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W.P.No.22804 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.22804 of 2010

and

M.P.Nos.1 of 2010

V.Dhakshnamoorthy

...Petitioner

Vs

1.Tamil Nadu Warehousing Corporation,
rep.by its Executive Committee,
No.82, Anna Salai, Guindy,
Chennai – 600 032.

2.The Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai, Guindy,
Chennai – 600 032.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders issued by the 1st respondent in proceedings R.C.4470/09/E3 dated 23.11.2009 and consequential orders passed by the 2nd respondent in R.C.No.4740/09/E3 dated 09.03.2010 and R.C.4740/09/E3 dated 01.07.2010 confirming the orders of the 2nd respondent made in R.C.No.19944/00/E1 dated 25.06.2002 and quash the



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same and consequently direct the respondents to pay the monetary benefits in the post of Warehouse Manager Grade-I for the period from 29.01.1988 to 29.01.1998 and Selection Grade Pay from 30.01.1998 till 21.03.2002 within a time fixed by this Court and to pass such further or other orders as this Court may deem fit.

For Petitioner : Mr.K.Premkumar
For Respondents : Mr.S.A.Hahiz

ORDER

The Writ Petition is filed calling for the records relating to the impugned orders issued by the 1st respondent in proceedings R.C.4470/09/E3 dated 23.11.2009 and consequential orders passed by the 2nd respondent in R.C.No.4740/09/E3 dated 09.03.2010 and R.C.4740/09/E3 dated 01.07.2010 confirming the orders of the 2nd respondent made in R.C.No.19944/00/E1 dated 25.06.2002 and quash the same and consequently direct the respondents to pay the monetary benefits in the post of Warehouse Manager Grade-I for the period from 29.01.1988 to 29.01.1998 and Selection Grade Pay from 30.01.1998 till 21.03.2002 within a time fixed by this Court.



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2.Learned counsel for the petitioner submitted that petitioner was appointed as Junior Assistant in Tamil Nadu Warehousing Corporation. He was promoted as Assistant. When he was working as Assistant from 10.07.1981 to 23.07.1981 at Vellore Warehouse, an inspection was conducted by the then Manager (Quality Control). They alleged to have found irregularities in price hike of fertilizers stocks during the year 1980 and discrepancies in the records of Vellore warehouse. A complaint was lodged before the Directorate of Vigilance and Anti-Corruption. On the basis of the complaint, 13 first information reports were registered against the petitioner and other officials of the respondent Corporation and some traders. When petitioner was working as Ware House Manager, Grade.II/Deputy Manager, he was suspended from service on 12.12.1986 due to registration of Criminal cases by the Directorate of Vigilance and Anti-Corruption. When he was under suspension, a panel for promotion to the post of Ware House Manager, Grade.I was preferred and his junior Mr.G.Prasannakumar was promoted as Ware House Manager, Grade.I on 29.01.1988. The Directorate of Vigilance and Anti-Corruption laid 12 charge sheets in Special Cases Nos.2 to 13 of 1986 for the offence under



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Sections 120-B, 408, 409, 420, 477(A) of IPC and Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act on the file of the Special Judge cum Chief Judicial Magistrate Court at Vellore. After trial, petitioner was acquitted on 14.02.1994. Subsequently, suspension was revoked and petitioner was restored to the post of Ware House Manager, Grade.II on 12.05.1994. Only thereafter, a charge memo was issued to the petitioner on 03.08.1994. However, the Disciplinary proceedings was dropped on 15.05.1996 by passing final orders by the 2nd respondent. Against the acquittal, the Directorate of Vigilance and Anti-Corruption filed an Appeal in C.A.Nos.90, 91, 204 to 214 of 1995. All the Appeals came to be dismissed by confirming the judgment of trial Court on 18.09.2001. After dropping the charges, 2nd respondent issued a proceeding dated 30.05.1996 by granting backwages for the period from 01.07.1987 to 13.04.1994 due to the post of Ware House Manager, Grade.II, however petitioner was eligible for promotion and pay, applicable to the post of Ware House Manager Grade.I with effect from 01.02.1987 itself.

2.1.On an Appeal to the Executive Committee, it was ordered that



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petitioner was eligible for promotion to the post of Warehouse Manager, Grade.I with restoration of his original seniority as on 01.02.1987. On 13.02.2002, 2nd respondent issued a order, granting Selection Grade Scale of Pay to the petitioner with effect from 04.07.1994 in the cadre of Warehouse Manager, Grade.II.

2.2.On 05.03.2002, 2nd respondent issued an Order, fixing the original seniority of the petitioner with effect from 01.02.1987 in the cadre of Warehouse Manager, Grade.I just above the name of Mr.G.Prasanna Kumar, Manager (Admn.) at H.O.Chennai. Thereafter, petitioner was promoted as Warehouse Manager, Grade.I, notionally with effect from 29.01.1988 with monetary benefits with effect from 22.03.2002. Thereafter, petitioner was promoted as Regional Manager. Petitioner submitted a representation dated 17.05.2004 to sanction the arrears of pay for the post of Warehouse Manager, Grade.I with effect from 29.01.1988 and Selection Grade pay with effect from 29.01.1998. His representation was rejected on 05.01.2005. On 31.01.2005, petitioner voluntarily retired from service.



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2.3.He filed Appeal before the 1st respondent, seeking pay benefits in view of his acquittal from criminal case and dropping of disciplinary proceedings. He filed Writ Petition in W.P.No.12294 of 2009 and a direction was given to consider petitioner's Appeal petition and pass appropriate orders. 2nd respondent passed order on 09.03.2010 in Rc.No.4740/09/E3 stating that petitioner was promoted as Warehouse Manager, Grade.I, notionally but was sanctioned monetary benefits with effect from 22.03.2002 on the basis of Fundamental Rule 27(17). That is not correct. Therefore, this Writ Petition is filed.

2.4.Learned counsel for the petitioner further submitted that, when both the criminal Courts had found in favour of the petitioner, disciplinary proceedings initiated had been dropped and there is a specific order to treat the period of absence as duty period, there is no way that the respondents can deny the petitioner his promotion, pay and allowances. In support of his submissions, he produced the following judgments,

(i) Judgment reported in *[2005 4 CTC 7]* in the case



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of *The Secretary, Vallalar Guruklam Higher
Secondry School , Vadalur, Cuddalore District n
Vs. District Educational Officer, Cuddalore
district and another.*

(ii) *W.A.No.1026 of 2016* in the case of *The
Superintendent of Police, Salem District & ors
Vs. C.Govindan.*

3.In reply to the submissions of the learned counsel for the petitioner, learned counsel for the respondents submitted that petitioner joined as Warehouse Manager Grade.I only on 22.03.2002. Therefore, he can be given pay benefits to the post of Warehouse Manager Grade.I only from 22.03.2002, though he was notionally promoted with effect from 29.01.1988. This position is based on Fundamental Rule 27(17). It states that, “*When a Government servant has been overlooked for promotion/appointment to the next higher post, but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay of his junior in the lower post from time*



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to time.”

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3.1.He further submitted that though the departmental proceedings were dropped, it was not dropped on merits. The Enquiry Officer found the charges against the petitioner had been proved. However, the order dropping the proceedings had been passed, taking into account the decision of the learned Special Judge-cum-Chief Judicial Magistrate, Vellore. When dropping proceedings, it was specifically stated that, the period of suspension may be treated as duty period, however, the individual will not be eligible for any claim for inclusion in any panel for promotion which might have been drawn up during the period of suspension. The order dropping the charges is subject to its condition and is not a open ended order. Therefore, petitioner is not entitled for any pay benefits, as claimed by him.

3.2.In support of his submissions, he relied on the judgments of Hon'ble Supreme Court reported in **AIR 1991 SCC 2010** in the case of **Union of India & ors. Vs. K.V.Janikaraman & ors** and Judgment of this Court in W.P.No.48365 of 2006 in the case of **K.Ramachandran Vs.**



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The State of Tamil Nadu.
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4.Considered the rival submissions and perused the records.

5.From the facts obtained from the records and submissions of the learned counsel appearing for the parties, there is no doubt that petitioner along with certain other officials had been charged both by departmentally and by initiating criminal proceedings. We are concerned about this petitioner alone in this case. It is seen from the Proceedings of Chairman-cum-Managing Director, Tamilnadu Warehousing Corporation in RC.24007/89/K5 dated 15.05.1996 that after narrating the charges against the petitioner and other officials, the finding of the Enquiry Officer, the Chairman cum Managing Director finally concluded as follows,

“I conclude therefore that the decision of the Special Judge and Chief Judicial Magistrate, Vellore should hold a major say in the final decision on the disciplinary proceeding before us accordingly. I conclude that all charges against them are dropped. The period of suspension may be treated as duty.



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However, these individuals will not be eligible for any claim for inclusion in any panel for promotion which might have been drawn up during the period of suspension.”

5.1.It is not in dispute that the criminal case against the petitioner as 2nd accused had ended in acquittal and that acquittal was confirmed by the Appellate Court. Therefore, from the proceedings of the Chairman-cum-Managing Director and judgment of the Criminal Court and criminal Appeal, it is made clear that the departmental proceeding initiated against the petitioner had been dropped and criminal cases initiated against him ended in acquittal. The point to be noted from the proceedings of the Chairman cum Managing Director is that, period of suspension will be treated as duty, however, the individual will not be eligible for any claim for inclusion in any panel for promotion, which might have been drawn up during the period of suspension.

5.2.Contrary to this finding, it is seen that 2nd respondent chose to



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promote the petitioner as Warehouse Manager Grade.I, notionally with effect from 29.01.1988, but the monetary benefits were granted only from 22.03.2002.

5.3.Coming to the precedence relied by the learned counsel appearing for the Parties, reading of the judgment reported in [2005 4 CTC 7] in the case of *The Secretary, Vallalar Guruklam Higher Secondary School , Vadalur, Cuddalore District Vs. District Educational Officer, Cuddalore district and another*, this Court finds that “Once a person is acquitted in a criminal case, it has to be deemed that he never committed that offence. This is because every judgment operates retrospectively unless expressly made prospectively, unlike a legislation which normally operates prospectively unless expressly made retrospectively. Since the employee has been acquitted in the criminal case that judgment will operate retrospectively and it has to be deemed that the teacher concerned was never guilty of that offence. Consequently, he is entitled to his salary for the period of his unemployment and he is entitled to reinstatement.”



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5.4. In another judgment of this Court in W.A.No.1026 of 2016 in the case of *The Superintendent of Police, Salem District & ors Vs. C.Govindan*, this Court in a case involving a police constable, after acquittal in a criminal case and quashing of departmental proceeding, found in a similar circumstances that, “the First Bench of this Court in W.A.No.1430 of 2013 passed a order on 02.09.2013, treating the period of suspension as “spent on duty” and directed the respondents therein to settle consequential benefits within a stipulated time.” Following the First Bench Order, the Hon'ble Division Bench of this Court found that the Writ Petitioner was entitled for the benefit of continuity of service and consequential monetary benefits including backwages.

5.5. Learned counsel for the respondent specifically relied on the judgment of the Hon'ble Supreme Court reported in **AIR 1991 SCC 2010** in the case of **Union of India & ors. Vs. K.V.Janikaraman & ors** for the proposition that the claim of backwages is not absolute but subject to certain qualifications like incase there is a delay in conduct of criminal



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and departmental proceedings because of the conduct of the employee and in certain other circumstance, the employee cannot claim the backwages as a matter of right. It is pertinent to refer to the relevant portion of the judgment for better appreciation.

“7. The Full Bench of the Tribunal, while considering the earlier Memorandum dated 30th January, 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of the period prior to the date of the actual promotion" is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotion- al post for the perked during which the promotion has been withheld while giving other benefits, is discriminatory when compared with other employees' who are not at the verge of promotion when the disciplinary proceedings ' were initiated against them.

The Tribunal has, therefore, directed that. on exoneration. full salary should be paid to such employee which he would have on promotion if he had not been subjected to disciplinary proceedings.



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We are afraid that the Tribunal's reference to para- graph 2 of the Memorandum is incorrect. Paragraph 2 only recites the state of affairs as existed on January 30, 1982 and the portion of the Memorandum which deals with the relevant point is the 'last sentence of the first sub-para- graph after clause (iii) of paragraph 3 of the Memorandum which is reproduced above. That sentence reads as follows:

"But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

This sentence is preceded by the observation that when the' employee is completely exonerated on the conclusion of the disciplinary/court proceedings, that is, when no statutory penalty, including that of censure, is imposed, he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. This direction in the Memorandum has also to be read along with the other direction which follows in the next sub-paragraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least, should



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be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings.

There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1)' of the Fundamental Rules and Supplementary Rules which reads as follows:

"F.R. 17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any



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pay and allowances during the period of such absence."

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed Under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case



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where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and



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enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the



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disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

To this extent we set aside the conclusion of the Tribunal on the said point."

5.6.He further relied the judgment in W.P.No.48365 of 2006 in the case of ***K.Ramachandran Vs. The State of Tamil Nadu*** dated 20.12.2011 for the same proposition. On going through both the judgments, this Court is of the considered view that the ratio of the judgment is that the employees are not entitled to backwages in all case automatically, where Disciplinary Authority or criminal proceedings exonerated the employees. Disciplinary Authority has to take into account the entirety of the circumstances, as to whether the proceedings ended in favour of the delinquent employee was based on benefit of doubt or account of non-availability of evidence due to acts attributable to the employees etc., or it was on merits.

5.7.We have seen in this case that the criminal case ended in acquittal on merits. Based on the outcome of the criminal case, the



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Chairman-cum-Managing Director deemed it fit to drop the disciplinary proceedings. There is no role of the petitioner in either the criminal case ending in acquittal or the dropping of departmental proceeding. Therefore, I am of the view that the criminal case ended in acquittal on merits and on that basis, the departmental proceeding was dropped. There is no role of the petitioner in either of these decisions.

5.8. With regard to the Tamil Nadu Government Fundamental Rules 27(17), it reads as follows,

(17) In case where a Government servant has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal, his pay shall be fixed on the date of assumption of charge in the higher post on par with the pay of his junior provided he has drawn the same rate of pay as his junior in the lower post from time to time. If he has not drawn the same rate of pay as his junior in the lower post, his pay shall be fixed, on the date of assumption of charge, at the stage at which he would have drawn pay on that date had he been promoted/appointed to the higher post along



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with his junior. In cases where seniority has been restored on or after 19th September 1981, arrears of pay and allowance consequent of fixation of pay shall be admissible with effect from the date of assumption of charge in the higher post; in cases where seniority has been restored prior to 19th September 1981, arrears shall be admissible only with effect from the above date.

[G.O. Ms. No. 977, Personnel and Administrative Reforms (FR.III), dated 6th October, 1986.]

"Provided that in case of Government servants whose names were deferred for inclusion in the panel for promotion to higher post due to pendency of charges, but subsequently included in the same panel on exoneration of the charges after the date of their retirement on superannuation on appeal or review, their pay shall be fixed notionally on the date of their retirement on superannuation at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their junior for the purpose of pension and other monetary terminal benefit;

Provided further that in the case of Government servant whose names were deferred for inclusion in the panel due to pendency of charges and have



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subsequently died while in service or after retirement from service, the charges shall automatically stand abate. In such cases, the pay shall be fixed notionally on the last date of their service or on the date of the retirement on superannuation, as the case may be, at the stage at which they would have drawn, had they been promoted or appointed to the higher post along with their juniors for the purpose of pension and other monetary terminal benefits."

5.9.This Rule can be applied only in cases, where an employee has been overlooked for promotion/appointment to the next higher post but subsequently promoted/appointed to that higher post after restoration of his original seniority on appeal.

5.10.In the case before hand, no such contingency arise. The departmental proceedings dropped midway. Thereafter, petitioner's original seniority was restored and he was promoted notionally above his junior Mr.G.Prasannakumar with effect from 29.01.1988. That being the case, he should also be paid pay benefits with effect from 29.01.1988. The order restricting monetary benefits only from 04.07.1994 is not just



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and appropriate. Therefore, the impugned order passed by the 1st respondent in proceedings R.C.4470/09/E3 dated 23.11.2009 and consequential orders passed by the 2nd respondent in R.C.No.4740/09/E3 dated 09.03.2010 and R.C.4740/09/E3 dated 01.07.2010 confirming the orders of the 2nd respondent made in R.C.No.19944/00/E1 dated 25.06.2002 are quashed and this Court directs the respondents to pay monetary benefits to the petitioner for the post of Warehouse Manager Grade-I for the period from 29.01.1988 to 29.01.1998 and Selection Grade Pay from 30.01.1998 till 21.03.2002 within a period of three months from the date of receipt of a copy of this order.

6. With the above directions, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. Parties are directed to bear their own costs.

06.02.2024

Index: Yes/No
Speaking order/Non-speaking order
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G.CHANDRASEKHARAN, J.

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To

1.Tamil Nadu Warehousing Corporation,
rep.by its Executive Committee,
No.82, Anna Salai, Guindy,
Chennai – 600 032.

2.The Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai, Guindy,
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