

Philip Johnson ... Vs. the Tamil Nadu Water Supply and Drainage Board, and ors.

Philip Johnson ... Vs. the Tamil Nadu Water Supply and Drainage Board, and ors.

SooperKanoon Citation : sooperkanoon.com/905657

Court : Chennai

Decided On : Jul-21-2010

Judge : K.B.K.Vasuki, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.12062 OF 2010 AND M.P.NO.2 OF 2010

Appellant : Philip Johnson ...

Respondent : The Tamil Nadu Water Supply and Drainage Board, and ors.

Advocate for Def. : Mr.Sudarsana Sundar, Adv.

Advocate for Pet/Ap. : M/s.Muthumani Doraisami, Adv.

Judgement :

1. On consent, the writ petition is taken up for final hearing.
2. The writ petition is filed to set aside the order of the second respondent dated 19.03.2010 in his letter No.66835/Estt.(DP)/A1/2005 in and under which the petitioner's representation dated 18.11.2009 for reconsidering the earlier order of his removal from the service issued by the first respondent and for consequential settlement of pension benefits is rejected by the second respondent.

3. The petitioner was during the relevant point of time working as Executive Engineer in RWS Division, Thiruvallur. While so, the petitioner was on 15.02.1991 placed under suspension for his alleged involvement in the criminal case lodged by Director of Vigilance and Anti Corruption for the alleged offences under Section 120-B r/w 167, 409, 420 and Section 5(2) of the prevention of Corruption Act. The criminal prosecution culminated in SC.No.4 of 1993 on the file of Special-cum-Additional District Judge-cum-Chief Judicial Magistrate, Chengalpattu. The petitioner herein was in the Trial Court, found guilty of the offence and was convicted and sentenced. Aggrieved against the same, the petitioner preferred appeal before the High Court. In the mean while, the departmental proceedings was also simultaneously initiated against the petitioner for the same set of facts and the same ended in an order of his removal from service passed by the Managing Director on 07.02.1993. The order of removal was subsequently confirmed by the Board/appellate authority on 25.02.1993. The said order of appellate authority was challenged by the petitioner in W.P.No.14034 of 1997 to quash the order of removal from service and the same was disposed of on 11.09.2004 by permitting the petitioner to make due representation to the respondent for revoking the order of dismissal in the event of his succeeding in the criminal appeal. The criminal appeal was after due contest allowed on 10.05.2005 thereby the order of conviction passed by the trial is set aside and the petitioner along with other accused was acquitted from all the charges. Thereafter, the petitioner has along with the copy of the order made in criminal appeal forwarded his detailed representation to the first respondent with a request to revoke his order of removal and to treat him to be continuously in service with all service and monetary benefits and to settle his retirement benefits as the petitioner has by then reached the age of superannuation. The order dated 19.03.2010 impugned herein is the rejection order passed upon the representation so made by the petitioner.

4. The main grievance raised by the petitioner in this writ petition is that the second respondent has passed the impugned order without examining in detail and without considering his acquittal from all the charges in the light of the earlier direction passed by this Court. According to the learned counsel for the petitioner, the impugned order is the outcome of total non application of mind and is not in

compliance with the earlier direction and is hence invalid and unsustainable. This Court finds much force in such argument advanced on the side of the petitioner.

5. As already referred to while disposing of the earlier writ petition our High Court made it very clear that in the event of his criminal appeal being allowed he is at liberty to approach the concerned authority for revocation of the order of termination. Thus there is implied direction to the authorities concerned to consider revocation of the removal order in the light of the outcome of the criminal proceedings. As the criminal proceedings and the departmental proceedings are based on the same set of facts and as the criminal case was disposed of after full fledged hearing resulting in honourable acquittal of the petitioner from all the charges on due consideration of all the available evidence both oral and documentary in nature. That being so, the second respondent ought to have when his attention is drawn to the same duly considered and disposed of the representation given by the petitioner in the light of the decision of the criminal appeal and by speaking order by giving reasons as to why the request made by the petitioner cannot be accepted so that the petitioner would be able to contest the correctness of the same by attacking such reasons. Whereas the second respondent has disposed of the representation almost in one line order without assigning any reason and without any discussion. The only reason given by the second respondent is that the order of dismissal is passed on earlier occasion. It is totally non speaking one reflecting non-application of mind and is hence unfair, biased and arbitrary as such the impugned order of the second respondent is to be necessarily set aside.

6. In the result, the impugned order dated 19.03.2010 is set aside with liberty given to the petitioner to make fresh representation to the first respondent, who is the competent authority within 15 days from the date of receipt of the copy of this order with further direction issued to the first respondent to consider and dispose of the petitioner's representation on merits and in the light of the direction issued by this Court in the earlier writ petition by duly considering decision of the criminal appeal and other documents produced on the side of the petitioner and after giving the petitioner adequate opportunity of being heard and the first respondent shall complete the whole exercise within six weeks from the date of receipt of the

representation of the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com