



W.P.No.8108 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	11.04.2023
PRONOUNCED ON :	01.06.2023

CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.8108 of 2015

P.Daniel

... Petitioner

Vs.

The Municipal
Corporation of Coimbatore,
Rep. By its Commissioner,
Office of the Municipal Corporation
of Coimbatore, Coimbatore 641 001

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 27.12.2011 passed by the respondent in Na.Ka.No.4213/2006/K14, quash the same in so far as giving the petitioner reinstatement and pay and allowances only with effect from the date of reinstatement and consequently direct the respondent to regularise the petitioner service with effect from 06.04.2006, the date of suspension to the date of the petitioner reinstatement on 06.06.2011 as duty with pay and all other consequential benefits and also to regularise the petitioner service as Secondary Grade Teacher with effect from 01.06.2006 as given to the other



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similarly placed teachers who joined along with him in December 2005 with the same Pay Band, Grade Pay, Special Pay, Pay and Allowances together with arrears and other consequential benefits together with interest at the rate of 12% per annum till the amounts are actually paid to the petitioner.

For Petitioner : Mr.V.Ajay Khose

For Respondent : Mr.K.Magesh

ORDER

Seeking to quash the order dated 27.12.2011 passed by the respondent in so far as reinstatement and fixation of PB-1 from the said date i.e. 06.06.2011 is concerned and for a consequential direction to the respondent to regularise the petitioner's service with effect from 06.04.2006 and to consider from the date of suspension to the date of the petitioner's reinstatement on 06.06.2011 as 'duty with pay' and also to regularise the petitioner's service as Secondary Grade Teacher with effect from 01.06.2006, the petitioner has filed the present writ petition.

2. Due to the matrimonial dispute that arose between the petitioner and his wife, the petitioner's wife lodged a complaint against the petitioner before the All Women Police Station and also before the Social Welfare Department



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under the Domestic Violence Act. The petitioner and his mother were summoned to attend the enquiry on 24.03.2006 by the department officials.

After attending the enquiry, the petitioner and his aged mother were arrested and remanded to judicial custody. As a result of the same, the respondent placed the petitioner under suspension by an order dated 06.04.2006 and the petitioner was also not paid any subsistence allowance from 06.04.2006 to 15.06.2010.

3. Further it is seen that the petitioner's wife had given a complaint under the Domestic Violence Act in M.T.C.No.273 of 2007 and the same came to be dismissed vide order and judgment dated 20.07.2007. The appeal filed by the petitioner's wife in C.A.No.177 of 2008 also came to be dismissed. Further she had filed a case for maintenance in M.C.No.89 of 2006, which also came to be dismissed. Meanwhile, the petitioner had filed for divorce in O.P.No.230 of 2006 and the same came to be allowed in favour of the petitioner.

4. When the criminal case filed by the petitioner's wife was taken for trial in C.C.No.590 of 2006, the learned Judicial Magistrate vide judgment dated 18.06.2008 acquitted the petitioner's mother and sentenced one year rigorous



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imprisonment and a fine of Rs.2000/- to the petitioner. Based on the above order of conviction, the respondent has removed the petitioner from service on 15.06.2010. The petitioner had filed an appeal against the above order in C.A.No.187 of 2008, wherein the Appellate Court set aside the judgment of the trial Court and remitted back the matter for fresh trial and judgment and also permitted the petitioner to adduce additional evidence both oral and documentary after the remand before the trial Court.

5. The trial Court held that the charges levelled against the petitioner were not proved and therefore acquitted him. Since the suspension was not revoked, the petitioner made a representation dated 18.10.2010 to the respondent requesting for reinstatement. Thereafter, the petitioner filed a writ petition in W.P.No.30069 of 2010 for considering his above representation. This Court vide order dated 29.12.2010 directed the respondent to consider the petitioner's representation.

6. The respondent has complied with the orders of this Court by setting aside the order of removal from service and reinstated the petitioner by an order dated 02.06.2011 and the petitioner had also joined duty on 06.06.2011.



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However, the respondent fixed the pay of the petitioner in Pay Band-1 Rs.5200-20200 and a Grade Pay of Rs.2800 along with a special pay of Rs.750, with effect from 06.06.2011. The grievance of the petitioner is that, when the respondent himself has set aside the order of removal from service, the respondent ought to have given the entire benefits treating the period from 06.04.2006 to 05.06.2011 as duty with pay and all other consequential benefits.

7. Moreover, according to the learned counsel for the petitioner, when the petitioner was under suspension, the persons who were appointed as Junior Secondary Grade Teachers along with the petitioner, on a consolidated pay of Rs.3,000/-, were regularized with effect from 01.06.2006, with a pre-revised scale of pay of Rs.4500-125-7000. However, the said scale of pay was revised after the Sixth Tamil Nadu Pay Commission recommendations as Rs.5200-20200 with a Grade Pay of Rs.2800. Further, based on the One Man Commission recommendations they were given a special pay of Rs.750/- per month from 2010. In this connection, the petitioner made a representation, dated 27.11.2013 to the respondent to regularize his services also from 01.06.2006 as done in the case of other Junior Secondary Grade Teachers, who



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joined along with the petitioner in December 2005, taking into consideration of the acquittal of the petitioner in the criminal case. However, the respondent has not considered the same.

8. The main grievance of the petitioner is that the impugned order dated 27.12.2011 giving the petitioner the Pay Band of Rs.5200-20200 with a Grade Pay of Rs.2800/- and a Special Pay of Rs.750/- per month, by considering the petitioner as a fresh entrant who joined duty only on 06.06.2011 is liable to be quashed. Therefore, the petitioner has preferred the present writ petition.

9. On the other hand, the learned counsel for the respondent would submit that the petitioner was appointed on consolidated pay of Rs.3.000/- per month on 09.12.2005 on temporary basis. He stated that the petitioner's appointment order on consolidated pay basis, itself clearly mentions that the petitioner is not entitled for any benefits on par with regular employees. Subsequently, due to dowry harassment, a criminal case was registered against the petitioner for which he was arrested on 24.03.2006 and detained for more than 48 hours in judicial custody. Hence, the respondent suspended the petitioner on 06.04.2006. Subsequently, he was removed from service on



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15.06.2010. Since the appointment of the petitioner was on the contractual and consolidated pay basis, no separate disciplinary action was initiated against the petitioner by the respondent Corporation.

10. Abiding by the orders of this Court dated 29.12.2010, the representation of the petitioner was sent to the Appointment and Appeals Committee of Coimbatore Corporation for consideration. The said Committee considered the request of the petitioner by their Resolution No.96 dated 01.06.2011 and the same was forwarded to the respondent Corporation for giving appointment to the petitioner.

11. Thereafter, the respondent had appointed the petitioner on 02.06.2011 by canceling the earlier order of removal from service dated 15.06.2010. Thereafter, the petitioner was appointed on regular pay scale from 06.06.2011 from the date of his joining and pay was fixed on regular pay scale by impugned order dated 27.12.2011. Thereafter, his service was regularized on 05.06.2013 after completion of 2 years probationary period as Secondary Grade Teacher by order dated 02.09.2013.



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12. According to the learned counsel for the respondent Corporation, the petitioner's request to regularize his service from the date of his contractual appointment i.e. 09.12.2005 on the ground that the persons appointed on consolidated pay brought to regular scale of pay by G.O. Ms. No.99, School Education (Budget.II) Department, dated 27.06.2006 , cannot be accepted.

13. It is further submitted that the above said GO. is not applicable to the case of the petitioner since the petitioner was suspended from service even before the issuance of G.O. on 06.04.2006 and subsequently, the petitioner was removed from contractual and consolidated pay basis service on 05.06.2010 based on the conviction. Hence, his present appointment commences only from 06.06.2011 and accordingly, his service was also regularized only on 05.06.2013.

14. The learned counsel vehemently argued that during the above said period, the petitioner did not question the appointment order and did not seek his pay scale from the date of his original appointment on contractual and consolidated pay basis, as per the above said G.O. After a lapse of nearly 4 years from the date of his appointment, the petitioner has now challenged the



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pay scale and the same is unsustainable. Therefore, the writ petition is liable to be dismissed.

15. It is further submitted that the original appointment of the petitioner was on contractual and on consolidated pay basis. Therefore, the same cannot be considered as a regular service period subsequent to the acquittal of the criminal case. According to the learned counsel, the petitioner has been appointed on regular pay scale only on 01.06.2011 and therefore, the petitioner is entitled to regular pay scale and other benefits only from 01.06.2011. It is further submitted that the above G.O. is not applicable to the case of the petitioner on the ground that he was not in regular service on 01.06.2006 and the temporary service period cannot be regularized from 01.06.2006. Claiming any fixation based on the above said G.O. is liable to be dismissed.

16. Heard the learned counsel for the petitioner as well as for the respondent and perused the materials placed before this Court.

17. Admittedly, the petitioner was suspended from service by order dated 06.04.2006. He was not paid any subsistence allowance. The complaint



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is regarding Domestic Violence given by his wife. With regard to criminal complaint and the conviction of the petitioner thereafter was taken on appeal and the appellate court acquitted the petitioner honourably. It was held by the appellate court that petitioner's wife given complaints to give unnecessary troubles and harassment to the petitioner. It is also transpired that Divorce O.P.No.230 of 2006 filed by the petitioner was ended in his favour.

18. The admitted fact is that the order of acquittal in the criminal charge has reached a finality and the petitioner was acquitted honourably. If at all there was no complaint against the petitioner on the date of regularization with effect from 01.06.2006, the petitioner would have got regularized as per the Sixth Tamil Nadu Pay Commission recommendations. The petitioner after getting honourable acquittal from the appellate court, approached the respondent for regularization of his services. Even though the petitioner has been reinstated into service, the automatic benefits like regularization with Pay commission recommendation benefits has not been effected.

19. The service rules provides that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court,



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he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. No doubt, the petitioner was at no fault on his side and so it is arbitrary on the part of the respondent Corporation to deny the same benefit which was extended to the teachers who joined along with the petitioner. The petitioner for no fault of him, was put to prejudice and great monetary loss as the respondent reinstated the petitioner and he has been given the benefits of Pay commission only with effect from 06.06.2011.

20. The Departmental action of suspension proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced by law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the Departmental action in imposing the penalty for the same incident, is completely without any justification. Therefore, this Court is of the considered view that the petitioner has to succeed on this ground alone.

21. For the foregoing reasonings, this writ petition is allowed. The



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impugned order dated 27.12.2011 is set aside. The respondent is directed to regularise the service of the petitioner with effect from 06.04.2006 till 06.06.2011 viz., the date of reinstatement and pay all consequential benefits and regularise the service of the petitioner as Secondary Grade Teacher with effect from 01.06.2006 as given to other similarly placed teachers, with Pay and allowances available to him. No costs.

01.06.2023

Index:Yes/No
Speaking/Non-speaking order

sts/nvsri

To:

The Commissioner,
Municipal Corporation of Coimbatore,
Office of the Municipal Corporation
of Coimbatore,
Coimbatore 641 001

J.NISHA BANU, J.,



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sts/nvsri

Order made in
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Dated:
01.06.2023