IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition No.1740 of 2014

S.Dakshinamoorthy ...Petitioner

Vs.

1.Deputy Inspector General of Police,
Vellore Range, Vellore.

2.Superintendent of Police,
Vellore District, Vellore. ...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, calling for the records in C.No.B2/523/2011 dated 02.02.2011 issued by the first respondent and consequential order in D.O.No.656 of 2011 dated 19.04.2011 issued by the 2nd respondent and quash the same and consequentially direct the respondents to treat the suspension period of the petitioner from 07.08.2005 to 21.11.2005 as on duty.

For Petitioner : Mr.N.Krishnakumar

For Respondents : Mr.M.S.Ramesh,
Addl.Govt.Pleader

O R D E R

The challenge in this writ petition is to the order dated 02.02.2011 and the consequential order passed by the second respondent dated 19.04.2011 treating the suspension period from 07.08.2005 to 21.11.2005 as Eligible Leave.

2. While the petitioner was working as Sub Inspector of Police, the second respondent initiated disciplinary proceedings against him. The petitioner was placed under suspension. The second respondent initiated proceedings under Rule 3(b) of Tamil Nadu Police Subordindate Service (D & A) Rules. It was a major penalty proceedings. However, after enquiry, the petitioner was imposed with the punishment of stoppage of increment for a period of one year without cumulative effect. According to the petitioner, the punishment was given under Rule 3(a) of TNPSS (D& A) Rules and as such, the authority was bound to treat the suspension period as Duty Period.

3. The second respondent issued notice to the petitioner calling upon him to show cause as to why suspension period should not be treated as eligible leave including extra ordinary leave to the extent necessary. Even though the petitioner submitted a detailed explanation that it would amount to double jeopardy, the second respondent passed an order dated 19.04.2011 treating the period as Eligible Leave. Feeling aggrieved, the petitioner is before this Court.

4. The second respondent filed a counter affidavit justifying the impugned order.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader on behalf of the respondents.

6. There is no dispute that the second respondent initiated proceedings against the petitioner invoking Rule 3(b) of TNPSS (D& A) Rules. It is also a matter of record that only minor punishment was imposed on the petitioner. It was only in the said circumstances, the petitioner pleaded that the suspension period from 07.08.2005 to 21.11.2005 should be treated as Duty Period. However, the second respondent considered the said period as Eligible Leave and rejected his request to pay monetary benefits treating it as Duty Period.

7. This Court considered an identical issue in W.P.No.5142 of 2007 dated 20.04.2012 [R.Sekar v. Principal Commissioner and Commissioner of Commercial Taxes] and having found that discretion was not exercised in accordance with well settled principles, quashed the impugned order therein and directed the respondents to treat the period of suspension as spent on duty with all consequential benefits.

8. F.R.54(B) gives a discretion to the authority to regularise the period of suspension. When a discretion is given to the authority to consider the matter, necessarily all background facts should be taken into account. In the subject case, the second respondent failed to consider the fact that only minor punishment was imposed on the petitioner, notwithstanding the initiation of proceedings under Rule 3(b) of TNPSS (D & A) Rules. The impugned order refusing to treat the suspension period as spent on duty would involve civil consequences to the petitioner. It would also amount to double jeopardy inasmuch as the petitioner has already been punished for the misconduct in question. I am therefore of the view that the petitioner is entitled to succeed.

9. In the result, the impugned orders are set aside and the second respondent is directed to pass a fresh order treating the period of suspension as spent on duty and pay consequential benefits to the petitioner. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this

order.

The writ petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki

To

1.Deputy Inspector General of Police,
Vellore Range, Vellore.

2.Superintendent of Police,
Vellore District, Vellore.

1 cc to Mr. N.S.Nandakumar,Advocate, SR.No.10691
1 cc to Government Pleader,Sr.No10243

W.P.No.1740 of 2014

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pmk.12.3.2015