(1995) 10 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 8229 of 1995-D

Joseph, K.J. APPELLANT

Vs

Director of Treasuries and Others RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(1)
Penal Code, 1860 (IPC) — Section 109, 420, 468, 477A

Citation : (1995) 10 KL CK 0007

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, for the Appellant; V.J. John, Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Petitioner retired as Senior Accountant on 30th June 1987. Petitioner, while working as Junior Accountant, Sub Treasury, Muvattupuzha, was placed under suspension as per order No. B5-2406/77, dated 13th September 1977 since he was arrested by police in connection with a complaint of making certain false entries in the tax licence register, etc. Charges levelled against him were punishable under Sections 420, 468 and 477A read with Section 109 of the Indian Penal Code. The department issued to the Petitioner a memo of charges dated 13th September 1977 alleging that he has committed irregularities during the period from 18th June 1975 to 27th August 1977, and the Petitioner was required to show cause, if any, as to why disciplinary action as contemplated under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 should not be taken against him. Petitioner submitted a detailed statement of defence dated 30th September 1977 denying the charges. Petitioner was later charge-sheeted before the Judicial First Class Magistrate''s Court, Muvattupuzha, and the case was taken on file and numbered as C.C. No. 140 of 1980. After a detailed examination, the trial court found that the Petitioner was not guilty of any charges levelled against him and acquitted him u/s 248(1) of the Code of Criminal Procedure. There was an appeal against the said judgment as Crl. A. No. 169 of 1982, which ended in dismissal. When the Petitioner was acquitted by the order of the Judicial First Class Magistrate''s Court, orders dated 5th July 1984 were issued for reinstatement of the Petitioner. In the said order, it was stated that the regularisation of the period of suspension will be considered at the time of the disposal of the disciplinary action initiated against the Petitioner. Later the disciplinary proceedings initiated against him was finalised as per proceedings dated 19th June 1987. In the disciplinary proceedings Petitioner was found guilty. It was found that a sum of Rs. 5,240 was recoverable from the Petitioner. However, since the Petitioner was about to retire on 30th June 1987, and he was under suspension for seven years, he was let off without inflicting any other punishments. It was ordered to treat the period of his suspension with effect from 14th September 1977 to 31st July 1984 as leave to which he is eligible and that the subsistence allowance, if any, paid to him in excess of the admissible leave salary for the period will be recovered from him. Against the said proceedings dated 29th June 1987, Petitioner preferred appeal. Appeal petition was however rejected by the Government by Ext. P-9 order dated 28th April 1988.

2. Aggrieved by the same, Petitioner filed O.P. No. 4238 of 1988 challenging Exts. P-8 and P-9 orders. Original Petition was allowed by Ext. P-10 judgment setting aside Exts. P-8 and P-9 orders. It is stated that the said judgment has become final. Petitioner then submitted various representations to the Director of Treasuries as well as other authorities. He was served with Ext. P-12 communication stating that further action on his representation will be taken after getting orders from the Government. Another communication was also received by the Petitioner, vide Ext. P-14, on the same line. However, no action has been taken by the Respondents. Petitioner submitted Anr. representation Ext. P-15. He also sent Anr. representation on 8th October 1994 to which he received Ext. P-18 wherein it was stated that the matter is still pending before the Government. Since no action has been taken by the Respondents, Petitioner has preferred the present Writ Petition for a writ of mandamus directing the Respondents to give grade promotion in the scale of Rs. 950-1640 with effect from 16th September 1985 and to grant him arrears of pay and also to fix his pension on the basis of the pay he would have drawn in that scale. He also sought for a writ of mandamus directing the Respondents to treat the period of suspension from 14th September 1977 to 1st August 1984 as duty for all purposes and to disburse the arrears of pay and allowances taking into account annual increments and pay fixation in respect of pay revisions and promotions to which he would have been otherwise entitled, deducting the subsistence allowance already drawn by him with 18 per cent interest. He also prayed for a direction to the Respondents to permit the Petitioner to commute his pension in terms of Pension (Commutation) Rules with interest.

3. While the Original Petition was pending Government have issued Ext. P-19 orders dated 23rd June 1995. Government ordered that the period of suspension of the Petitioner from 14th September 1977 to 31st July 1984 will be treated as

duty for the limited purpose of pension, only and his pay during the period regulated to the subsistence allowance paid to him if any. Petitioner has amended the Original Petition, and sought for a writ of certiorari to quash Ext. P-19 order.

4. Respondents have filed a statement, wherein they have stated that the Government have issued G.O. (Ms.) No. 404/95/Fin., dated 23rd June 1995 regularising the period of suspension. It is stated that copy of the order has been sent to the District Treasury Officer. Muvattupuzha, the pension sanctioning authority for settling the retirement benefits of the Petitioner. It was stated that the delay in sanctioning the retirement benefits due to the Petitioner was not deliberate.

5. I heard counsel for the Petitioner as well as learned Government Pleader. According to the Petitioner, he has retired from service on superannuation on 30th June 1987 and that all the proceedings in the criminal court as well as disciplinary proceedings ended in his favour. According to him, since all the proceedings ended in his favour, the order of suspension automatically ceases and therefore the period for which he was kept under suspension should be treated as duty for all purposes and Petitioner should be paid his full salary and allowances. According to the Petitioner, he is entitled to full pension with effect from 1st July 1987 in the scale admissible to Junior Accountant and he may be permitted to commute his pension in terms of Pension (Commutation) Rules. He also submits that he is entitled to D.C.R.G. with arrears of pay and allowances and pension at 18 per cent interest.

6. Learned Counsel placed reliance on the decision of the Supreme Court in Chaudhry Ram v. State of Haryanaa 1994 supp. (3) S.C.C 674. and contended that Petitioner was acquitted of the criminal charges by Ext. P-5 judgment, which was confirmed by this Court vide Ext. P-6 judgment. The necessary consequence is that he should have been reinstated as if there is no blot on his service. According to the Petitioner, the disciplinary proceeding itself was initiated since he was arrested by the police in connection with the complaint that he had made false entries in the tax licence register, tax licence discs and registration certificates. The proceedings, Ext. P-8 by which his period of suspension with effect from 14th September 1977 to 31st July 1984 was directed to be treated as eligible leave was quashed by this Court vide Ext. P-10 judgment. Therefore it is the case of the Petitioner that the very foundation of the charge levelled against him has itself gone and consequently he is entitled to have the period of his suspension from 14th September 1977 to 3lst July 1984 treated as duty and is entitled to pay and other allowances as well. In order to support this contention, learned Counsel relied on the decision of the Full Bench of the Andhra Pradesh High Court in The District Manager, Andhra Pradesh State Road Transport Corporation, Bhimavarm Vs. Labour Court, Guntur and Another, wherein the Andhra Pradesh High Court held that where an employee has been found in a regular trial, not to be guilty of any misconduct or commission of any crime or

other misconduct, it will be wholly unreasonable to hold that the employee should still suffer the loss of remuneration and other benefits for the period of his suspension which merges in the order of acquittal. Learned counsel also relied on the decision of the Calcutta High Court in Jatindra Nath Mondal Vs. State of West Bengal and Others, , wherein a learned Single Judge of the Calcutta High Court also took the view that once an employee has been reinstated after acquitting him of the criminal cases, he is entitled to recover full salary and other allowances. Counsel also referred to the decision of this Court in Karunakaran Pillai v. State of Kerala ILR 1994 (1) Ker 101 : (1) KLT 78, and contended that the Government has no authority to withhold the pensionary benefits payable to the petitioner on the sole ground that a criminal case of misappropriation is pending against him. In the instant case, however, the criminal case has already ended in acquittal. This Court also quashed the departmental proceedings as well. Therefore, so far as the petitioner is concerned, he has been completely relieved of all the criminal charges as well as charges in the disciplinary proceedings as well. In fact, this Court in Ext. P-10 judgment held that Exts. P-8 and P-9 are no longer valid.

Under the above-mentioned circumstances, I am of the view that Ext. P-19 cannot stand. Petitioner is entitled to have his period of suspension from 14th September 1977 to 31st July 1984 treated as duty for all service benefits, not only for the purpose of pension. He is therefore entitled to get salary allowances and other benefits also and to have his pension reckoned, as if he was in service from 14th September 1977 to 31st July 1984. It is declared. I also hold that the Petitioner is entitled to get 9 per cent interest for the amounts due from 14th September 1977 to 31st July 1984. Petitioner is also entitled to get 12 per cent interest from 1st September 1987 for the balance amount due to him by way of pension and other retirement benefits till the date of payment.

Original Petition is disposed of as above.

