

A.Rajagopal Vs. 1.The Director of School Education,

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SooperKanoon Citation : sooperkanoon.com/1168437

Court : Chennai

Decided On : Jul-04-2014

Judge : R.Mahadevan

Appellant : A.Rajagopal

Respondent : 1.The Director of School Education,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

04. 07.2014 CORAM THE HONOURABLE MR.JUSTICE R.MAHADEVAN
W.P.(MD)No.15404 of 2012 A.Rajagopal : Petitioner Vs. 1.The Director of School Education, College Road, Chennai 6. 2.The Joint Director of School Education, [Personal]., College Road, Chennai 6. 3.The Chief Educational Officer, Madurai. : Respondents PRAYER Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.No.103106/C2/E3/2008, dated 17.02.2009, insofar as the denial of back wages and the subsequent order passed by the second respondent in his proceedings in Na.Ka.No.103106/C2/E3/2008, dated 19.03.2012 and quash the same and direct the respondents to regularize the service from 01.05.2002 to 02.03.2009 as duty period with all benefits as per Fundamental Rules 54 and confer all the consequential benefits. !For Petitioner : Mr.V.Panneer Selvam For M/s.C.S.Associates ^For Respondents : Mr.J.Gunaseelan Muthiah Government

Advocate :

ORDER

The case of the petitioner is that he was appointed as BT Assistant through Teacher Recruitment Board and joined at Government High School, N.Pudur, Trichy District, on 19.10.1994, and thereafter, he was transferred to Government High School, M.Kallupatti, Madurai District. The wife of the petitioner committed suicide, on 15.07.1997. In this connection, a case in Crime No.687 of 1997 was registered against the petitioner, on the file of the Inspector of Police, Jaihindpuram Police Station, Madurai. After trial, the learned Additional District and Sessions Judge, [Fast Track Court III]. Madurai, by Judgment, dated 06.05.2002, in S.C.No.57 of 2001, convicted the petitioner and sentenced him to undergo rigorous imprisonment for five years and also to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for six months. On the basis of the conviction rendered by the Criminal Court, the second respondent by proceedings, dated 23.09.2003, removed the petitioner from service. In the meanwhile, the petitioner preferred an appeal against the conviction and sentence made in S.C.No.57 of 2001, dated 06.05.2002. This Court, by Judgment, dated 14.08.2008, acquitted the petitioner of all the charges. The petitioner, therefore, submitted a representation, seeking reinstatement in service. As there was no reply, the petitioner filed W.P.[MD]..No.28670 of 2008, which was, by order, dated 04.12.2008, disposed of. In pursuance of the said order, the second respondent, by proceedings, dated 17.02.2009, reinstated the petitioner in service, stating that the petitioner is not entitled to any back wages, as he was out of employment from the date of dismissal from service till the date of reinstatement. Challenging the same, the petitioner has come forward to file the present Writ Petition.

2. The learned counsel appearing for the petitioner, vehemently contends that the impugned part of the order, denying backwages to the petitioner, cannot be sustained in law, as the only reason for his discharge was the conviction by the Criminal Court. Therefore, on acquittal, the petitioner was entitled to all the benefits, including backwages. The learned counsel, in support of his contention, makes reliance upon the Judgment of this Court in Mohammed Abdur Raheem Vs.State Bank of India, reported in 2011 (7) MLJ976 3. On the other hand, the

learned Government Advocate appearing for the respondents contends that no fault can be found with the order passed by the second respondent, as the petitioner was discharged on account of conviction by a Criminal Court and on acquittal, he was only entitled to reinstatement and not backwages.

4. I have considered the above submissions and perused the records carefully.

5. The reinstatement of the petitioner in service has already been ordered by the second respondent. However, the only question is whether he is entitled to back wages?.. A similar issue was considered by this Court in Mohammed Abdur Raheem Vs.State Bank of India, reported in 2011 (7) MLJ976 wherein this Court held as follows:- ".18. It is well settled, that the denial of backwages can only be in case, some fault can be with the employee in not performing his duties. If the employee is not permitted to perform his duties, and subsequently action of the Management is held to be bad, the denial of backwages will amount to punishment for no fault of him, which cannot be sustained in law.

19. In the present case, in spite of registration of the case, the petitioner was not placed under suspension. The petitioner continued to work with the bank till the date of conviction. Even after the conviction, the sentence of the petitioner was ordered to be suspended by the Appellate Court, and the order was operative during the pendency of the Criminal Appeal.

20. In spite of the suspension of sentence, the respondents did not allow the petitioner to work. The order of discharge was passed solely on the basis of the conviction in the Criminal Court. Admittedly, the petitioner was acquitted of the charge.

21. In view of the acquittal by the Criminal Court, the petitioner was entitled to reinstatement of service, and there is absolutely no justification with the respondents to deny the back wages to the petitioner, as no fault can be found with him, as petitioner was always willing to perform his duties.

22. The Judgment of the Hon'ble Supreme Court in the case of RANCHHODJI CHATURJI THAKORE (supra) will not be applicable to the facts of this case, in the

Judgment it has been laid down that each case is to be decided on its facts. No precedent has been laid, that an employee on reinstatement is not entitled to back wages.

23. As already observed above, in the case in hand, the petitioner was at no stage incapacitated to perform his duties, as he was not confined in jail, at any stage either before or after conviction.

24. Consequently, this writ petition is allowed, the impugned order dated 07.11.2002 passed by the second respondent, in so far as it relates to the refusal to grant backwages for the period from the date of discharge till the date of reinstatement of the petitioner in service is quashed. The petitioner held entitled to backwages also for the period he remained out of service."

6. Following the said Judgment, the Writ Petition is allowed, the impugned order, dated 19.03.2012, passed by the second respondent, insofar as it relates to the refusal to grant backwages for the period from the date of discharge till the date of reinstatement of the petitioner in service is quashed. In the light of the above, the respondents are directed to pass appropriate orders for the relief prayed for by the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. To 1.The Director of School Education, College Road, Chennai 6.
2.The Joint Director of School Education, [Personal]., College Road, Chennai 6.
3.The Chief Educational Officer, Madurai.

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