



WEB COPY



W.P.No.22840 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.22840 of 2010

S.D.Radhakrishnan

Vs

...Petitioner

1.Chairman

Board of Apprenticeship Training (SR),
Former Education Secretary,
Ministry of Human Resource Development,
Government of India,
D-201, Renaissance Jagriti,
Ramagondanahalli, Whitefield,
Bangalore – 560 066.

2.The Additional Apprenticeship Adviser (T),
Ministry of Human Resource Development,
Department of Higher Education,
Government of India,
Room No.526-C, Technical Section-IV,
Shastri Bhavan,
New Delhi – 110 001.

3.Director,

Board of Apprenticeship Training (SR),
Ministry of Human Resource Development,
Department of Higher Education,
Government of India,
CIT Campus, Taramani,
Chennai – 600 113.

...Respondents



W.P.No.22840 of 2010

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records from the respondent No.3 in Memorandum F.No.BAT/SR/PER/39 dated 15.09.2009 to quash the order of denial of full back wages/salary as mentioned in 1st paragraph of the said memorandum and to direct the respondents to grant the petitioner full back wages/salary for the petitioner's suspension period from 11.09.1997 to 17.05.2009, along with interest at the rate of 10% per annum, from 17.05.2009, and extend all consequential service and retrieval benefits including promotion(s)/ACP/MACP.

For Petitioner : Mrs.G.Ramadhevi
for M/s.Lakshmipriya Associates

For Respondents : Mr.V.T.Balaji, CGSPC

ORDER

The Writ Petition is filed for calling for the records from the respondent No.3 in Memorandum F.No.BAT/SR/PER/39 dated 15.09.2009 to quash the order of denial of full back wages/salary as mentioned in 1st paragraph of the said memorandum and to direct the respondents to grant the petitioner full back wages/salary for the petitioner's suspension period from 11.09.1997 to 17.05.2009, along with



W.P.No.22840 of 2010

WEB COPY

interest at the rate of 10% per annum, from 17.05.2009, and extend all consequential service and retrieval benefits including promotion(s)/ACP/MACP.

2.Learned counsel for the petitioner submitted that petitioner was appointed as Lower Division Clerk in the office of the Board of Apprenticeship Training, Southern Region, Ministry of HRD, Department of Higher Education, Government of India, Chennai with effect from 01.02.1979. He was promoted as Upper Division Clerk on 03.09.1987. He possessed M.A., (Public Administration), M.L.S., (Master of Labour Studies) B.G.L., (Bachelor of General Law) PGDBA., (P.G.Diploma in Business Administration) DL&AL (Diploma in Labour Law and Administrative Law). He was a active member of the Union of Board of Apprenticeship Training Staff Welfare Association (SR), Chennai and was holding the post of General Secretary of the Union, till the date of his suspension. CBI, ACB, Chennai registered a false case against him in R.C.No.52(A)/1977 on 03.09.1997 under Section 7 of the Prevention of Corruption Act, 1988, on allegation of demand of bribe from one Shri Manimaran. This false case was closed by filing closure



W.P.No.22840 of 2010

WEB COPY

report by CBI on 14.07.1999. He was placed under suspension by virtue of an order dated 11.09.1997 by the 3rd respondent in F.No.BAT/SR/PER-39/97. Because of the closure of the criminal case registered against him, petitioner's suspension should have been revoked immediately after closure of the case in R.C.52(A)/1997, but his suspension was continued illegally. CBI registered another case against him for alleged possession of disproportionate assets in R.C.No.63(A)/1997 under Section 13(2) r/w 13(1)(e) of the Prevention of corruption Act, 1988 on 25.11.1997. After investigation, final report was filed on 31.05.2000. There is no specific order passed for the registration of 2nd first information report. The case in C.C.No.52 of 2000 was contested by the petitioner before the learned Additional Special Judge for CBI cases, Chennai. After trial, petitioner was acquitted from the charges. There was no appeal filed against the acquittal. Therefore, acquittal became final. Petitioner ought to have been promoted as Junior Accountant, but he was not promoted and one Smt.Madhavi Selvaraj, his junior was promoted. In the said circumstances, this Writ Petition is filed.

3.In reply to the submissions of the learned counsel for the



W.P.No.22840 of 2010

petitioner, learned counsel for the respondents submitted that petitioner faced two criminal cases, one for illegal demand of bribe under Section 7 of the Prevention of Corruption Act and other for the alleged possession of disproportionate assets. However, first case was closed and second case ended in acquittal. The fact that first information report was registered against the petitioner under Prevention of Corruption Act shows that there is a prima facie case of petitioner involving in corrupt practice. It is a stigma against him. His request for promotion was considered but was rejected, for the reason that, he retired from service on 31.12.2010 and therefore, considering his request for promotion will set a wrong precedence. Thus, he prays for dismissal of this petition.

4.Considered the rival submissions and perused the records.

5.From the facts obtained from the petitioner's averments, records and submissions of the parties, it is not in dispute that petitioner was appointed as Lower Division Clerk in the Board of Apprenticeship Training and then promoted as Upper Division Clerk. He was suspended on registration of case in R.C.No.52(A)/1977 on 03.09.1997 under



W.P.No.22840 of 2010

WEB COPY

Section 7 of the Prevention of Corruption Act, 1988 by proceedings of the 3rd respondent in F.No.BAT/SR/PER-39/97 on 11.09.1997. It is seen from the petition filed by the prosecution under Section 173 Cr.P.C, that the investigation in SPE/CBI/ACB has been completed and final report was filed, seeking closure of first information report. Order had been passed in this petition by learned Principal Special Judge for CBI cases, Chennai on 30.06.2004 in CrI.M.P.No.129 of 2004 in R.C.No.52(a)/97. This orders reads that, “though there was a demand and acceptance of bribe by the accused from the complainant, the affidavit of the defacto complainant available with records shows that there is no substantial evidence to prosecute the accused in a Court of law as claimed by the prosecution. Therefore, the prosecution has recommended for departmental action for major penalty against the accused for violating Rule 3(1)(i) & (iii) and also 15(3) of CCS Conduct Rules for the lapses notices against him.” It is further ordered that first information report was closed.

6.In the second first information report registered in R.C.No.63(A)/97 for the offences under Sections 13(2) r/w 13(1)(e) of



W.P.No.22840 of 2010

WEB COPY

PC Act, 1988. After investigation, final report was filed and was taken on file in C.C.No.52 of 2000. The trial was conducted before the learned Additional Special Judge for CBI cases, Chennai. After trial, the learned Judge acquitted the petitioner and co-accused from the charges levelled against them. Thus, the criminal cases registered for demand of bribe was closed and criminal case registered for possession of disproportionate assets had ended in acquittal.

7.It is the submission of the learned counsel for the petitioner that petitioner was suspended after registration of 1st first information report and that suspension continued even after the closure of the first information report. No separate order was passed for suspending the petitioner after the registration of the second first information report. In view of the closure of the 1st first information report and acquittal of the 2nd criminal case registered for alleged possession of disproportionate assets, there is no way, the respondents can deny the petitioner's continuation of service from the date of his suspension till the date of his rejoining on 18.05.2009, especially when no disciplinary proceeding was initiated. It is seen that no Disciplinary proceedings was initiated against



W.P.No.22840 of 2010

him at any point of time, even after, in the closure order, instruction was given for initiation of Disciplinary proceedings against him. In the said circumstances, petitioner is entitled for wages and all the attendant monetary benefits during this period. It is also no doubt that he is also entitled for promotion as per Rules.

8.In the said circumstances, this Writ Petition is allowed, holding that the period from 11.09.1997 to 17.05.2009 has to be treated as duty period, entitling the petitioner for the wages and other attendant monetary benefits, excluding the amount already paid to the petitioner. Apart from that petitioner is entitled for eligible promotion notionally and consequential monetary and retirement benefits as per rules.

11.01.2024

Index:Yes/No

Speaking order/Non-speaking order

gd



W.P.No.22840 of 2010

WEB COPY

To

1.Chairman

Board of Apprenticeship Training (SR),
Former Education Secretary,
Ministry of Human Resource Development,
Government of India,
D-201, Renaissance Jagriti,
Ramagondanahalli, Whitefield,
Bangalore – 560 066.

2.The Additional Apprenticeship Adviser (T),
Ministry of Human Resource Development,
Department of Higher Education,
Government of India,
Room No.526-C, Technical Section-IV,
Shastri Bhavan,
New Delhi – 110 001.

3.Director,

Board of Apprenticeship Training (SR),
Ministry of Human Resource Development,
Department of Higher Education,
Government of India,
CIT Campus, Taramani,
Chennai – 600 113.



WEB COPY



W.P.No.22840 of 2010

G.CHANDRASEKHARAN, J.

gd

W.P.No.22840 of 2010

11.01.2024