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W.P.No.6540 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.12.2023
Pronounced on	24.04.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.6540 of 2015
and M.P.No.1 of 2015

C.K.Arivudainambi ... Petitioner

Vs

1. The National Banking Zonal Manager,
Formerly the Zonal Manager and Appellate Authority,
Bank of India, Zonal Office,
Errablau Street, Chennai-1.
2. Deputy Zonal Manager (Formerly)
Bank of India,
Chennai Zonal Officer, Madras1. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus to direct the respondents to pay the petitioner's benefits such as the difference in Subsistence Allowance paid and the balance payable for the suspension period and to promote the



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petitioner's to Scale VI, as detailed in Schedule I to II, respectively, three additional stagnation increments, as per the latest pay revision, second stagnation increment in December 2005, third stagnation increment in December 2008 and fourth stagnation increment in December 2011, and the petitioner's salary from 10.04.2012 to 28.05.2012.

For petitioner

... Mr. G.Surya Narayanan
for M/s.D.Nellaiappan

For respondents

... M/s.S.Geetha
for M/s.Rajnish Pathiyal

O R D E R

The petitioner was working as Senior Manager in Asset Recovery Branch at Chennai. A Charge Memo was issued to the petitioner on 04.04.2005 alleging that petitioner has resorted to sending, derogatory and defamatory messages by E-mail to various authorities by misusing the computer infrastructure facility provided to him in order to defame the reputation of top executives of the Bank. Petitioner was suspended pending enquiry. On completion of enquiry, petitioner was given a major penalty of compulsory retirement.



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2. The petitioner has filed W.P.No.12828 of 2006 and the same was allowed on 15.09.2010 setting aside the impugned order dated 06.04.2006 and directed the respondents to reinstate the petitioner back in service. The respondent Bank filed W.A.No.71 of 2011 and the same was dismissed, thereby, the orders of W.P.No.12828 of 2006 become final.

3. The petitioner was initially suspended on 03.01.2005 he was paid 1/3rd of his pay as subsistence allowance for three months from January 2005 to March 2005 and thereafter he was paid ½ of this pay from April 2005 till compulsory retirement on 31.12.2005. According to the petitioner, the respondent Bank is liable to pay 2/3rd of pay for three months ie from January 2005 to March 2005 and 50% of pay for remaining period, thereby the difference of subsistence allowance to be paid by the respondents in favour of the petitioner is Rs.3,50,324.34/-, of which the respondent Bank has paid Rs.1,62,124.41/- to petitioner, thereby, still the respondent Bank has to pay Rs.1,88,199.93/-.

4. Along with petitioner about eight officers were promoted to Scale III on 16.03.2001. As on the date of filing of Writ Petition, all the eight officers were promoted to Scale VI. It is the contention of the



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petitioner that he should also be promoted to Scale VI on par with eight officers.

5. According to petitioner, he is entitled for three additional stagnation increments as per the latest pay revision. Further, the petitioner was though directed to be reinstated as per the order of this Court in W.P.No.12828 of 2006, dated 15.09.2010, he was only reinstated only on 28.05.2012 after the dismissal of W.A.No.71 of 2011, thereby the petitioner has sought for full salary from 15.09.2010 to 28.05.2012.

6. Respondent has filed counter affidavit and contended that the respondent Bank has fully complied with the orders of the Hon'ble High Court in W.P.No.12828 of 2006 and W.A.No.71 of 2011 and that the petitioner was reinstated and he was issued a letter Ref No. CZO HRD NC 302 dated 21.05.2012 with the required information accordingly he joined the duty on 28.05.2012. Learned counsel has submitted that the petitioner had counted the future service benefits and thereby no justification to grant any monetary benefits for the period during which is was not in service. Hence, the petitioner is not eligible to claim any balance amount in respect of the subsistence allowance.



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7. Learned counsel for the respondent has further submitted that petitioner was out of service during during the month of December 2005, December 2008 and December 2011 thereby he is not entitled for stagnation increments or its arrears as claimed by him, and that, the petitioner's terminal benefits were calculated and paid taking into account of entire period of service from the date of joining till the date of retirement. Hence, the respondent has complied with the orders of this Court.

8. Heard both sides and perused the records.

9. The petitioner is claiming promotion to Scale VI on par with his colleagues, balance of subsistence allowance, full salary from the date of orders of Writ Petition to that of actual reinstatement and three stagnation increments.

10. In order to appreciate the submissions of the petitioner, the orders of the W.P.No.12828 of 2006, which were confirmed by the W.A.No.71 of 2011 are required to be considered. The relevant portion is extracted hereunder for ready reference:



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"The respondent are hereby directed to reinstate the petitioner. Even though the prayer is for attendant benefits, except for counting the services for future service benefits, I do not find any justification to grant any monetary relief to the petitioner for the period during which he was out of service"

11. The findings of this Court in W.P.No.12828 of 2006 dated 15.09.2010 which are confirmed in W.A.No.71 of 2011, are to the effect that the petitioner is required to be reinstated and that though the petitioner seeks for attendant benefits, except to counting of service for future service benefits, other attendant benefits were declined. It is specifically mentioned that there is no justification to grant monetary relief during the period which he was out of service. That means, from the date of his suspension until date of his reinstatement, though the service has to be counted only for future service benefits, attendant benefits were declined.



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12. Admittedly, the petitioner has filed Contempt Petition No.907 of 2013, to punish the respondent for disobeying the orders passed by this Court in W.P.No.12828 of 2006 and the same was closed. This Writ Petition is again filed almost with the relief of implementation of earlier order of W.P.No.12828 of 2006. Once the petitioner has specifically prayed in W.P.No.12828 of 2006, seeking for reinstatement and to grant all attendant benefits, when the W.P.No.12828 of 2006, has been disposed of specifically mentioning that the petitioner is not entitled for attendant benefits and granted only the relief of reinstatement and continuity of service for future service benefits, again filing of present Writ Petition seeking attendant benefits cannot be entertained.

13. The petitioner should have preferred Writ Appeal aggrieved by the order of W.P.No.12828 of 2006 dated 15.09.2010 for not giving the attendant benefits, but the petitioner has kept quite and thereby those orders have become final. Therefore, once this Court has considered the issuance of attendant benefits and declined specifically, again the petitioner cannot approach this Court by filing another Writ Petition seeking the same relief. On this ground itself, the Writ petition is liable to



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be dismissed.

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14. The petitioner has sought for attendant benefits under four categories. Firstly, according to him, he is entitled for subsistence allowance to the tune of Rs.3,50,324.34/-, of which the respondent Bank has paid Rs.1,62,124.41/- to petitioner, thereby, still the respondent Bank has to pay Rs.1,88,199.93/-. The subsistence allowance will be paid to the suspended employee basing on the rules that are applicable. It is the case of the petitioner that he was paid 1/3rd from January 2005 to March 2005, however according to petitioner, respondent Bank is liable to pay 2/3rd of his pay as subsistence allowance for the period of said three months and 50% of his pay for remaining period. According to the petitioner, the respondent has paid Rs.1,62,124.41/- and a balance sum of Rs.1,88,199.93 has to be paid. Though this Court in W.P.No.12828 of 2006 has declined to grant the attendant benefits, the subsistence allowance is not part of the attendant allowance and this amount has to be paid for every suspended employee without any delay. Therefore, a suitable direction can be given to the respondents to pay balance of subsistence allowance if any, as quickly as possible, not later than six weeks from the date of receipt of copy of this order.



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15. The petitioner has sought for promotion to Scale VI on par with his colleague eight officers. According to the petitioner, the petitioner and eight other officers were promoted into scale III on 16.03.2001. However, on account of the disciplinary proceedings, the petitioner was not promoted and thereby sought for promoting him to Scale VI on par with his colleague eight officers. As already observed, this relief as sought for by the petitioner falls under the category of attendant benefits. Once the W.P.No.12828 of 2006 filed by the petitioner has already been disposed of without granting any attendant benefits, again same thing cannot be reopened in this Writ Petition.

16. Even otherwise, the respondent Bank has filed documents in respect of Revised Promotion Policy in terms of Regulation 17 of Bank of India Officers Service Regulations, 1979 as modified (2012-13) which came into force on 03.05.2012. Similarly the respondent Bank also filed the Promotion Policy dated 19.04.2013 in terms of regulation 17 of Bank of India Officers Service Regulations, 1979- with modification for the year 2013-2014. These regulations disclose the procedure in respect of promotion. As per regulation 10.5 of policy in terms of regulation 17, the



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selection process from scale III to Scale IV shall comprises of test of computer knowledge, professional qualification, group discussion, interview and performance in Scale III. Regulation 10.7 speaks about further promotion from Scale V to Scale VI as per performance and interview. 70 marks were earmarked for the performance, whereas 30 marks were earmarked for interview.

17. That means in order to get the promotion from Scale III to Scale IV, and Scale V to Scale VI, every candidate is expected to undergo various tests. The promotion will not be given only basing on seniority. At para No.7 of the counter affidavit, the respondent Bank has mentioned that in the year 2012, 2013 and 2014, the petitioner has appeared for the interview, however, basing on his performance, he was not promoted to next level. In the contrary, when he appeared for the interview in the year 2015, he became eligible and promoted for the post. That means, as suggested by the learned counsel for the petitioner, the promotion to the petitioner to the higher scales, is not by default but it will be given only on successful completion of various tests. Since, the petitioner has not performed properly, he has not come under the zone of consideration for promotion and so the petitioner was denied promotion. Therefore the



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petitioner cannot attribute that had he not been suspended, he would have been promoted to Scale VI along with his eight colleagues officer.

Therefore, this contention of the petitioner that he should be promoted on par with his colleagues officers is hereby rejected.

18. The other relief sought for by the petitioner that the petitioner was denied three additional stagnation increments. In respect of this ground is concerned, it is submitted by the respondent that during period of December 2005, December 2008 and December 2011, the petitioner was out of service and thereby he is not entitled for three stagnation increments. Apart from that as already observed, this grant of stagnation increments also was part of attendant benefits. In W.P.NO.12828 of 2006, attendant benefits were considered and rejected, therefore the petitioner cannot reopen the same in this Writ Petition.

19. Finally, the other grievances of the petitioner is that the Writ Petition No.12828 of 2006 was allowed, on 15.09.2010, directing the respondent to reinstate the petitioner, but he was not reinstated instead, filed Writ Appeal and after dismissal of Writ Appeal, he was finally reinstated on 28.05.2012, therefore sought for direction to the respondent



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to pay the full salary, which was entitled by him from 15.09.2010 to 28.05.2012.

20. There is no record, before the Court as to when the respondents have preferred Writ Appeal No.71 of 2011, whether Appellate Court has stayed the orders passed in W.P.No.12828 of 2006. If at all there was no stay orders, then certainly, the respondent should have reinstated the petitioner after disposal of the Writ Petition. If at all, the respondents are aggrieved by the orders of Writ Petition No.12828 of 2006, still they could have given the posting orders to the petitioner and agitated the Writ Petition orders before the Division Bench. So no explanation has been offered as to why the salary has not been paid for the said period. Therefore, this Court is of the opinion that the petitioner is entitled for full wages from 15.09.2010 to 28.05.2012.

21. In view of the above, the Writ Petition is allowed in part, directing the respondents to pay difference of subsistence allowance if any paid to the petitioner and to pay the full salary to the petitioner from 15.09.2010 to 28.05.2012. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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To

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Formerly the Zonal Manager and Appellate Authority,
Bank of India, Zonal Office,
Errablau Street, Chennai-1.
2. Deputy Zonal Manager (Formerly)
Bank of India, Chennai Zonal Officer, Madras1.

Dr.D.NAGARJUN, J.

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Pre-delivery order made in

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