



WP(MD)No.2132 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.2132 of 2022
and
WMP(MD)No.1857 of 2022

G.Subburaj

.. Petitioner

v.

1.The Director of Technical Education,
Department of Technical Education,
Guindy, Chennai – 25.

2.The Chairman of the Governing Council,
Virudhunagar S.Vellaisamy Nadar Polytechnic College,
Virudhunagar.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent in No.F-50-2021/A3/0-4517-1923 dated 01.12.2021, quash the same and consequently, directing the respondents to provide all monetary and other benefits to the petitioner.



WP(MD)No.2132 of 2022

For Petitioner : Mr.S.Karthik

For Respondents : Mr.P.T.Thiraviam,
Government Advocate
for R.1

Mr.M.N.Ramkumar for R.2

ORDER

The petitioner is a retired staff of the second respondent College. He was suspended for certain delinquency and later, he was also dismissed from service on 27.02.1998. As against the order of dismissal, the petitioner has approached the Labour Court and thereafter, filed a writ petition before this Court in WP(MD)No.1550 of 2011. This Court, by order dated 05.02.2021, disposed of the said writ petition as under:-

“14.Considering the facts and circumstances of the present case, for minor and flimsy reasons, the petitioners were dismissed from service by the second respondent and the said order of dismissal was modified by the Labour Court, without properly weighed the evidences and without appreciation of materials placed before the Labour Court, which is unsustainable. The punishment imposed on the petitioners is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges. Therefore, the second respondent is directed to reinstate



the petitioners and settle the benefits, as if the petitioners reached the age of superannuation. However, the petitioners are not entitled for any backwages from the date of termination till the date of reinstatement and further, the petitioners are entitled for continuity of services and other benefits."

2. Pursuant to the order of this Court, the petitioner was reinstated as Watchman on 11.03.2021 and was allowed to retire on 31.05.2021. Since this Court has passed an order that the petitioner is entitled for continuity of service and other benefits, the second respondent has fixed the scale of pay with yearly notional increment for the dismissal period also, ie., from 27.02.1998 to 10.03.2021 and paid the salary to the petitioner. After retirement, the pension proposals were sent by the second respondent. The first respondent raised objections that the petitioner is not entitled for any increment during the period of suspension and dismissal and returned the proposal on 18.11.2021, with a direction to submit revised proposal. Based on this communication of the first respondent dated 18.11.2021, the second respondent, by the impugned proceedings dated 01.12.2021, directed the petitioner to return the excess amount of Rs.58,538/-, which was already



paid to the petitioner by fixing notional increments during the period of suspension and dismissal. This order of recovery is challenged in this writ petition.

3. Admittedly, the petitioner was a Watchman, a Group D employee. The first respondent has now filed a counter affidavit dated 20.11.2024, wherein, the following stand has been taken:-

"14. It is submitted that based on the Hon'ble Madurai Bench of Madras High Court order, the period of suspension to reinstatement has been taken as continuity of service and the pay of the petitioner has been revised as per the Vth, VIth and VIIth pay commission for pension calculation by the 2nd respondent and the same was forwarded to the A.G for admissibility of pension vide Commissioner's proceeding No. 39341/S3/2021 dated 04.09.2024. Now, the pay of the pensioner has been increased. Hence, the recovery of excess amount needs to be done will not arise from the petitioner."

4. In view of the stand now taken by the first respondent, this writ petition is allowed and the order of recovery dated 01.12.2021 issued by the second respondent as against the petitioner is set aside.



WP(MD)No.2132 of 2022

WEB COPY

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
gk

27.11.2024

To

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Guindy, Chennai – 25.



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WP(MD)No.2132 of 2022

B.PUGALENDHI, J.

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WP(MD)No.2132 of 2022

27.11.2024