

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35915 of 2015

R.Raman

.. Petitioner

Vs.

The District Collector,
Krishnagiri District, Krishnagiri.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent to treat the period of suspension of the petitioner from 14.06.2010 to 13.08.2014 for all purposes in the light of Fundamental Rules 54 - Ruling - 9, within a reasonable time to be fixed by this Court.

For Petitioner : Mr.G.Sankaran for Mr.C.Mahendran
For Respondent : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent to treat the period of suspension of the petitioner from 14.06.2010 to 13.08.2014 for all purposes in the light of Fundamental Rules 54 - Ruling - 9, within a reasonable time to be fixed by this Court.

2. It is the case of the petitioner that he joined as Noon Meal Organiser in the year 26.11.1987 in the Government Higher Secondary School, Santhur in Krishnagiri District and presently working at Kallai Mahal Nursery School, Santhur, Krishnagiri District. A criminal case was registered against the petitioner by the Inspector of Police, Pattakapatti Police Station, Krishnagiri District in Crime No.374 of 2009 under Sections 364, 302 and 404 of the Indian Penal Code, based on which, the petitioner was suspended from service by proceedings in Na.Ka.No.17211/2010/X-1, dated 17.06.2010 by the respondent. The petitioner contested the criminal case in C.C.No.06/2011 before the Additional District Sessions Court, Krishnagiri District and he was acquitted on 17.04.2013 in the above said criminal case.

3. The respondent sent a letter to the Police officials to ascertain as to whether any appeal is preferred in the above said criminal case, but the Police officials responded to the same after lapse of nine months from the date of acquittal, stating that the case against the petitioner had ended in acquittal. The respondent sought a legal opinion from the Assistant Director, Criminal Case Department and it was replied by letter in No.62/2014, dated 07.04.2014 and 01.07.2014 that there is no legal hurdle to reinstate the petitioner into service. Based on that, by proceedings in Na.Ka.No.28963/2014/XI, dated 14.08.2014, the respondent reinstated the petitioner into service. Thus, after acquittal from the criminal case, the petitioner was reinstated into service, but without any back wages. It is further stated that as per Fundamental Rules in F.R.54 - Ruling 9, where a Government servant was acquitted from the criminal case, the suspension period shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension. Hence, the petitioner made a representation, dated 24.08.2015 to the respondent, but till date, the representation was not considered. Hence, the petitioner has filed this Writ Petition.

4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner, while adverting to the averments made in the affidavit filed in support of the Writ Petition, made detailed arguments.

5. Learned Special Government Pleader appearing for the respondent, while referring to the averments made in the counter affidavit, vehemently opposed the prayer made in the Writ Petition, by contending that the writ petitioner is only working on temporary basis and he is a part-time non-standard scale worker. Hence, the petitioner will not come under the purview of Fundamental Rules and he is not entitled to claim the pay and allowances for the suspension period as per F.R.54 - Ruling 9. Hence, he prayed for dismissal of the Writ Petition.

6. However, learned counsel for the petitioner denies the submission made by the learned Special Government Pleader that F.R. will not apply to the petitioner. In this regard, learned counsel for the petitioner invited attention of this Court to F.R.2 and submitted all the Government servants shall be paid from the Consolidated Fund of the State and to any other class of Government servants to which the Government may, by general or special order, declare them to be applicable. In the instant case, the payment from the Consolidated Fund will apply. So far as the petitioner is concerned, the petitioner is seeking for a direction for payment of back-wages, however, learned counsel for the petitioner prayed that a direction may be issued to fix the petitioner's pay on notional basis for the period of suspension and accordingly, the petitioner's scale of pay may be directed to be fixed from the date of reinstatement.

7. In the above context, this Court is of the view that instead of giving positive direction, it would be appropriate to direct the petitioner to give fresh representation to the respondent, seeking the relief that is sought for in this Writ Petition, including the plea of fixation of pay from the date of reinstatement on notional basis from the period of suspension. Accordingly, the petitioner is directed to give a representation to the respondent with regard to the said relief, within a period of two weeks from the date of receipt of a copy of this order and on receipt of such representation, the respondent is directed to consider the said representation and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of such representation. It is made clear that this Court has not expressed any view on the merits of the claim of the petitioner and it is for the respondent to decide the same at the time of disposal of such representation, purely on merits.

8. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

Copy to

The District Collector,
Krishnagiri District,
Krishnagiri.

+lcc to Mr.C. Mahendran, Advocate, S.R.No.70310

+lcc to the Government Pleader, S.R.No.70092

ug(CO)
md(22/12/2016)

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