

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.1026 of 2016
and
CMP.No.13442 of 2016

1. The Superintendent of Police,
Salem District, Salem.
2. The Director General of Police,
Chennai -4.
3. The Secretary to Government,
Government of Tamil Nadu,
Home (Police) Department,
Secretariat,
Chennai - 600 009. ... Appellants/Respondents

Vs.

C. Govindan ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.04.2012 made in W.P.No.17361 of 2010 passed by the learned Single Judge of this Court.

W.P.No.17361 of 2010 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of first Respondent in D.O.No.1643/2007 (C.No.H1/46440/2000) dated 31.12.2007 denying backwages for the period of suspension from 18.01.1991 to 10.07.1993 and out of employment period from 13.7.1999 to 03.12.2002 to quash the same and to issue consequential directions to restore the order in D.O.No.1100/2007 (C.No.H1/46440/2000) dated 10.10.2007 regularizing the abovesaid periods as duty for all purposes and to grant consequential benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent : Mr.M.Ravi

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Being aggrieved over the order passed by the learned Single Judge of this Court, the official respondents in W.P.No.17361 of 2010 are before this Court.

2. The facts leading to the filing of this writ appeal, are as follows:

While the writ petitioner was working as a Police Constable, he was suspended on the ground of his implication in a criminal case and he has been ultimately acquitted by this Court, through a common judgment dated 30.04.2002 made in CrI.A.Nos.386, 393 and 444/1999. While so, departmental action was initiated against him by issuing a charge memo, which was subsequently, quashed by a common order of the Tribunal dated 29.08.2003 made in the Original Applications. Pursuant to the same, charge memo was cancelled and the period of suspension and out of employment period spent by the writ petitioner were treated as 'duty' for all purposes under Rule 54(2) of the Fundamental Rules. However, he was denied backwages, which compelled him to approach this Court with a writ petition in WP.No.17361 of 2010. By order dated 09.04.2012, the said writ petition was allowed by setting aside the order, denying the benefit of backwages and the respondents therein were directed to grant the relief of backwages to the writ petitioner for the period of suspension and out of employment period, within a period of twelve weeks. As against the said order, the present writ appeal came to be filed.

3. When the matter came up for admission, learned counsel for the respondent / writ petitioner, produced a copy of the judgment dated 02-09-2013 in W.A.No.1430 of 2013 passed by the First Bench of this Court and prayed for a similar order in this writ appeal also.

4. We have perused the judgment produced on the side of the respondent / writ petitioner. In the said judgment, under similar circumstances, the First Bench of this Court has dismissed the writ appeal filed by the official respondents and confirmed the order passed by the learned single Judge in the writ petition, treating the period of suspension as "spent on duty" and directing the respondents therein to settle the consequential benefits within the stipulated time. For better appreciation, the relevant paragraphs of the said judgment are extracted hereunder:

"8. This Court, after careful consideration of the rival submissions and upon perusal of the materials placed before it, especially sub-rule 9(b) of FR 54-B, is of the considered opinion that there is no merit in this writ appeal.

9. It is relevant to extract sub-rule 9(b) of FR 54-B as under:

'9:- Where a Government servant is :-

(a).....

(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 has 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, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension 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 or dismissed or removed or compulsorily retired from service.'

10. As per the above said Rule, if the Government servant is subsequently reinstated in service on his acquittal either on merits or by giving benefit of doubt, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension, shall be treated as duty for all purposes and he shall be paid full pay and allowances, which he would have been entitled to, but for the fact that he was not placed under suspension or dismissed from service. The said Rule is squarely applicable to the present facts of the case and in fact, in respect of one Ramadoss, who was arrayed as A-26 and who was also one of the appellants in CA.No.444/1999, which was allowed by this Court along with the other two criminal appeals in CA Nos.386 and 393/1999, his period of suspension has been treated as "spent on duty" and the consequential benefits were also directed to be paid to him.

11. Since the learned single Judge has taken into consideration the factual and legal position and has rightly arrived at the conclusion to allow the writ petition, this Court is of the view that there is no error or infirmity in the impugned order.

12. In the result, this writ appeal is dismissed at the admission stage itself. The appellants/official respondents are directed to comply with the order passed in W.P.No.17360/2010, within a period of one month from the date of receipt of copy of this judgment. However, there shall be no order as to costs. Consequently, connected MP is also dismissed."

5. We are of the view that the aforesaid judgment is squarely applicable to the case of the respondent / writ petitioner and by applying the same, the respondent / writ petitioner is entitled for the benefit of continuity of service and consequential monetary benefits including backwages. At this stage, it is submitted that the petitioner has been paid subsistence allowance during the suspension period.

6. In such view of the matter, the writ appeal is dismissed at the stage of admission itself. The appellants / official respondents are directed to settle all the benefits to the respondent / writ petitioner, if not already done so, within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Superintendent of Police,
Salem District, Salem.
2. The Director General of Police,
Chennai -4.

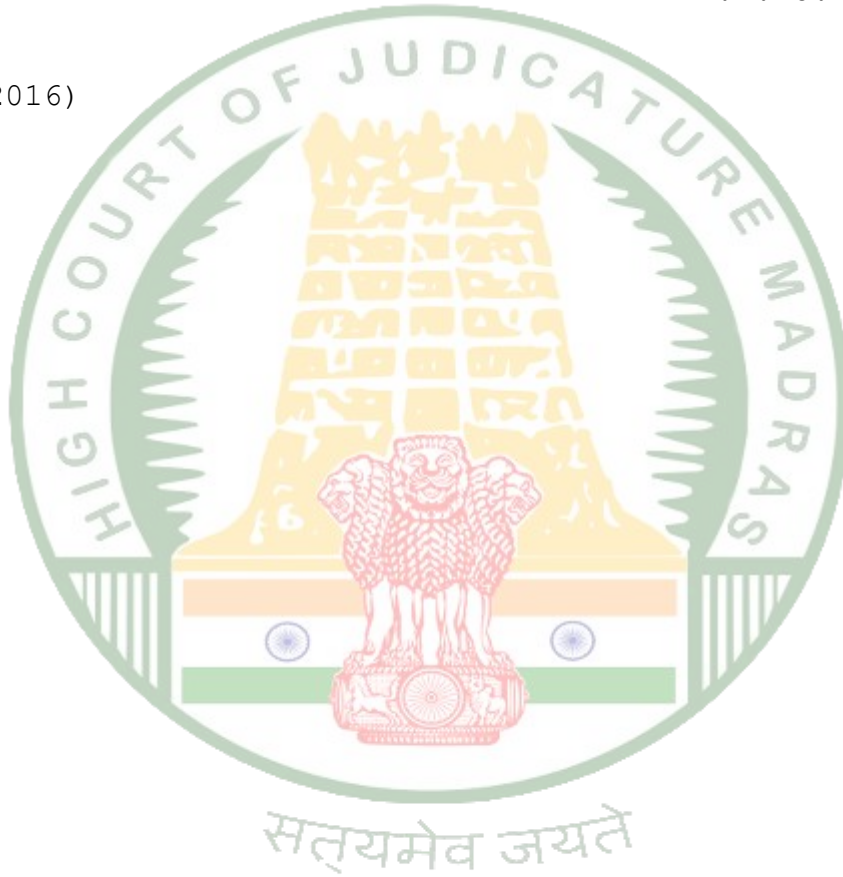
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3. The Secretary to Government,
Government of Tamil Nadu,
Home (Police) Department,
Secretariat,
Chennai - 600 009.

+1cc to Mr.M.Ravi, Advocate, S.R.No.50611
+1cc to the Government Pleader, S.R.No.50555

W.A.No.1026 of 2016

SKV(CO)
CA(23/09/2016)



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