

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.5622 of 2014
and
W.M.P.No.8811 of 2016

P.Raju .. Petitioner

Vs.

1.The Director General of Police,
Mylapore, Chennai - 4.

2.The Superintendent of Police,
Q Branch, CID, Chennai - 4.

3.The Superintendent of Police,
Theni District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the second respondent's order made in C.No.D1/Q/6613/2007:DOQ/1027/2013 dated 28.11.2013 and to quash the same and consequently direct the respondents to treat the period between 20.03.2004 and 17.08.2012 as duty for all purposes as per Fundamental Rules and to extend all benefits both service and monetary and revision of pay forthwith thereto.

For Petitioner .. Mr.L.Chandrakumar

For Respondents.. Mr.A.Zakkir Hussain,
Govt. Advocate

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records relating to the second respondent's order made in C.No.D1/Q/6613/2007:DOQ/1027/2013 dated 28.11.2013 to quash the same and consequently direct the respondents to treat the period between 20.03.2004 and 17.08.2012 as duty for all purposes as per Fundamental Rules and to extend all benefits both service and monetary and revision of pay forthwith thereto.

2.The case of the petitioner is that the petitioner was enlisted as Grade II Police Constable on 15.01.1979. He was promoted as Grade I Police Constable during 1994 and thereafter as Head Constable in 1999. While working as Head Constable, the petitioner was initiated with departmental action and a punishment of removal from service was passed against the petitioner. The said punishment of removal from service was the subject matter of challenge before this Court in W.P.Nos.2471 of 2007 and 27942 of 2004. This Court had set aside the order of penalty of removal from service on 02.07.2012 on the basis of the order passed by the Division Bench in W.A.No.58 of 2011.

3.While setting aside the order of removal from service, the learned Judge of this Court has granted liberty to the Department to pass any other punishment as the punishment of removal from service was found to be disproportionate and excessive. In pursuance of the liberty granted by this Court, the second respondent vide proceedings dated 13.08.2012, awarded the punishment of reduction in rank for a period of two years. Thereafter, the impugned proceedings dated 28.11.2013 was issued towards settlement of the period when the petitioner was out of service. As per the said proceedings, the entire period of non-employment of the petitioner from 20.03.2004 till 17.08.2012 is treated as eligible leave including extraordinary leave to the extent necessary. The details of the leave has been incorporated in the impugned proceedings dated 28.11.2013.

4.Mr.L.Chandrakumar, learned counsel appearing for the petitioner would submit that by the impugned proceedings, nearly eight years service of the petitioner had been wiped out and not treating the period in question as spent on duty has resulted in extreme loss and hardship to the petitioner as the same would affect his pensionary benefits. According to him, by not treating the period as spent on duty, the petitioner would be forced to lose his valuable service of about eight years, in which event, needless to mention that the petitioner would suffer irreparable monetary loss and hardship for his life time.

5.Learned counsel appearing for the petitioner would draw the Court's attention to the relevant provisions of the Tamil Nadu Fundamental Rules, particularly Rule 54-A (3), which reads as follows:

54-A(3). If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, 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.

6.According to the learned counsel for the petitioner, once the punishment is set aside on the merits of the case, the intervening period shall be treated as duty for all purposes. In the instant case, this Court vide order dated 02.07.2012 had set aside the order of removal from service on the basis of the decision laid down by the learned Division Bench of this Court in W.A.No.58 of 2011. Therefore, the order passed by this Court in the earlier proceedings is the order on merits and in which event, the petitioner is entitled to the benefit of the above referred Fundamental Rule.

7.Learned counsel for the petitioner would also draw the Court's attention to the order passed in similar circumstances by the learned single Judge of this Court in W.P.No.31036 of 2013 dated 21.03.2017. The learned Judge has discussed the provisions of the Fundamental Rules and has held that the employee is entitled to the benefit of the aforesaid Fundamental Rules. The operative portion of the order passed by the learned single Judge is extracted below:

9. In this regard, the learned Government Advocate would submit that Rule 54(1) and (2) would be the opt rule. Only by invoking the said Rule, the present impugned order has been passed. The said rule has been extracted above and on a perusal of the same, this Court feels that the said Rule 54(1) and (2) is not the relevant Rule to be invoked in the case on hand. At the same time, as has been rightly pointed out by the learned counsel appearing for the petitioner, Rule 54-A.(3), which has also been extracted herein above, would make it clear that, if any punishment of dismissal, removal or compulsory

retirement of the Government servant is set aside by the Court of Law on the merits of the case, the intervening period between the date of dismissal and the period of suspension preceding such dismissal and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances. Here in the case on hand, the punishment of removal from service has been set aside by the court law. Once the said punishment is set aside as per the import of Rule 54-A.(3), then, certainly the petitioner shall be entitled to claim full pay and allowances for the period between dismissal or removal and reinstatement. However, in this case since the Tribunal itself has given a modified punishment and also denied backwages, such benefit cannot be conferred on the petitioner and he would also not entitled to seek the same.

10. However, in so far as the said absence period on the part of the petitioner is concerned, whether it is to be treated as duty period without backwages or to be treated as leave period without pay is concerned, the said Rule 54(1) and (2), as has been quoted by the learned Government Advocate, on a perusal and in the opinion of the Court, may not be applicable to the present facts of the case.

11. Then, the only option available to the second respondent is to invoke F.R. 54-A.(3) and if the said Rule is invoked without giving any backwages, the said absence period shall be treated as duty for all purposes. If it is treated as duty for all purposes, it goes without saying that the petitioner shall be entitled to get other service benefits for which, he is entitled to, as per the Rules, which are in force except backwages.

8. In view of the above ruling by the learned single Judge, the learned counsel for the petitioner would submit that the present petitioner is also entitled for the benefit as given in F.R. 54 A(3) of the Fundamental Rules.

9. Upon notice, Mr. A. Zakir Hussain, learned Government Advocate entered appearance on behalf of the respondents and filed a detailed counter affidavit. He would vehemently oppose the grant of relief to the petitioner on the ground that the punishment has not been set aside on merits but it was set aside only on the ground that the same is being disproportionate and excessive and further more, liberty was also granted to the Department to proceed against the petitioner for imposing any

other penalty. Thereafter, by order dated 13.08.2012, the penalty of reduction in rank for a period of two years had been imposed and therefore, the petitioner is not entitled to the benefit of F.R.54 A (3) of the Fundamental Rules. Since the disciplinary action had ended in punishment, protection given under the Fundamental Rule cannot be given to the petitioner.

10.This Court has considered the rival submissions of the learned counsels appearing for the parties and also considered the relevant materials and the pleadings placed on record. This Court has to first see whether the order passed by the learned Judge dated 21.03.2017 in W.P.No.31036 of 2013 can be applied to the factual matrix of the present case. After going through the order, this Court is of the view that the petitioner's case is similarly circumstanced and therefore, the order passed by the learned single Judge in the aforesaid writ petition has to be applied in toto. Moreover, as rightly contended by the learned counsel for the petitioner, this Court originally set aside the order of removal from service which was set aside only on the ground that such punishment was not warranted, in which case, the petitioner is entitled to the benefit incorporated in the aforesaid F.R.54 A(3). However, while granting the benefit of the said Fundamental Rule, this Court has to see whether the petitioner is entitled to pay and allowances for the period of his non- employment from 20.03.2004 till 17.08.2012. Admittedly, the petitioner was not on duty during the said period and therefore, by applying the principle of "No Work No Pay", the petitioner is not entitled to the backwages. As stated by the learned single Judge in the aforesaid decision, the petitioner is also entitled for other service benefits except backwages for the said period.

11.In the aforesaid circumstances, the impugned order in C.No.D1/Q/6613/2007:DOQ/1027/2013 dated 28.11.2013 is set aside and the writ petition stands allowed. The respondents are directed to pass consequential order regularising the period of non-employment of the petitioner as directed above and the order shall be passed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Director General of Police,
Mylapore, Chennai - 4.

2.The Superintendent of Police,
Q Branch, CID, Chennai - 4.

3.The Superintendent of Police,
Theni District.

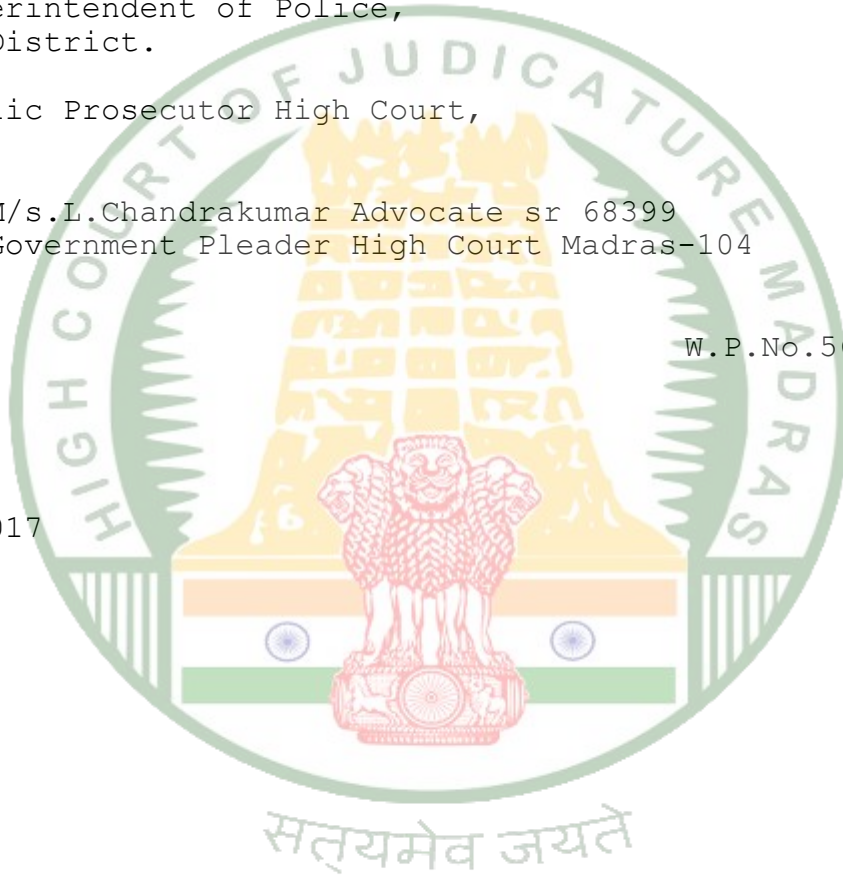
4.The Public Prosecutor High Court,
Madras

+1 cc to M/s.L.Chandrakumar Advocate sr 68399

+1 cc to Government Pleader High Court Madras-104
sr 68876

W.P.No.5622 of 2014

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