



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2016

CORAM :

**THE HON'BLE Dr.JUSTICE S.VIMALA**

W.P(MD)No.20379 of 2016

V.Rose De Nayagam

... Petitioner

Vs.

1.The Special Commissioner and  
Commissioner of Revenue Administration,  
Chepauk,  
Chennai - 600 005.

2.The District Collector,  
Thoothukudi District,  
Thoothukudi.

3.The Divisional Excise Officer,  
Kovilpatti,  
Thoothukudi District.

... Respondents

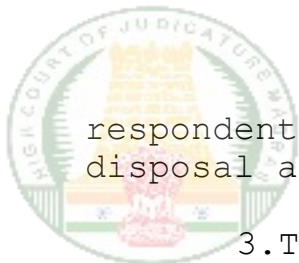
Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 2nd respondent to regularize petitioner's suspension period from 09.04.1999 to 26.06.2001 based on the strength of amendment of rule 54 of fundamental rules in G.O.Ms.No.228 of personnel and administrative reforms (personnel-J) department dated 13.04.1989 and consequently direct to pay all eligible full pay and allowances according to law based on his final representation 07.09.2016.

|                 |                                                       |
|-----------------|-------------------------------------------------------|
| For Petitioner  | : Mr.S.Muthalraj                                      |
| For Respondents | : Mr.V.R.Shanmuganathan<br>Special Government Pleader |

**O R D E R**

This writ petition has been filed, seeking a direction to the second respondent to regularise the suspension period of the petitioner based on G.O.Ms.No.228 of (Personnel and Administrative Reforms (Personnel-J) Department dated 13.04.1989.

<https://hcservices.ecourts.gov.in/hcservices/>  
2. To call the learned counsel for the petitioner and the learned Special Government Pleader, who takes notice for the



respondents. By consent, this writ petition is taken up for final disposal at the stage of admission.

3. The petitioner was working as a Tahsildar at Ottapidaram, Tuticorin District during the year 1999. At that point of time, a case came to be registered against him under sections 7, 13(2) of Prevention of Corruption Act, 1988. Therefore, the petitioner was placed under suspension with effect from 09.04.1999, i.e., from the date of arrest. The petitioner was acquitted by the Special Judge and Additional Sessions Judge - cum - Chief Judicial Magistrate, Tuticorin by the Judgment dated 14.06.2002. The State preferred an appeal against the Judgment and acquittal before this Court in Crl.A.No.1737 of 2002. On 07.01.2010, this Court dismissed the Appeal and thus, the acquittal came to be confirmed. The petitioner has preferred a representation seeking regularisation of the suspension period from 09.04.1999 to 26.06.2001. (ie., the date just prior to date of joining)

4. The learned counsel appearing for the petitioner has relied upon G.O.Ms.No.228 of (Personnel and Administrative Reforms (Personnel-J) Department dated 13.04.1989, providing for amendment to Rule 54 of the Fundamental Rules. Rule 54 of the Fundamental Rules reads as under:-

"54.(1) When a Government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), 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 his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation



within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole), of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowance to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal removal or compulsory retirement, as the case may be, 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:

Provided that any payment under this sub-rule to a Government servant shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated for any specified purpose :

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.



Explanation.—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of six months in the case of non-permanent Government servant; and

(b) leave of any kind in excess of five years in the case of a permanent Government servant or an approved probationer.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

5. In the said Fundamental Rules, the amendment which came into force on 19.06.1987, reads as under:—

"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 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."

6. As per the above said Rules, a Government servant who is reinstated in service on the ground of acquittal either:—

(a) on merit



- (b) on the ground that the charge has not been proved
- (c) on the ground of benefit of doubt; or
- (d) on any other technical ground,

he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension should be treated as a period of duty for all purposes and the petitioner shall be entitled and eligible to full pay and allowances which would have been entitled to, if he had not been placed under suspension.

7. Relying upon this provision, seeking regularisation of the suspension period, the petitioner has submitted a representation dated 25.11.2005, that is the one submitted prior to the orders in the criminal appeal. Even after being the orders passed in the criminal appeal, the petitioner has submitted representations on 28.03.2016 as well as on 07.09.2016. As these representations are not considered, the petitioner has filed this Writ Petition.

8. The factual aspects with regard to involvement of the petitioner in the criminal case and thereafter the order of acquittal passed by the criminal Court are not under dispute.

9. The only grievance of the respondents is that the petitioner has not preferred the representation in time and therefore, the belated representation cannot be considered after several years.

10. This Court is of the view that without expecting any representation from the petitioner, the respondents should have passed orders regularising the service of the petitioner, after the order of acquittal rendered by the Criminal Court. The petitioner was submitting representation from 2005. Moreover, the acquittal was confirmed only on 07.01.2010.

11. Under such circumstances, the representation of the petitioner cannot be discarded only on the ground of limitation. Therefore, the second respondent is directed to regularise the service of the petitioner in terms of the representation and to pass consequential orders within a period of four weeks from the date of receipt of a copy of this order.

12. The Writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

1.The Special Commissioner and  
Commissioner of Revenue Administration,  
Chepauk,  
Chennai - 600 005.

2.The District Collector,  
Thoothukudi District,  
Thoothukudi.

3.The Divisional Excise Officer,  
Kovilpatti,  
Thoothukudi District.

+1cc to M/s.S.MUTHAL RAJ Advocate in SR. No.62974

+1cc to Special Government Pleader in SR. No.64193

Mj

JS /MR/UB/02.02.2017/6P-6C

W.P(MD)No.20379 of 2016  
24.10.2017