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Writ Appeal No.1524 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2024

PRONOUNCED ON : 08.08.2024

CORAM

**THE HONOURABLE MR. ACTING CHIEF JUSTICE D.KRISH-
NAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1524 of 2022 &
CMP.No.10000 of 2022**

1.The Deputy Secretary to Govt.,
Public (Establishment-2) Department,
Fort St., George, Chennai – 600 009.

2.The Under Secretary to Government
Public (Establishment-2) Department,
Fort St., George, Chennai – 600 009.

... Appellants

Vs

R.Sivaraj

... Respondent

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent against the order dated 27.01.2022 made in W.P.No.2449 of 2017.

For Appellant : Mr.V.Manoharan AGP

For Respondents : Mr.S.Sivakumar



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JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU., J)

This instant Intra-Court Appeal had been filed as being aggrieved against the order of the learned Single Judge wherein the learned Single Judge had issued directions to pass orders by treating the respondent's suspension period from 08.02.2013 to 01.07.2014 as duty period for all purposes together with all service and monetary benefits.

2.Heard Mr.V.Manoharan, learned Additional Government Pleader appearing for the appellants and Mr.S.Sivakumar learned counsel appearing for the respondent.

3. Mr.V.Manoharan, learned Additional Government Pleader appearing for the appellants would contend that the respondent herein was arrested on 18.02.2013, in a criminal case registered on 24.09.2012. Hence by invocation of the provisions of the Fundamental Rules, he was placed under suspension by proceedings dated 20.02.2013. During the criminal investigation, the complainant and the accused in the criminal case had com-



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promised between themselves and the same was also recorded by this Court in Crl.O.P.No.445 of 2015 and the complaints were quashed. Based upon the said order, the suspension was revoked. However, a departmental action was initiated against the respondent under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for having contravened the provisions of the Tamil Nadu Government Servant Conduct Rules. Pursuant to the said enquiry, he was also been imposed with a punishment of withholding of increment for a period of two years without cumulative effect by proceedings, dated 17.07.2015. Against the said punishment, the respondent did not prefer any appeal and the said punishment had become final. Thereafter by proceedings dated 27.06.2016, orders were issued regulating the period of suspension by holding it to be a period not spent on duty and he was denied the pay and allowances. Being aggrieved against the same, he had preferred the Writ Petition which was also stoutly opposed by the appellants by contending that as per FR 54(5), it is the Government which has to decide how the period of suspension is to be regulated. Rule 54B(1), the excess period after adjusted against the leave salary was also sought to be waived. However, the learned Single Judge without appreciating the facts of the case, had applied FR 54B(9) to hold that the

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respondent would be entitled for treating the period as period on duty and would be entitled for monetary and other attendant service benefits.

4. He would contend that FR 54B(9) would only be applicable in a case, when the Government employee had been acquitted from a criminal case on the grounds stated therein. He would further contend that in the present case for the very same act, the respondent had also been proceeded departmentally and has also been found to have been guilty of misconduct and had been imposed a punishment. The respondent had also accepted the punishment and had not preferred any appeal against the said order and therefore, the same had become final. Therefore, the application of Rule 54B(9) cannot be available to the respondent, as his misconduct had been proved in the departmental action and therefore, FR 54(5) alone would be applicable to determine whether he would be entitled for treating his period of suspension as being spent on duty. Only if an order under FR 54(5) is made treating the period of suspension as period spent on duty, only then he would be entitled to monetary benefits. He would further contend that strict application of Rule 54(5) would show that even if the suspension is treated as period spent on duty, he would not be entitled for the entire monetary



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benefit in view that he had been imposed with the punishment for the very same act in the departmental proceedings. Therefore, he would seek interference of this Court with the order of the learned Single Judge.

5. Countering his arguments, Mr.S.Sivakumar, learned counsel appearing for the respondent would submit that in the present case the order of suspension had been made pursuant to the criminal case that had been lodged against the respondent. The said criminal case had been quashed by the Hon'ble Court by taking into consideration that the parties to the dispute had settled between themselves. Only thereafter he had been reinstated into the service by revoking the order of suspension. After the order of suspension was revoked in the year 2015, a charge memo was served upon the respondent for the alleged delinquencies and after enquiry, a punishment was imposed to withhold the increment for a period of two years without cumulative effect. Hence, the disciplinary proceedings cannot be put against the respondent for the denying the pay and other allowances during the period of suspension. He would vehemently contend that FR 54B(9) would only be applicable to the facts of the present case. He would contend that if a suspension had been made only on the ground of pendency of criminal



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case and that if the criminal case had ended in an acquittal on the ground stated in the Fundamental Rule, then the period of suspension should be treated as duty entitling the employee to receive full pay and pension. However, under the order that had been set aside by the learned Single Judge, the appellants had treated the period of duty as leave and had denied the respondent the pay and allowances, which he had been otherwise entitled to and therefore, he would submit that there is no error or infirmity in the order passed by the learned Single Judge, which warrants interference by this Court.

6. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

7. The issue that is to be decided in this Writ Appeal is as to whether a Government employee, who had been placed under suspension pending criminal charges would be entitled to seek the said period of suspension to be treated as period of duty, which entitles him to full pay and allowances. To decide the issue, it is pertinent to analyse the Fundamental Rules



that is applicable to a Government servant in that aspect. FR 54 deals with such a situation. For better appreciation, the relevant FR in that aspect are extracted hereunder:-

FR 54-B-1(5):-

In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

F.R. 54-B. (1) *When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty. (2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances*



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for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid. (3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

54B(9)(3)(1):-

The cases of suspension during pendency of criminal proceedings or proceeding for arrest for debt or during detention under a law providing for preventive detention, shall be dealt with in the following manner hereafter:-

(a) A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either in a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension, from the date of detention until further orders as contemplated in the Tamil Nadu Civil Services (Discipline and Appeal) Rules. A Government servant who is undergoing a sentence of imprisonment shall also be dealt with in the same manner pending a decision on the disciplinary action to be taken against him;

(b) A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension by an order of the competent authority under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course;



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c) A Government servant against whom a proceeding has been taken for his arrest for debt but who is not actually detained in custody may be placed under suspension by an order under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, i.e., only if a disciplinary proceeding against him is contemplated.

d) When a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in the circumstances mentioned in clause (b) is reinstated without taking disciplinary proceedings against him, his pay and allowance for the period of suspension will be regulated under rule 54/54-B, i.e., in the event of his being acquitted of blame or if the proceeding taken against him was for his arrest for debt or its being proved that his liability arose from circumstance beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under Rule 54(2)/54-B(3); otherwise it may be dealt with under rule 54(4)/54-B(5).

FR Rulings clause (9):-

Where a Government servant is:-

(a) Placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or trial; or

(b) dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge had not been proved against him or by giving benefit of doubt or on any other technical ground, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession.



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8. A reading of the aforesaid Fundamental Rules would indicate that in cases that do not fall under FR 54 namely when a Government servant under suspension dies before the disciplinary proceedings or the Court proceedings instituted against him are concluded and when the authority reinstates him by considering was wholly unjustifiable, then he would be entitled for full pay and allowances. The cases that do not fall under sub Rules (2) and (3) are dealt with under FR 54-B-1(5). Under the said Rule, a Government servant had been held to be paid such amount (not being the whole) of pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determined, after notice to him. FR 54-B-3(1)(d) provides that when a Government servant, who had been suspended and is reinstated without taking any disciplinary proceedings against him, then his pay and allowances for a period of suspension would have to be regulated under Rule 54(4)/54-B-(5). FR 54-B(9) postulates the situation that when a Government servant is placed under suspension in view of any criminal offence either under investigation or trial and that he is being acquitted, then the said period of suspension shall be treated as duty for all purposes and he would be en-



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titled to be paid full pay and allowances, which he would have been entitled to, if he had not been suspended.

9. We have thoroughly gone through Rule 54, but there has been no Rule that has been made which would fit to the facts of the case, i.e., if a Government servant had been suspended for a criminal offence being under either investigation or trial or had been taken into custody for a particular offences is also proceeded departmentally, and acquitted in a criminal case and had been imposed with a punishment in the disciplinary case. In such view of the matter, we are called upon to answer as to how to deal with such a situation. Even though the claim of the respondent is that since suspension had been made only pursuant to a criminal offence and in that offence, he had been acquitted, then he is entitled for full pay and allowances. He may be correct in such statement had not a disciplinary proceedings been initiated against him on the same set of charges and had been found not guilty of the said delinquency. In the present case, he had been proceeded departmentally and had also been inflicted with a punishment for the delinquency which arose out of the criminal offence. He had also not filed any appeal against the same and has accepted the order of punishment, which would only



indicate that he had committed the criminal offence. Had not a private settlement been arrived at between the complainant and the accused, which led to the criminal case, the appellant would have been proceeded with definitely for the criminal charge. In such circumstance, we are of the considered view that FR 54(9) cannot be made strictly applicable to the case of the respondent.

10.**Rule 54B-3-1(d)** indicates that even in a case where disciplinary proceedings had not been initiated, then the period of suspension and pay and allowances would have to be determined under 54(4) or 54-B(5). Rule 54(4) and 54-B(5) empowers the Competent Authority to determine as to what would be the pay and allowances for which a Government servant would be entitled to. As indicated above, such a procedure is envisaged, when there was no disciplinary proceedings initiated against the said Government servant. But in the present case, the respondent had been imposed with the punishment for the delinquency which was also the criminal charge against him. Since, there are no specific Rules, we deem it fit that in such a situation either Rule 54(4) or Rule 54(5) would have to be only followed by the Competent Authority.



11. Hence, in view of the aforesaid conclusion, we hold that the authority has rightly exercised his power in deciding the manner in which the period of suspension ought to be held and the consequential decision on the pay and allowances.

12. However, a perusal of the order impugned before us would show that in passing such an order the manner prescribed under 54-B(5) had not been followed. FR 54-B(5) empowers the Competent Authority to determine the pay and allowances only after giving notice to the Government servant concerned regarding the quantum proposed and after considering the representation, if any, submitted by him only, then an order could be passed under Rule 54-B(5). But in the present case, we do not find any such notice that had been sent to the respondent for determining the pay and allowances as indicated under Rule 54-B(5). Rule 54(4) is also a *pari materia* to Rule 54-B(5) and hence on that aspect, the impugned order suffers from a vice of principle of natural justice and hence, for the aforesaid reasons, we are inclined to interfere with the impugned order in the Writ Petition.



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13.Since, we have come to a conclusion that the impugned order in the Writ Petition is bad in law, even though we do not subscribe to the order made by the learned Single Judge impugned before us, we propose to set aside the order passed by the learned Single Judge. However, we having found that the order had not been made in consonance with Rule 54-B(5), which had been invoked by the appellant, we set aside the order made by the first appellant in G.O.(1D).No.250, dated 27.06.2016 and remit the matter back to the first appellant for fresh consideration after following the procedure contemplated under Rule 54-B(5). Such an exercise shall be completed by the appellants within a period of eight weeks from the date of receipt of a copy of this order.

14.With the above directions, the Writ Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K.,A.C.J.) (K.B., J.)
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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No

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