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W.P.No.27806 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.27806 of 2016

A.Ramaswamy

... Petitioner

Vs.

Superintendent of Central Prison,
Cuddalore, Cuddalore District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Order No.1968/௫௭.1/2015 dated 26.03.2015 issued by the respondent, quash the same and direct the respondent to disburse the terminal benefits, gratuity and all other monitory benefits including back wages from 02.09.1993 to 31.05.2003 to the petitioner within time stipulated by this Court.

For Petitioner : Mr.K.M.Ramesh
Senior Counsel
for Mr.D.Gopinathan

For Respondent : Mr.M.Shahjahan
Special Government Pleader



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ORDER

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The petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the impugned order dated 26.03.2015 and consequently, to direct the respondent to disburse all terminal benefits to the petitioner within a stipulated time.

2. The petitioner was employed as Secondary Grade Warden at Cuddalore Central Prison and thereafter, he was promoted as First Grade Warden on 02.09.1993. Two charges were framed against him one under Section 20(b)(1) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 for carrying contraband article "Ganja" and the other being under Section 4(1)(j) of the Tamil Nadu Prohibition Act, 1937 for consuming liquor.

3. The superintendent of Central Prison, Cuddalore lodged a complaint, based on which a criminal case was initiated before the Special Designated Judge (NDPS), Tanjore in C.C.No.17 of 1995. The said case was partly allowed on 17.05.1995 awarding one year rigorous imprisonment and imposing fine of Rs.1,000/- on the petitioner in respect of the charge under the NDPS Act and in respect of the second charge under the TNP Act, the trial Court acquitted the petitioner. Based on the said conviction, the petitioner was dismissed from



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service on 27.07.1995.

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4. The petitioner preferred Crl.A.No.558 of 1995 and the same was allowed on 06.06.2001 thereby acquitting the petitioner. Post acquittal, the petitioner made a representation to the Inspector General of Prisons on 21.09.2001, to which, the said Inspector General of Prison, Chennai, passed an order on 01.04.2002, directing reinstatement of the petitioner into service and the petitioner was posted in the existing vacancy at Central Prison, Cuddalore. The petitioner was reinstated only on 19.04.2002 and according to the petitioner, such reinstatement was unconditional and therefore, the petitioner's contention is that he is entitled to get all the benefits from the date of suspension namely 02.09.1993 till 18.04.2002, the period prior to being reinstated into service.

5. In the Departmental proceedings initiated against the petitioner in respect of the very same set of charges, the respondent has passed order on 21.01.2003 ordering stoppage of increment for five years without cumulative effect. According to the petitioner, the petitioner was due to retire on 31.05.2003 and just on the eve of his retirement, few months prior to the date of his attaining the age of superannuation, the respondent has passed the



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impugned order on 21.10.2003, only to deny payment of benefits to the petitioner.

6. The petitioner has approached the Tamil Nadu Administrative Tribunal, Chennai by way of O.A.No.3580 of 2003, which was subsequently transferred to this Court and renumbered as W.P.No.12471 of 2007. The writ petition came to be disposed on 21.11.2014 directing the respondent to settle the terminal benefits. Thereafter, the petitioner made a representation on 21.02.2015 requesting the respondent to settle his terminal benefits.

7. In and by an order dated 26.03.2015, the respondent informed the petitioner that punishment amount of Rs.7,959/- would stand forfeited from his gratuity and also informed the petitioner that no amounts would be payable towards terminal benefits as the period between 02.09.1993 and 18.04.2002 was out of employment period.

8. The grievance of the petitioner is that the impugned order dated 21.01.2003, is without jurisdiction and against the order dated 01.04.2002



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passed by the Inspector General of Prison, Chennai. The petitioner has already been punished by an order dated 21.01.2003 and by treating the period as loss of pay would amount to double jeopardy under Article 22 of the Constitution of India.

9. The respondent has filed a counter affidavit stating that there is no infirmity in the impugned order and the increment postponed for a period of five years without giving cumulative effect was well-founded and it does not deserve any reconsideration.

10. Heard the learned Senior Counsel Mr.K.M.Ramesh for the petitioner and the learned Special Government Pleader Mr.M.Shahjahan for the respondent.

11. It is not in dispute that the petitioner was acquitted in the criminal case. The acquittal order was also objectively considered by the authorities, reinstating the petitioner, without imposing any condition whatsoever. Thereafter to deny the petitioner's service benefits and terminal benefits payable to him, citing the charges originally framed against him in the criminal case would not be just and proper.



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12. The order of the Inspector General of Prison, Chennai dated 01.04.2002, has clearly directed the petitioner to be reinstated and posted in the existing vacancy of the Central Prison, Cuddalore. Even thereafter, the petitioner was not reinstated immediately and he was reinstated only on 19.04.2002. It is also noticed that the Criminal Appeal came to be allowed in favour of the petitioner as early as 06.06.2001. The delay in reinstatement was for no fault of the petitioner.

13. The petitioner cannot be denied the terminal benefits taking into account the delayed period and to hold that the petitioner was out of employment for the entire period from 02.09.1993 to 18.04.2002, especially, when the petitioner was acquitted of the main charge under Section 20(b)(1) of the NDPS Act. Even in respect of the other charge of drinking under Section 4(1)(j) of the Tamil Nadu Prohibition Act, the petitioner was acquitted even by the Special Designated Judge (NDPS), Tanjore in C.C.No.17 of 1995 as early as on 17.05.1995, which part of the order has attained finality and only the charge under Section 20(b)(1) of the NDPS Act awarding one year rigorous imprisonment and imposing fine of Rs.1,000/- was challenged by the petitioner alone, that too, successfully.



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14. For all the above reasons, this Court finds that there is no justification on the part of the respondent to treat the entire period from 02.09.1993 to 18.04.2002 as being out of employment to deny the benefits payable to the petitioner.

15. The learned Senior Counsel for the petitioner however fairly conceded that a sum of Rs.7,959/-, which was ordered to be deducted from the petitioner's gratuity has already been deducted and the same need not be refunded or taken into account while re-writing the amount payable to the petitioner.

16. The respondent shall rework the amounts taking into account, the entire period from 02.09.1993 to 18.04.2002 as "period of employment" and

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accordingly arrive at the terminal benefits payable to the petitioner and pay the same to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.



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17. This Writ Petition is disposed of with the above directions. No costs.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes / No

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To

Superintendent of Central Prison,
Cuddalore, Cuddalore District.

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