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W.A.No.750 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2024

CORAM

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

W.A.No.750 of 2023
AND
C.M.P.No.7241 of 2023

1.Chennai Port Trust
Rep. by its Chairperson
Rajaji Salai, Chennai 600 001

2.Chief Mechanical Engineer
Chennai Port Trust
Rajaji Salai, Chennai 600 001

.. Appellants

Vs.

N.Antony

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 26.07.2022 passed by the learned Judge in W.P.No.15695 of 2018.

For Appellants : Mr.S.Haja Mohideen Gisthi
For Respondent : Mr.Balan Haridas



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JUDGMENT

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

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Challenging the order dated 26.07.2022 passed by the learned Judge in W.P.No.15695 of 2018, the appellants / Chennai Port Trust have preferred this writ appeal.

2. The necessary facts leading to the filing of this writ appeal are as under :

2.1. The respondent herein was the petitioner in the aforesaid writ petition. He joined as Assistant Engineer (Mechanical) in the appellant-Port Trust on 25.11.1986. During the course of his employment, he was placed under suspension on 12.12.1995 and was subsequently, issued with a charge memo on 17.10.1996 for the alleged misconduct. Pursuant to the issuance of the charge memo, Departmental Enquiry was conducted. Simultaneously, criminal proceedings were also initiated against him. Since the charges framed against the respondent in the disciplinary proceedings were proved, the appellant-Port Trust passed the order dated 22.03.1998, reducing his basic pay from Rs.5225/- to Rs.4700/- by 3 stages for a period of 5 years, during which period, he will earn increments and the reduction will not have the effect of



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postponing the future increments and the period of suspension be treated as leave, to which he is eligible.

2.2. Thereafter, the criminal case in C.C.No.221 of 1997 filed against the respondent for the offences under Sections 120-B, 420, 420 r/w.511, 468 & 471 (2 counts) IPC and u/s.13(2) r/w.13(1)(d) of the Prevention of Corruption Act, ended in conviction and he was sentenced to undergo one year rigorous imprisonment and imposed a fine of Rs.8,000/- altogether, in default to undergo three months rigorous imprisonment, by judgment dated 04.02.2004 passed by the Principal Special Court for CBI Cases, Chennai. In view of this, the respondent was dismissed from service with effect from 27.04.2004. As against the said conviction and sentence, the respondent preferred Crl.A.No.176 of 2004 and this Court, by judgment dated 25.03.2015, allowed the appeal, by setting aside the conviction and sentence imposed by the CBI Court.

2.3. Based on the judgment passed by the appellate court, the appellant-Port Trust accepted the request of the respondent seeking reinstatement and passed an order dated 23.03.2016, reinstating him in service as Assistant Engineer (Mechanical) (Class II) in the Mechanical & Electrical Engineering Department. The respondent had joined duty on 11.04.2016. Subsequently, *vide* order dated 22.05.2018, it was informed to the respondent that his request to grant monetary and service benefits for the period from



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27.04.2004 to 22.03.2016 cannot be acceded to, as the said period was treated as *dies non*.

2.4. Challenging the orders so passed by the appellant authorities, the respondent filed W.P.No.15695 of 2018. The learned Judge, disposed of the said writ petition, by order dated 26.07.2022, the operative portion of which is usefully quoted below:

“In the result, the following orders are passed in this writ petition.

That the impugned condition of the order of the first respondent dated 23.03.2016 and the second respondent / appellate authority's order dated 22.05.2018 declaring the non-working period of the petitioner between 27.04.2004 and 23.03.2016 as dies non, are hereby set aside.

As a sequel, the petitioner would be entitled to get proportionate pay and allowances for the period from 27.04.2004 till 24.03.2015 and in respect of such proportionate payment, even though the discretion has been vested with the authority concerned, in view of the decision already been taken by the respondent, which is reflected in the impugned order and the same has been confirmed by the appellate authority which are subject matters before this court, after testifying the veracity of the condition imposed by both the authorities in their respective impugned orders, this court wants to fix such quantum so that further or future quarrel in this regard between the parties can be avoided. Hence, the backwages for the non-working period as such from 27.04.2004 to 25.03.2015 shall be paid at 30% of the backwages.

Insofar as the period from 25.03.2015 till 23.03.2016 is concerned, it is the delay caused on the part of the respondents in passing the order reinstating the petitioner into service despite the order of the appellate court is concerned, and hence for the said period i.e., between 25.03.2015 to 23.03.2016, the petitioner is entitled to get full backwages.

As afore stated, the backwages shall be calculated and be paid to the petitioner. That apart, the petitioner would be entitled for continuity of service and other service benefits had he not been dismissed from service on 27.04.2004 and had been continuously working in the respondent Port Trust.

The needful as indicated above with regard to the calculation and



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payment of the backwages and arrears shall be undertaken by the respondent Port Trust within a period of eight weeks from the date of receipt of a copy of this order.”

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2.5. Feeling aggrieved and being dissatisfied with the order so passed by the learned Judge, the appellant Port Trust are before this court with the present writ appeal.

3. It is the specific contention of the learned counsel appearing for the appellants that the direction of the learned Judge to consider the promotion of the respondent violates the fundamental principles of service law and will render Regulation 41(4) of the Chennai Port Trust (Pay and Allowances, etc.) Regulations, 2001, inoperative and unenforceable. He also submitted that the learned Judge failed to consider the fact that if such relief is accorded to the respondent, it will open floodgates of litigation and the employees who are similarly placed will claim the benefits, even though their claims were settled long back. Finally, it was submitted that having correctly come to the conclusion that the competent authority had rightly decided that proportionate pay and allowances alone are payable to the respondent, the learned Judge went wrong in setting aside that portion of the impugned order dated 23.03.2016 without giving reasons as to how such discretionary power is used in an unjust or illegal manner. With these submissions, the learned counsel sought to allow



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this appeal by setting aside the order passed by the learned Judge in the writ petition.

4. On the other hand, the learned counsel appearing for the respondent submitted that the appellant-Port Trust had wrongly invoked and relied upon Rule 14(1)(v) of the Chennai Port Trust (Pay and Allowances, etc.) Regulations, 2001 and issued the order dated 23.03.2016. As per the said Rule, the absence during strike period has to be treated as *dies non*, which has no application to the respondent's case. Moreover, the absence of the respondent from 27.04.2004 to 22.03.2016 was due to the arbitrary action of the appellant authorities in dismissing him from service, without awaiting the appellate Court's order against his conviction. The learned counsel further submitted that mere presumption of the appellants that the employees whose claims were settled long back will make similar claim in the event of the respondent's claim being considered favourably, is vague and without substance. Therefore, according to the learned counsel, the order passed by the learned Judge is perfectly correct and the same does not warrant any interference by this court.

5. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.



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6. Admittedly, for the alleged misconduct, the respondent was subjected to departmental as well as criminal proceedings. By order dated 22.03.1998 passed by the appellant authorities, he was imposed with the punishment of reduction of basic pay from Rs.5225/- to Rs.4700/- by 3 stages for a period of 5 years, during which period, he will earn increments and the reduction will not have the effect of postponing the future increments and the period of suspension be treated as leave, to which he is eligible. In respect of the criminal proceedings, though CC No.221 of 1997 filed against the respondent, ended in conviction by judgment dated 04.02.2004 passed by the Principal Special Judge for CBI Cases, Chennai, the same was set aside by this court in Crl.A.No.176 of 2004 *vide* judgment dated 25.03.2015. Pursuant to the same, the respondent was reinstated into service by order dated 23.03.2016.

7. Firstly, the delay on the part of the appellant Port Trust for a period of one year ie., from 25.03.2015 to 23.03.2016, in reinstating the respondent after the appellate Court passed the order of acquittal, without any plausible reason, cannot be accepted. Since it is the delay on the part of the appellant Port Trust in passing the reinstatement order, for the said period, the respondent/employee is entitled to full backwages, as rightly ordered by the learned Judge.



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8. Secondly, with regard to the period between 27.04.2004 and 25.03.2015, even though the respondent was not in service as he was suspended from service pursuant to the judgment of conviction passed by the Trial Court, the appellant authorities have to grant the proportionate pay and allowances, as per the Rules. Whereas the said period has been declared as *dies non* by the appellants, without granting any monetary benefits. In this connection, the learned Judge went on to examine Rule 41(4) of the Chennai Port Trust (Pay and Allowances etc.,) Regulations, 2001, and also sub-rule (1) of Rule 41 which is relevant to the facts of the case on hand. After analysing the same, the learned Judge concluded that the case of the respondent falls under sub-rule(4) of Rule 41, which states that in cases other than those covered by Sub-rules (1) and (2), the employee shall be paid such amount (not being the whole) of the pay and allowances, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired. Referring to the clarification which has been relied upon by the learned standing Counsel for the Port Trust, ie., Clarification (c), which states that the competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specific purpose, the learned Judge correctly interpreted the clarification as one wherein discretion vested with the competent authority is only to decide the



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proportionate pay and allowances to be payable to the respondent and not to deny the entire backwages. Thus, it has been correctly held that the said clarification does not grant the competent authority the power to deny the benefit of backwages by declaring the period as *dies non*. If the respondent is entitled to some benefit for this period, then, what benefit he is entitled to, has to be ascertained and finalised and as already stated, the authority is not clothed with the power to deny the benefit which the statute entitles the respondent to get. For fixing the quantum in this respect, the learned Judge exercised his discretionary power and ordered that for the non-working period from 27.04.2004 to 25.03.2015, the respondent has to be paid 30% of the backwages.

9.Thus, considering the facts and circumstances of the case, we are in total agreement with regard to the percentage of backwages fixed by the learned Judge. That apart, the order of the learned Judge with regard to continuity of service and other service benefits to which the respondent is entitled also, does not require any interference by this court.

10.In such perspective of the matter, the writ appeal fails and is accordingly, dismissed. The appellants are directed to pay the backwages, as ordered by the learned Judge, if not paid earlier, within a period of four weeks



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from the date of receipt of a copy of this judgment. No costs. Consequently,

connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
01.04.2024

Internet : Yes

Neutral Citation : Yes/No

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To

1.Chairperson

Chennai Port Trust

Rajaji Salai, Chennai 600 001

2.Chief Mechanical Engineer

Chennai Port Trust

Rajaji Salai, Chennai 600 001



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