
(2016) 02 MAD CK 0015

In the Madras High Court

Case No : Writ Appeal (MD) No. 274 of 2016 and C.M.P (MD) No. 1425 of 2016

Executive Officer, Mamsapuram Town Panchayat,
Virudhunagar District

APPELLANT

Vs

Solaiappan

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) LIC 1599

Hon'ble Judges : S. Manikumar;C.T. Selvam, JJ.

Bench : Division Bench

Advocate : S. Ramesh, Advocate, for the Appellant; Seemaraj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J. - Challenge in this appeal, is to an order, passed in W.P(MD) No. 420 of 2012 dated 03.01.2013, by which a learned single Judge, has issued a Mandamus, directing the appellants, to reinstate the respondent, in service forthwith, with continuity of service and back wages. Writ Court has further directed that the order of reinstatement in service, should be passed, within two months from the date of receipt of a copy of the above said order.

2. Facts deduced from the material on record, are that the respondent, Sanitary Supervisor, Mamsapuram Town Panchayat, has been charged under Sections 120(B), 167, 467, 471, 467, 409, 477(A) IPC and Section 5(2) r/w 5(1)(c) and (d) of the Prevention of Corruption Act, 1988, in C.C.No.872 of 1995, on the file of the learned Special Judge cum Chief Judicial Magistrate, Srivilliputhur, Virudhunagar, and vide judgment, dated 24.11.2005, the respondent has been held guilty of various offences. Consequent to conviction, vide proceedings in Roc. No. 41/2008, dated 11.02.2008, the Executive Officer, Mamsapuram Town Panchayat, Srivilliputhur, has called upon the respondent, to show cause, as to why he should not be removed from service, as he had been convicted in the

above said criminal case. Thereafter, vide proceedings in Roc. No. 41/2008 dated 22.12.2008, respondent has been removed from service. In the meanwhile, being aggrieved by the conviction and sentence, imposed in C.C.No.872 of 1995, on the file of the learned Special Judge cum Chief Judicial Magistrate, Srivilliputhur, Virudhunagar, respondent has preferred an appeal in Crl. A(MD)No.628 of 2005, before this Court. Vide judgment, dated 11.04.2011, this Court has allowed the criminal appeal, setting aside the conviction and sentence and thus, acquitted the respondent of all the charges.

3. Material on record discloses that after the judgment of this Court, the respondent has made a representation dated 23.06.2011, requesting the appellant to reinstate him, in service. As there was no response, he has filed W.P(MD) No. 420 of 2012.

4. Perusal of the order impugned in W.P(MD) No. 420 of 2012, shows that despite service of notice on 30.01.2012, the appellant has not appeared before the Writ Court. Though the name of the appellant, was shown in the cause list, there was no appearance, either in person or through pleader, to oppose the prayer for reinstatement in service, with back wages. Observing that the appellant has no interest, in opposing the plea made by the respondent, in the writ petition and after hearing the learned counsel for the respondent and perusing the records, Writ Court, at paragraphs 5 and 6, ordered as hereunder:-

"5.As of now, from the records, I am satisfied that the petitioner was dismissed from service not in culmination of any disciplinary proceedings, but on the basis of the conviction and sentence imposed by the learned Special Judge cum Chief Judicial Magistrate, Srivilliputhur, Virudhunagar District in the said criminal case. Now, this Court has allowed the appeal filed by the petitioner and the petitioner has been acquitted of all charges. The said judgment has become final. When that be so, as per the settled law, the petitioner is entitled for reinstatement in service forthwith.

6.In view of the above position, the Writ Petition is allowed with a direction to the respondent to reinstate the petitioner in service forthwith with continuity of service and back wages. It is directed that the consequential order for reinstating the petitioner in service shall be passed by the respondent within a period of two months from the date of receipt of a copy of this order. No costs."

5. Being aggrieved by the same, the present appeal has been filed and while assailing the same, the appellant has contended that the Writ Court, has exceeded in its constitutional authority, which ground is inappropriate.

6. The impugned order is also assailed, on the ground that the respondent was out of employment from 01.10.2008 to 11.04.2011, and that applying the principle of "no work, no pay", he is not entitled to back wages and continuity of service. The appellant has also contended that the Writ Court has failed to appreciate that charge memorandum can be issued, at any time.

7. Heard Mr. S. Ramesh, learned counsel for the appellant and perused the materials available on record.

8. Perusal of the judgment made in Crl. A(MD)No.628 of 2005 dated 11.04.2011, on the file of this Court, shows that after considering the evidence adduced on behalf of the prosecution, a learned single Judge, has observed as hereunder:-

Since P.W.1 is not clear with regard to his power to accord sanction in respect of accused No. 2, the order of sanction granted to prosecute accused No. 2 under Ex.P1 in the considered opinion of the Court is vitiated."

9. On the appreciation of evidence, the learned single Judge, has further opined as hereunder:-

"This Court for the reasons stated above, is of the considered opinion that the prosecution has failed to probabalise their case against the accused beyond reasonable doubt and therefore, the judgment of the trial Court in convicting and sentencing the accused is not sustainable and the accused are entitled to be acquitted."

10. Admittedly, the State has not preferred any appeal. It is also the admitted case that removal was only consequent to conviction, which has been set aside on appeal. There is no hard and fast rule, that the principle of ""no work, no pay"", has to be applied in every case, where the employee reinstated in service, on acquittal, should be denied back wages and continuity of service. When the employer removes a person from service, on account of conviction, which has been set aside, with a clear observation that the order of sanction to prosecute itself, is vitiated and on the merits also, recording a finding that the State has failed to probabalise the case against the respondent, beyond reasonable doubt, the respondent who could not discharge his duties on account of the fact that he was kept out of employment, during the interregnum period, between conviction and reinstatement, should not be denied continuity of service and back wages, unless there are exceptional circumstances. Once the conviction is set aside, the stigma is removed. In the instant case, only on account of conviction, he has been removed. Thus, once the conviction is set aside, he should be restored to his original position, as if, he was not removed and continued in service.

11. For the reasons stated supra, this Court is of the view that no strong grounds, have been made out, for interfering with the order impugned in this appeal. Added further, it is also the contention of the learned counsel for the appellant that recommendations have been made, for dropping action on the charges framed.

12. Be that as it may, for the reasons stated supra, the writ appeal is liable to be dismissed and accordingly dismissed. No costs. Consequently, C.M.P(MD) No. 1425 of 2016 is closed.