

(2011) 08 MAD CK 0256

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1061 of 2008 and M.P. (MD) No. 2 of 2008

P. Mani

APPELLANT

Vs

Senior Divisional Manager, Life
Insurance Corporation of India

RESPONDENT

Date of Decision: Aug. 17, 2011

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: F. Deepak, for the Appellant; C. Godwin, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner has approached this Court, with a prayer, for issuance of a writ, in the nature of certiorari, to quash the impugned part of order, vide which, the benefit of back-wages and salary, from the date of termination, till reinstatement has been denied to the Petitioner.

2. The Petitioner was working as "Record Clerk" with the Respondent Insurance Corporation, and on account of his involvement in a murder case, he was placed under suspension. The Petitioner was convicted by the learned Sessions Judge and his conviction was upheld up to the Hon"ble High Court.

3. In view of the conviction of the Petitioner, by the Sessions Judge, Petitioner was removed from service for the conduct leading to his conviction. The Petitioner preferred an appeal against the decision of this Court before the Hon"ble Supreme Court of India. The Hon"ble Supreme Court, by giving benefit of doubt, acquitted the Petitioner of the charges.

4. The Petitioner, on acquittal, approached the Respondent for reinstatement with continuity of service with all consequential benefits. The request of the Petitioner was accepted and he was ordered to join duty, however, the period from the date of his removal, till realization was ordered to be treated as "The period not spent on

duty", i.e. Dies non.

5. The learned Counsel for the Petitioner has challenged the impugned order, by contending that the order, on the face of it, arbitrary, as on account of acquittal, the very basis of his removal had ceased to exist, therefore, the Petitioner is entitled to reinstatement with all consequential benefits.

6. It is also the case of the Petitioner that he was always willing to work and it was the Respondent, who removed him from service, on account of his conviction by the court.

7. The writ is opposed by the learned Counsel for Respondent, by placing reliance on Regulation 38, which has a statutory force of law.

8. The Regulation 38, governing service condition of the Petitioner reads as under:

Treatment of the Period of Suspension:

38. When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee who has been dismissed, removed and suspended is reinstated, the disciplinary, appellate, or reviewing authority, as the case may be whose decision shall be final, may grant to him for the period of his absence from duty-

(a) if he is honorably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance;

(b) if otherwise, such proportion or pay and allowance as the disciplinary, appellate or reviewing authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. (in a case falling under clause (b), the period of absence shall not be treated as a period spent on duty, but the disciplinary, appellate or the reviewing authority may, at its discretion, grant leave for the period of extent admissible to the employee under the rules; any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these Regulations but will not constitute break in service).

No order passed under this regulation shall have the effect of compelling any employee to refund the subsistence allowance payable under regulation 31.

9. It is not in dispute that the Petitioner has not been acquitted Honorably, but on benefit of doubt. The impugned order, therefore, is, in consonance with the statutory regulation, governing the service condition of the Petitioner, which does not call for any interference by this Court.

10. No merit. "Dismissed".

11. No costs. Consequently, connected M.P. is closed.