(7) SCC 231 and also the decision of the High Court of Andhra Pradesh acquitting the petitioner honourably. Therefore, it was affirmed that the petitioner was acquitted honourably.

9. The only basis of the impugned order is that the 2nd respondent had found that the petitioner was not honourably acquitted. It is to be noted that the suspension and dismissal of the petitioner by the respondents was purely on account of his conviction in the criminal case. However, the Andhra Pradesh High Court in Appeal had set aside the conviction order of the Special Judge holding that the appellant has discharged the burden satisfactorily regarding account of his possession of disproportionate assets. Therefore, as held by the Hon'ble Division Bench of this Court in



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W.A.No.3056 of 2004, the stigma attached on him stood completely wiped out and therefore, the petitioner should be put back in the same position as though there was no criminal case against him. There is no discretion left with the employer to harp upon the same issue which has already been decided by the Andhra Pradesh High Court and confirmed by the Division Bench of this Court. As per the mandate of Regulation 14(b)(iii)(b) of ONGC Pay & Allowance Regulations, if in the opinion of the employer, an employee gets fully exonerated, he shall be given full pay and allowances as though he has not been dismissed. In the present case, there is no room for the respondents to form a different opinion about his acquittal in criminal case and the 2nd respondent cannot also sit in appeal over the judgment of the Andhra Pradesh High Court, reopening the issue of acquittal of the petitioner in the criminal case. Therefore, this Court is of the opinion that the respondents are bound to pay all the benefits to the petitioner as per Regulations 14(b)(iii)(b) and (d) of ONGC Pay & Allowances Regulations, 1972.



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10. For the foregoing reasons and discussions, the impugned order is unsustainable in law and therefore, the impugned order dated 23.02.2015 is set aside insofar as it deprives the petitioner of full pay and allowances under Regulation 14(b)(iii)(b) and (d) of ONGC Pay & Allowances Regulations, 1972. The Writ Petition is allowed. No costs.

24.03.2023

Index :Yes/No
Speaking/Non-speaking order
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Pre-delivery order in
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