



W.P.No.31183 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.31183 of 2019
and
W.M.P.No.31313 of 2019

1.Union of India

Rep. by its Under Secretary to Govt.of India
Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
6th Floor, Hudco Vishala Building,
Bhikaji Cama Place,
R.K.Puram,
New Delhi - 100 066.

2.Commissioner of Customs (Chennai VIII),
(Cadre Controlling Officer),
Customs House, No.60, Rajaji Salai,
Chennai - 600 0001.

.. Petitioners

vs

A.Ashokan

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for the records of the Central Administrative Tribunal, Madras Bench, in O.A.No.488 of 2018 and quash the order dated 18.12.2018 passed therein and pass any such further orders as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thus render justice.

For Petitioners : Mr.M.Santhanaraman
Senior Standing Counsel

For Respondent : Mr.P.Rajendran



W.P.No.31183 of 2019

ORDER

(Order of the Court was made by Dr. ANITA SUMANTH., J)

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The respondent was appointed as Appraiser in the Customs and Central Excise Department and has attained superannuation on 30.09.2013.

2. The Central Board of Investigation (CBI) had launched proceedings in C.C.No.15 of 2002 under the Prevention of Corruption Act, 1988 (in short, 'PC Act') and the XVIII Additional Special Court for (CBI Cases), Chennai had held the respondent guilty of offences punishable under Section 13(2) read with 13(1)(e) of the PC Act sentencing him to undergo rigorous imprisonment for a period of three years. Penalty had also been levied and in default thereof, simple imprisonment of six months had been imposed. The respondent has challenged the order of the Special Court by way of Criminal Appeal No. 245 of 2015 and has obtained interim protection on 23.04.2015.

3. As a consequence of the conviction by the CBI, proceedings were initiated by the petitioners for withholding of monthly pension and gratuity. Despite the respondent objecting to the proposal, an order had been passed on 09.02.2018 confirming the proposal for withholding of 100% of the monthly pension and the entirety of gratuity on permanent basis.

4. The respondent challenged the aforesaid order by way of an Original Application before the Central Administrative Tribunal (Tribunal) in



W.P.No.31183 of 2019

O.A.No.1825 of 2017. Before the Tribunal, the respondent had relied upon proceedings in a matter relating to a third party [V.S.Sundarajan v Union of India in OA No. 1013 of 2014 dated 06.04.2016] urging that the view taken by the Tribunal in that matter could be applied to his case as well. In that order, the Tribunal had held that *'not retaining a person in service pending appeal in the criminal case is not the same as withholding 100% of pension to a pensioner as the latter deprives the pension to a pensioner as the latter deprives the person his livelihood at an old age. A mere restoration of pension in the event of an Honourable acquittal in the appeal case may not undo the damage done to the pensioner in the interregnum. Accordingly, the Tribunal directed that the order could be kept in abeyance till the Hon'ble High Court finally disposes the Criminal appeal filed by the applicant. As the applicant's case herein is similar, a similar order is sought from this Tribunal'*.

5. The above plea was objected to by the present petitioners to state that the facts were distinguishable between that case and the present case. Moreover, and most importantly, the order of the Tribunal dated 06.04.2016 had been challenged in W.P.No.3240 of 2017 and by order dated 13.02.2017, the High Court had granted an interim stay of the same.

6. Notwithstanding the aforesaid submissions, the Tribunal has, by way of the impugned order, proceeded on the basis that the two cases dealt with similar facts and has come to dispose O.A.No.310/488/2018 with a direction to the petitioners / Department to review their decision in



W.P.No.31183 of 2019

the event of the High Court upholding the order of Tribunal in the case of *V.S.Sundarajan*.

7. The case of *V.S.Sundarajan* has ultimately come to be closed by a Division Bench of this Court that held as follows:-

"3. When the Writ Petition is taken up for hearing today, learned Standing Counsel for the petitioner by producing a copy of the communication dated 04.07.2019 and the order dated 03.07.2019 submitted that a decision was taken to close the disciplinary proceedings initiated against the respondent was on account of the decision taken by the CBI not to challenge the judgment of acquittal passed by the High Court in Criminal Appeal No. 248 of 2013. The order No.12 of 2019 dated 03.07.2019 is taken on file."

8. Said *V.S.Sundarajan* has hence been acquitted in the criminal appeal and the CBI has chosen not to challenge the judgment of acquittal. It would, in our considered view, be highly pre-mature to presume that the same conclusion would be applicable in the present case as well as in the criminal appeal relating to the respondent is still pending before this High Court. That apart, reliance on the observations made under order dated 06.04.2016 are itself inappropriate insofar as that order has been stayed by this Court on 13.02.2017.

9. We are thus of the view that the impugned order of the Tribunal is liable to be set aside as it does not appears to have taken note of the matter in proper perspective. We hence set aside the order and restore O.A.No.310/488/2018 to the file of the Tribunal.



W.P.No.31183 of 2019

10. We are informed that the Criminal Appeal filed by the respondent is ripe for disposal by the Bench. Hence it is for the parties to bring it to the notice of the Tribunal as and when the criminal appeal is disposed and upon coming to be appraised of the outcome, the Original Application filed by the respondent shall be decided, after hearing the both parties, in accordance with law.

11. This writ petition is disposed in terms of this order. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
13.08.2024

Index:Yes/No
Neutral Citation:Yes
ssm

To

The Central Administrative Tribunal, Madras Bench.



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W.P.No.31183 of 2019

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and
G. ARUL MURUGAN.,J

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W.P.No.31183 of 2019

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