



WEB COPY



W.A.No.514 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.A.No.514 of 2018

K.Subraya Kamath

... Appellant

-Vs-

1. The Chairman and Managing Director,
Punjab and Sind Bank,
No.21, Rajendra Place,
New Delhi – 110 008.

2. The General Manager,
Punjab and Sind Bank,
HRD Department,
No.21, Rajendra Place,
New Delhi – 110 008.

3. The Deputy General Manager,
Punjab and Sind Bank,
HRD Department,
No.21, Rajendra Place,
New Delhi – 110 008.

4. The Zonal Manager,
Punjab and Sind Bank,
Zonal Office, 770-A, 1st Floor,
Spencer Towers, Anna Salai,
Chennai – 600 002.

... Respondents



W.A.No.514 of 2018

Prayer : Writ Appeal under Clause 15 of the Letters Patent, to set aside the order dated 11.12.2017 made in W.P.No.32100 of 2017 and allow the writ appeal.

For Appellant : Mr.S.Udhayakumar

For Respondents : Mr.V.J.Arul Raj

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order of the writ Court dated 11.12.2017 in W.P.No.32100 of 2017.

2. The appellant was the writ petitioner who was working with the respondent Bank as a Clerk. When that being so, the disciplinary proceedings was initiated against him which ultimately ended in punishment of dismissal from service, as against which, he preferred appeal and revision, ultimately the first respondent / Revisional Authority, by order dated 11.10.1995 has modified the punishment from dismissal of service to stoppage of annual increment for five years with cumulative effect. While passing such order giving modified punishment on 11.10.1995, the Appellate Authority in fact imposed certain conditions under which the appellant shall not claim any difference of salary



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and other allowances which shall not be paid to him, except the subsistence allowance already paid to him for the suspension period and he was not paid any salary for the period from the date of dismissal till the date of joining in service as a consequence of the said order, dated 11.10.1995.

3. The said order in fact has not been challenged as he has accepted the said order and joined the service by way of reinstatement. Thereafter, it seems that, he has asked for further promotion after undergoing the punishment period sometime from 2002, however that was also denied and he was considered for promotion only from the year 2008. This has also been conveyed subsequently on a legal notice issued in this regard by the appellant.

4. Only in the said circumstances, after he retired from service, he filed the said writ petition seeking a prayer of mandamus to pay the full salary for the period from dismissal to reinstatement, to pay the monetary benefits in the post of Officer in the scale-I from the year 2002 to 2008 and consequential benefits to pay the withheld two increments from 17.10.1992 etc. The said writ petition with the prayer of mandamus as stated *supra* having been considered was rejected by the learned Judge through the impugned order dated 11.12.2017, as against which only this appeal has been directed.



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5. Finding fault with the said order passed by the writ Court, Mr.S.Udhayakumar, learned counsel for the appellant would submit that the entitlement of his promotion from the year 2002 though has been accepted by the Bank, they have not extended the monetary benefits which ought to have been extended to him. Correspondingly, the further monetary benefits sought for in the said writ petition ought to have been allowed by the Bank. Since they have not allowed the same, it triggered the appellant / petitioner to approach this Court by filing the said writ petition which was not considered in proper perspective by the writ Court, therefore, he seeks indulgence of this Court.

6. We have heard Mr.V.J.Arul Raj, learned counsel appearing for the respondent Bank, who would submit that, it is not a case where the disciplinary proceedings ended in acquittal and it is also not the case where the Appellate Authority having set aside the punishment directed him to be reinstated. It is the case where considering the proportionality of the punishment on the proven charge, a modified punishment has been given of course with conditions and that modified punishment with conditions given by the Bank by order dated 11.10.1995 having been accepted, the appellant / petitioner joined the service once again and had been continuing.



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7. Insofar as the claim made by the appellant / petitioner to get promotion from 2002 is concerned, why such a promotion has not been given, why it was given to him in 2008 has been clearly stated in the communication dated 09.08.2016 by way of reply to his representation-cum-legal notice. Despite this communication of the Bank, having receipt of the same, none of this communication has been put under challenge and all of a sudden, he approached the writ Court to file a writ petition seeking mandamus as if that he was entitled to get all those benefits without getting any promotion and without challenging the order dated 11.10.1995 and it has become final. The benefits whatever have been allowed by the said order of the Bank dated 11.10.1995, that alone the petitioner would be entitled to and since that has been paid, no other benefits as sought for by the writ petitioner in the prayer can be granted. This aspect having been considered of course rightly by the learned Judge who dismissed the writ petition through the impugned order, hence it does not warrant any interference from this Court, he contended.

8. We have considered the said rival submissions made by both sides and have perused the materials placed before this Court.



9. As has been rightly pointed out by the learned counsel appearing for the respondent Bank that, it is not the case where the charge have not been proved or it is not the case where the punishment has been set aside on the ground that, the charges framed against the delinquent appellant / petitioner has not been proved. It is the case where in the appeal or revision, the concerned authority has modified the punishment only on the ground of proportionality and accordingly, the modified punishment has been inflicted with conditions and this has been taken into account by the learned Judge in the order impugned which reads thus:

"2. On a perusal of typed set of papers filed in this Writ Petition, it is seen that the petitioner was dismissed from service by order dated 12.12.1994 passed by the Disciplinary Authority, against which, he preferred an appeal before the Appellate Authority, which was also dismissed. Thereafter, he moved Mercy Petition before the 1st respondent. While entertaining the Mercy Petition, the 1st respondent, evaluated the case in totality and after going through the records placed before him, had taken a sympathetic view and came to the conclusion that the punishment of dismissal from service requires modification. Finally, by order dated 11.10.1995, the petitioner was reinstated in service with two conditions, and the operative portion of the said order read as under:-

"I, therefore, order that the punishment of Dismissal be modified to stoppage of his five annual increments with cumulative effect.

I further order that no difference of salary and other allowances shall be payable to him except for the subsistence



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allowance already paid to him for the suspension period. Further, he shall not be paid any salary for the period from the date of his dismissal till the date of joining his service as a consequence of this order. However, this period shall not be treated as break in his service.

Sh.K.Subraya Kamath is directed to report to Zonal Manager, Madras, for further duties. A copy of this order be sent to Sh.K.Subraya Kamath and another, Zonal Manager, Madras, for necessary compliance."

10. The said order dated 11.10.1995 giving such modified punishment with condition admittedly has not been challenged by the appellant and the same has become final.

11. Thereafter when he made an attempt to get retrospective promotion from 2002, that was also denied by the Bank through its communication dated 09.08.2016 which has also not been questioned so far by the appellant / petitioner.

12. When that being the position, on what basis he seeks all these monetary benefits as have been sought for in the writ petition is not known.



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13. Since these orders dated i.e., 11.10.1995 and 09.08.2016 or any other orders passed in this regard by the Bank will hold the field, insofar as deciding what is the entitlement of the appellant / petitioner to get such financial benefits from the Bank as an erstwhile employee beyond which the appellant / petitioner cannot expect anything, therefore since the prayer sought for in the writ petition is beyond the scope of these orders as admittedly these orders have not been challenged, that position having been considered, the learned Judge decided to reject the writ petition which approach of the learned Judge cannot be found fault with, therefore, we do find no reason to interfere with the said order passed by the writ Court.

14. Resultantly the Writ Appeal fails, hence it is dismissed. However, there shall be no order as to costs.

(R.S.K., J.) (K.B., J.)
24.08.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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