IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2518 of 2023
AND
C.M.P.No.21075 of 2023

1.The Chief Engineer
Chennai Port Authority
Chennai

2.The Secretary
Chennai Port Authority
Chennai .. Appellants

Vs.

Balagovinda Rao .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 03.01.2023 passed by the learned Judge in W.P.No.18133 of 2016.

For Appellants : Mr.S.Haja Mohideen Gisthi

For Respondent : Mr.V.Vijay Shankar

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This Writ Appeal arises from the order dated 03.01.2023 passed by the learned Judge in W.P.No.18133 of 2016.

2.The writ petitioner, who was appointed as a Mazdoor in the Chennai Port Trust in the year 1984 and later, promoted as Assistant Maistry, was dismissed from service, by order dated 10.05.2016, for producing bogus community certificate, claiming the status of Scheduled Tribe. Challenging this dismissal order, he filed W.P.No.18133 of 2016, wherein, the learned Judge, by order dated 03.01.2023, set aside the dismissal order and directed the appellants to pass orders within a period of four weeks, to the effect that the writ petitioner had continued his service from 10.05.2016 onwards and notionally retire him on attaining the age of superannuation, by extending the continuity of service and all other service benefits and also to disburse his retirement benefits. Aggrieved by the order of the learned Judge, the authorities are before this Court with the present writ appeal.

3.The main contention of the learned Standing Counsel appearing for the appellants is that after having observed in Paragraph 19 of the order impugned herein, to the effect that in the light of the peculiar circumstances of the service career of the respondent, the ends of justice could be secured if the arrears of salary from the date of dismissal till the date of his superannuation, are withheld, the direction so issued to the appellants in paragraph 20 of the order impugned herein, is illogical, legally unsustainable and hence, liable to be set aside.

4.On the above submissions, we have heard the learned counsel for the respondent / writ petitioner and also perused the materials placed before us.

5.After considering the facts and circumstances of the case, the learned Judge has observed that when the charge against the respondent was only on the basis of a letter of the Collector, Vizianagaram claiming that the certificate produced by the respondent was not issued from their office, the contents of that letter can be proved only through statements of the Collector or other persons connected with the Collector's Office. It was further observed that the appellants had earlier framed charges through notice dated 02.07.1996, however, without proceeding further on this, the appellants have proceeded to frame fresh charges through charge memo dated 05.10.2011. Finally, it has been observed that though the report of the Tahsildar as well as the request of the respondent did not form part of the inquiry report, such report and representation may have a persuasive value only and that, since the inquiry itself is in gross violation of the procedure to be adopted during the course of the departmental inquiry, the objections raised on the side of the appellants do not deserve consideration. Having observed so, the learned Judge has rightly quashed the order impugned in the writ petition, instead remanding the matter to the appellants, considering the fact that the proceedings came to be initiated in the year 1996 and the writ petitioner has also reached the age of superannuation in the year 2021 and hence, serious prejudice would be caused to him, in the event of remand. Therefore, this Court is not inclined to interfere with the findings so rendered by the writ Court, however, is of the considered view that for the period during which the respondent had not worked, he is not entitled for monetary benefits on the principle “No work no pay”. To that effect, the order of the learned Judge is liable to be modified.

6.At this juncture, the learned counsel for the respondent submitted that the respondent is willing to forego the backwages for the period from 10.05.2016 to 30.04.2021, however, the said period has to be counted for the purpose of calculating pension and other terminal benefits. It is further submitted that the appellant has rendered 37 years of service from 1984 to 2021 and the same should be reckoned as qualifying service for computation of pension, gratuity and all other admissible benefits. The learned counsel also filed an affidavit of the respondent to that effect.

7.In view of the above, the impugned order passed by the learned Judge is modified to the effect that the respondent/writ petitioner is not entitled for the monetary benefits from the date of dismissal, till the date of attaining the age of superannuation i.e., from 10.05.2016 to 30.04.2021, however, the said period be counted for the purpose of pensionary benefits alone. Except the same, the order of the learned Judge remains unaltered.

8.The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
05.10.2023

Internet : Yes
Neutral Citation : Yes/No
gya

To

1.The Chief Engineer
Chennai Port Authority
Chennai

2.The Secretary
Chennai Port Authority
Chennai

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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