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W.P.No.5557 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.5557 of 2020

U.Poomarimuthu

... Petitioner

Vs.

1. Central Administrative Tribunal
Represented by its Registrar,
Madras.

2. Union of India,
Represented by
The Assistant Personnel Officer,
Southern Railway,
Divisional Office,
Personnel Branch,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for records on the file of the first respondent relating to the order passed on 09.04.2019 in Original Application 1233 of 2014, quash the same as illegal and consequently direct the 2nd respondent to implement the order passed in Original Application 132 of 2003 dated 30.06.2003 as confirmed by the High Court in Writ Petition No.28570 of 2023 dated 18.01.2005 by treating the petitioner's non-



W.P.No.5557 of 2020

employment as continuous service and grant the petitioner all the consequential benefits thereof.

For Petitioner : Ms.Anna Mathew
For Respondents : Tribunal [For R1]
Mr.M.Vijay Anand [For R2]

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The writ on hand has been instituted challenging the order passed by the Central Administrative Tribunal dated 09.04.2019 in O.A.No.1233 of 2014.

2. The petitioner is working as Keyman in Sivakasi Section of Madurai Railway Division. He was appointed as Keyman on 29.01.1997 and terminated from service on 03.12.1997, on the ground that the Community Certificate produced by him showing that he belongs to Scheduled Tribe Community is a fake certificate.

3. The genuinity of the original certificate produced by the petitioner at the time of appointment was not proved as genuine. However, the petitioner subsequently produced another Community Certificate dated 29.09.1997, which was found to be correct.



W.P.No.5557 of 2020

4. The petitioner filed O.A.No.132 of 2003 challenging the order of termination dated 03.12.1997. The Tribunal allowed O.A., on 30.06.2003 with a direction to reinstate the petitioner without backwages but with continuity of service. Admittedly, the respondents reinstated the petitioner on 14.09.2005. On 24.04.2007, the respondents passed an order stating that the period of absence between 03.12.1997 to 14.09.2005 will be treated as "non duty" and it will not constitute a break in service.

5. The undisputed facts between the parties to the *lis* are that after allowing of O.A.No.132 of 2003 on 30.06.2003, the respondents filed W.P.No.28570 of 2003. The Division Bench of the High Court dismissed the writ petition filed by the respondents by confirming the order of the Tribunal dated 30.06.2003 in O.A.No.132 of 2003.

6. After dismissal of the writ petition, the respondents implemented the orders of the Tribunal passed in O.A.No.132 of 2003 in proceeding dated 24.04.2007. The order reads as under:

"In compliance with the orders of the Hon'ble Central Administrative Tribunal Madras Bench in O.A.No.132/2003, Shri.U.Poomarimuthu has been re-instated in service as



W.P.No.5557 of 2020

Ty.Trackman on pay Rs.2610/- in scale Rs.2610-3540 and posted to SE/PW/KLGD vide this office O.O.cited above. He has joined SE/PW/KLGD Section on 14.09.2005.

As per orders of the Hon'ble Tribunal he is not entitled to any backwages for the period from the date of his termination till the date of his re-instatement i.e., from 03.12.97 to 14.09.05. However he is entitled for other benefits like continuity of service as per law, rules and instructions.

Therefore, the period from 03.12.97 to 14.09.05 will not count as service. However this will not constitute a break in service and there will be continuity of service i.e. the past service before termination and the future service after re-instatement will be continuous. The intervening period from 03.12.97 to 14.09.05 is treated as non-duty.

Necessary entries may be made in the Service Register and Leave Book."

7. Ms.Anna Mathew, the learned Counsel appearing on behalf of the petitioner would contend that even the initial application filed by the petitioner in O.A.No.1245 of 1997 was allowed granting liberty to the respondent to issue a show cause notice to the petitioner before taking a decision to terminate his services.



W.P.No.5557 of 2020

8. Since no action was taken in pursuance to the orders of the Tribunal dated 24.02.1998, the petitioner again filed O.A.No.132 of 2003, which was allowed with a direction to reinstate in service.

9. The learned Counsel for the petitioner would submit that the Tribunal in O.A.No.132 of 2003, issued directions to re-engage the petitioner in the post of Temporary Gangman based on the Community Certificate issued by the Assistant Collector, Tuticorin in his letter dated 29.09.1997, which is found to be genuine. Further direction was issued that the applicant shall not be entitled to any back wages for the period from the date of termination i.e., from 03.12.1997 till the date of his engagement. However, he shall be entitled to other benefits like continuity of service as per the provisions of law, Rules and instructions.

10. The said order of the Tribunal was confirmed by the High Court vide order dated 16.01.2005 in W.P.No.28570 of 2003. Therefore, the continuity of service would include that the period during which the petitioner was not performing his duty is to be taken into consideration for all purposes except back wages. Since re-fixation of pay taking into account the non duty period and other consequential benefits are not paid, the petitioner filed O.A.No.1233 of 2014 and the Tribunal rejected the same. Challenging the same, the present writ petition came to be instituted.



W.P.No.5557 of 2020

11. The learned Counsel for the petitioner would submit that the continuity of service granted by the Tribunal in Order dated 30.06.2003 in O.A.No.132 of 2003 has not been implemented in its letter and spirit. Therefore, the Tribunal has committed an error in clarifying the above directions, so as to grant re-fixation of pay, promotions and other consequential benefits to the petitioner, in view of the order passed in O.A.No.132 of 2003.

12. The learned Counsel appearing on behalf of the respondents would strenuously oppose by stating that the order of the Tribunal as confirmed by the High Court had been scrupulously followed and implemented. The Administrative Order of implementation dated 24.04.2007 would reveal that the period from 03.12.1997 and 14.09.2005 will not count for service. However, this will not constitute a break in service and there will be continuity of service. The period was treated as non-duty, since the petitioner is not eligible for any back wages. However, the period will be reckoned as a qualifying services for calculating the length of service and that alone is the direction issued by the Tribunal and thus, the order of Tribunal, which is under challenge is in consonance with the earlier directions issued and the present writ petition is to be rejected.



W.P.No.5557 of 2020

13. We have considered the arguments advanced on behalf of the parties to the *lis* on hand.

14. Let us examine the entertainability of the original application before the Central Administrative Tribunal filed by the petitioner in O.A.No.1233 of 2014. The relief sought for before the Tribunal is admittedly third round of litigation before the Tribunal. During the first round, the Tribunal directed the respondents to issue show cause notice before taking a decision to terminate the services. The second original application was filed challenging the order of termination. The third original application is filed to direct the respondent to implement the order passed in O.A.No.132 of 2003 dated 30.06.2003 confirmed by the High Court in W.P.No.28570 of 2003 dated 18.01.2005.

15. We are of the considered opinion that the directions seeking implementation of the order of the Central Administrative Tribunal as confirmed by the High Court is not entertainable. If at all, positive directions are issued by the Tribunal or High Court, it is to be implemented in the manner known to law and filing of a fresh original application seeking implementation of the orders passed by the Tribunal as confirmed by the High Court would not arise at all. The Tribunal cannot reinterpret the order already passed by the Tribunal, which



W.P.No.5557 of 2020

was confirmed by the High Court.

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16. The order dated 30.06.2003 in O.A.No.132 of 2003 reveals that the Tribunal directed the respondents to re-engage the applicant in the post of Temporary Gangman. The word reinstatement has not been employed but a direction was issued to re-engage based on the Community Certificate dated 29.09.1997. Therefore, the Tribunal itself has not validated the Community Certificate originally filed by the petitioner at the time of appointment as Keyman on 29.01.1997. The second direction of the Tribunal was that the petitioner shall not be entitled to any backwages for the period from the date of termination till the date of his engagement. The Tribunal has clarified that the petitioner is not entitled for the backwages from the date of termination till the date of engagement. It is also not clarified whether the period is to be regulated for the purpose of granting notional benefits of fixation of pay, promotion and other service benefits as admissible under the Rules. However, the Tribunal states that continuity of service as per the provision of law alone is to be granted. Thus, the continuity of service is to be granted by the respondents as per the Rules.

17. The implementation order dated 24.04.2007 reveals that the



W.P.No.5557 of 2020

continuity of service has already been granted to the petitioner. It is stated that the period from 03.12.1997 to 14.09.2005 will not constitute break-in-service and there will be continuity of service. The intervening period was treated as “non-duty” to indicate that the petitioner is not eligible for backwages, re-fixation of pay, promotion and other service benefits.

18. Though we have elucidated certain facts relating to the case on hand, primarily, we are not convinced that the original application filed seeking a direction to the respondents to implement the order passed in O.A.No.132 of 2003 dated 30.06.2003 confirmed by the High Court in W.P.No.28570 of 2003 dated 18.01.2005 is entertainable and thus, the original application itself is not entertainable and ought to have been rejected in *limine*. Directions seeking implementation of the Tribunal order as confirmed by the High Court cannot be considered by the Tribunal and it would be beyond the scope of the powers conferred under the Tribunals Act.



W.P.No.5557 of 2020

19. In view of the facts and circumstances, we do not find any reason to interfere with the order impugned and consequently the Writ Petition stands **dismissed**. No costs.

[S.M.S., J.]

[M.J.R., J.]

14.11.2024

Index: Yes/No

Speaking/Non-speaking order

veda

To

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2. The Assistant Personnel Officer,
Southern Railway,
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W.P.No.5557 of 2020

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W.P.No.5557 of 2024

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