

(2015) 02 MAD CK 0090

In the Madras High Court

Case No : W.A. No. 2283 of 2010 and M.P. No. 1 of 2010

Secretary to Government and Others

APPELLANT

Vs

P. Krishnamurthy

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0090

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; M.M. Sundresh, J.

Bench : Division Bench

Advocate : S.T.S. Moorthy, Government Pleader, for the Appellant; R. Arunmozhi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—While the respondent before us was serving as Inspector of Police, proceedings were initiated resulting in an order of removal. Challenge was made before the Tribunal in O.A. No. 1133 of 1991. By the Order dated 13.12.1996, the order of removal was set aside with a direction to reinstate the respondent. Resultantly, the appellants were directed to treat the period of out of employment as one on duty followed by continuity of service and pensionary benefits.

2. The respondent made a representation to the 2nd appellant seeking to promote him as Assistant Commandant on par with his immediate juniors. On the failure of the appellants to consider the said request, application was once again filed in O.A. No. 9326 of 1997. In pursuant to the directions of the Tribunal, the 1st appellant rejected the request of the respondent in Government Order passed in G.O.(D) No. 147, Home (Pol-II) Department, dated 27.2.1998. It is this order put into challenge before the learned single Judge in the writ petition.

3. After hearing the submissions of both sides, the writ petition filed was allowed holding that the order of removal of the respondent having been set aside on merits and thereafter given effect to, the consequences thereon would flow from

it. Taking into consideration of the fact that the respondent has retired from service, while setting aside the order impugned, the appellants were directed to consider and promote him as Assistant Commandant notionally with the consequential benefits. However, it was made clear that the respondent cannot seek back wages in tune with the earlier order passed.

4. The learned Government Pleader appearing for the appellants submitted that the respondent cannot seek the promotion as a matter of right as it is based upon merit. The promotion post involves a process of selection. The respondent was not considered as an order of suspension was in vogue at the relevant point of time. Therefore, the order of the learned single Judge requires interference.

5. At the time of passing the order, the respondent reached the age of superannuation. It is not the case of the appellants that the respondent was not otherwise eligible to be promoted. The grievance of the respondent was that but for the suspension order passed he would have been considered on par with his juniors, who were duly promoted ahead of him. Even while setting aside the earlier order, the Tribunal was pleased to hold that the respondent was entitled to full pay and allowances and other monetary benefits and the entire period of out of employment shall be counted as duty for continuity of service. The order passed by the Tribunal has become final and the order of removal passed was set aside on merits. Therefore, the respondent cannot be denied the resultant benefits accrued out of the said order. Taking note of the above said facts, the learned single Judge has rightly passed appropriate orders. Even in the order under challenge the respondent was not given the back wages. What was granted was notional fixation of pay scale in the post of Assistant Commandant based on which the appellants were directed to revise the terminal benefits. Thus, we do not find any error in the order passed warranting interference at our hands and the appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition also stands dismissed.