

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.31036 of 2013

N.Panneerselvam

.. Petitioner

vs.

1. The Commissioner of Police,
Chennai Police Office,
Egmore, Chennai-600 008.

2. The Deputy Commissioner of Police,
Motor Transport,
In-charge Armed Reserve,
Chennai-600 008.

.. Respondents

* * *

Prayer : Writ 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 pertaining to the order passed by the second respondent herein in his P.R.No.292/50988/PR.II(1)/02, dated 16.04.2003 treating the out of employment period from 25.06.1993 to 13.02.2003 as eligible leave including Leave Without Pay and quash the same and consequently direct the respondents herein to treat the out of employment period from 25.06.1993 to 13.02.2003 as duty for all purposes except backwages as per Fundamental Rule 54-A.(3).

* * *

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.A.Zakir Hussain
Government Advocate

ORDER

The prayer in the writ petition is for a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in proceedings No.P.R.No.292/50988/PR.II(1)/02, dated 16.04.2003 treating the out of employment period of the petitioner from 25.06.1993 to 13.02.2003 as eligible leave including leave without pay and quash the same and consequently, direct the respondents to treat the out of employment period of the petitioner from 25.06.1993 to 13.02.2003 as duty for all purposes except backwages as per Fundamental Rule 54-A.(3).

2. The short facts leading to filing of this writ petition is that the petitioner had joined the police services as Grade II Police Constable on 27.02.1986 in Armed Reserve, Chennai. He had absented from duty without leave or permission between 25.06.1993 to 15.07.1993. He was on Medical Leave with permission from 10.06.1993 to 24.06.1993. However, he was declared as deserter for absenting from duty for 21 days. For the said violation, an enquiry was conducted under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955.

2.1. Pursuant to the enquiry, a punishment of removal from service was inflicted on the petitioner on 29.07.1994. Challenging the said punishment the petitioner had filed O.A.No.5885/1994 before the Tamil Nadu State Administrative Tribunal. On 19.03.2002, the Tribunal had allowed the O.A.No.5885/94 by setting aside the order of removal from service. However, the Tribunal has imposed a modified punishment of stoppage of increment for one year with cumulative effect and also denied backwages to the petitioner. In the said order, the Tribunal had specifically directed that the period of absence shall be regularised as per Rules.

2.2. Pursuant to the orders passed by the Tribunal, the petitioner was reinstated on 16.10.2002 with modified punishment of reduction of pay by one stage for one year with cumulative effect without backwages.

2.3. According to the petitioner, he had rejoined duty on 14.02.2003. Thereafter, by show cause notice dated 19.03.2003, the petitioner had been asked to give explanation as to why the period of non-employment between 25.06.1993 and 13.02.2003 should not be regularised as eligible leave including leave without pay. On 28.03.2003 the petitioner had given explanation, whereby, he had requested that his out of employment period shall be treated as duty for all purpose without backwages.

2.4. However, the second respondent had passed the impugned order on 16.04.2003, treating the period from 25.06.1993 to 13.02.2003 only as eligible leave including leave without pay (LWP) as per F.R. 54.

2.5. Challenging the said order the petitioner has approached this court with the aforesaid prayer.

3. Mr.Ravi Shanmugam, learned counsel appearing for the petitioner would straightaway invite the attention of this court with regard to the Rule position. According to him, as per F.R. 54-A.(3), the petitioner's non duty period between 25.06.1993 and 13.02.2003 should be treated as duty period for all purposes, however without any backwages. In this regard, the learned counsel relied upon the relevant rule, namely F.R. 54-A.(3), which reads thus:

" 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".

3.1. By quoting the said rule, learned counsel would submit that, since the punishment of removal from service inflicted on the petitioner has been set aside by the orders of the Tribunal and a specific direction was given by the Tribunal that the period of absence on the part of the petitioner shall be regularised as per rules, the second respondent should have applied only the proper Rule, under which, the issue can be decided.

3.2. In this regard, the learned counsel for the petitioner would further submit that the relevant rule for deciding the said issue in the teeth of the direction given by the Tribunal is only F.R. 54-A and therefore, if the said rule is applied in the case of the petitioner, the non duty period between 25.06.1993 and 13.02.2003 ought to have been treated only as a duty period for all other purposes without backwages. Instead, the second respondent had passed the impugned order treating the petitioner's non duty period only as leave without pay.

3.3. In this regard, the learned counsel for the petitioner would submit that treating the said non duty period of the petitioner as leave without pay, is not possible, if the F.R. 54-A.(3) is invoked. Therefore he would submit that the impugned order is liable to be inferred with.

4. Per Contra Mr.A.Zakir Hussain, learned Government Advocate appearing for the respondents, relying upon the averments made in the counter affidavit as well as the written instructions received by him, has submitted that the petitioner's case, no doubt, was directed to be considered, by the orders of the Tribunal, as per the Rule. Since the punishment of removal of service has been set aside, the petitioner is entitled to get reinstated. Accordingly, he was reinstated. However, the learned Government Advocate would submit that in so far as the regularising the non duty period for long years, that is, between 25.06.1993 and 13.02.2003 is concerned, it was a direction given by the Tribunal that the period of absence shall be regularised as per Rules.

4.1. In this regard, learned Government Advocate would submit that the petitioner's case falls only under Rule 54 and in that context the learned Government Advocate drew the attention of this court on the said Rule, namely, F.R. 54, especially Rule 54(1) and (2) which reads thus:

"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."

4.2. The learned Government Advocate would also submit that since the petitioner's absence period has to be condoned or regularised as per the Rule and by invoking F.R.54, the second respondent have treated the said absent period on the part of the petitioner only as leave period without pay. This is the only option as per the rule, was available for the second respondent to condone the absent period on the part of the petitioner, because when there is a specific direction given by the court of law that he would not be entitled for any backwages, the said period can only be treated as leave period, otherwise, the petitioner may claim other benefits including the backwages, for which, there is no provision available either in Rule 54 or 54-A of Fundamental Rule.

4.3. Therefore the learned Government Advocate would submit that the order passed by the second respondent treating the absence period of the petitioner for ten long years as

leave without pay is a justifiable order within the meaning of the relevant Rule and therefore the same does not require any interference from this Court.

4.4. At this juncture, it is relevant to extract the written instructions, as received by the learned Government Advocate from the Joint Commissioner of Police, South Zone, Greater Chennai Police, Chennai, as hereunder:

"Gr.II PC 9967 N.Panneerselvam of 1 pln. Armed Reserve had deserted the force from 25.06.93. Hence he was dealt with on a charge u/r.3(b). On a proved minute, he was awarded the punishment of removal from service by the disciplinary authority i.e. The Deputy Commissioner of Police, Armed Reserve on 29.07.1994. Against the order, he had filed an O.A.No.5885/94 before the Tamil Nadu Administrative Tribunal. The Tamil Nadu Administrative Tribunal in their order dt. 19.03.2002 have set aside the order of removal and imposed the punishment of stoppage of increment for one year with cumulative effect and denial of backwages for the period of his absence for duty and the period of out of employment shall be regularised as per rules.

Accordingly the punishment of removal from service imposed on him was cancelled and he was reinstated into service on 13.02.2003 A.N. He was awarded the modified punishment of reduction of pay by one stage for one year with cumulative effective and he is not entitled for backwages for his desertion and the out of employment period.

The out of employment period from 25.06.93 to 13.02.03 was settled as eligible leave including LWP to the extent required as per FR 54 as follows:

25.06.1993 to 23.07.1993 -	29 days EL
24.07.1993 to 21.09.1993 -	60 days UEL(P)
22.09.1993 to 13.02.2003 -	3432 days LWP(P)

5. This Court considered the rival submissions made by either side and perused the materials placed before this Court.

6. The controversy centered around the issue raised in this writ petition lies in a very short compass as to whether the petitioner's absence period of ten years between 25.06.1993 and 13.02.2003 shall be treated as duty period without backwages or leave period without pay.

7. In this regard, the actual direction given by the Tribunal in O.A.No.5885/1994 filed by the petitioner, where his punishment of removal from service has been set aside, can be usefully referred to as hereunder:

"5. Therefore, we are inclined to set aside the order of removal passed against the applicant. The

applicant no doubt is guilty of having absented himself for more than two months and therefore, he must be adequately punished and a punishment of stoppage of increment for one year with cumulative effect and denial of backwages for the period of unemployment would be sufficient and adequate and this will also provide an opportunity for the applicant to improve himself and try to be useful to the department.

6. In the result, the application is allowed and the order of removal is set aside and instead the applicant is imposed with punishment of stoppage of increment for one year with cumulative effect and denial of backwages. The period of absence shall be regularised as per Rules."

8. The Tribunal has set aside the punishment of removal of service. However, the Tribunal itself has given a modified punishment of stoppage of increment for one year with cumulative effect. The Tribunal also denied backwages to the petitioner for the period of unemployment. Therefore in respect of these aspects, since the Tribunal has given a clear verdict, the respondents do not have any discretionary power to give relief in accordance with their assessment of the case. However, in so far as the question of regularising the absence period of the petitioner for ten years is concerned, it was the direction of the Tribunal that the period of absence shall be regularised as per Rules. Therefore, it is also unavoidable to regularise absence period of the petitioner. But the only thing is that, under which rule such regularisation shall be made.

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.

12. In view of the above Rule position and the discussions made, this Court is of the considered view that the impugned order is liable to be set aside.

13. In the result, the impugned order is quashed. The petitioner's period of absence between 25.06.1993 and 15.07.2003 shall be treated as duty period for all purposes. However, the petitioner shall not be entitled for any backwages or monetary benefits for the said period, which has been regularised now. It is needless to mention that in view of this, the petitioner shall be entitled to seek other service benefits.

14. With these directions, the writ petition is allowed to the extent indicated above. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rsi/gg

To

1. The Commissioner of Police,
Chennai Police Office,
Egmore, Chennai-600 008.

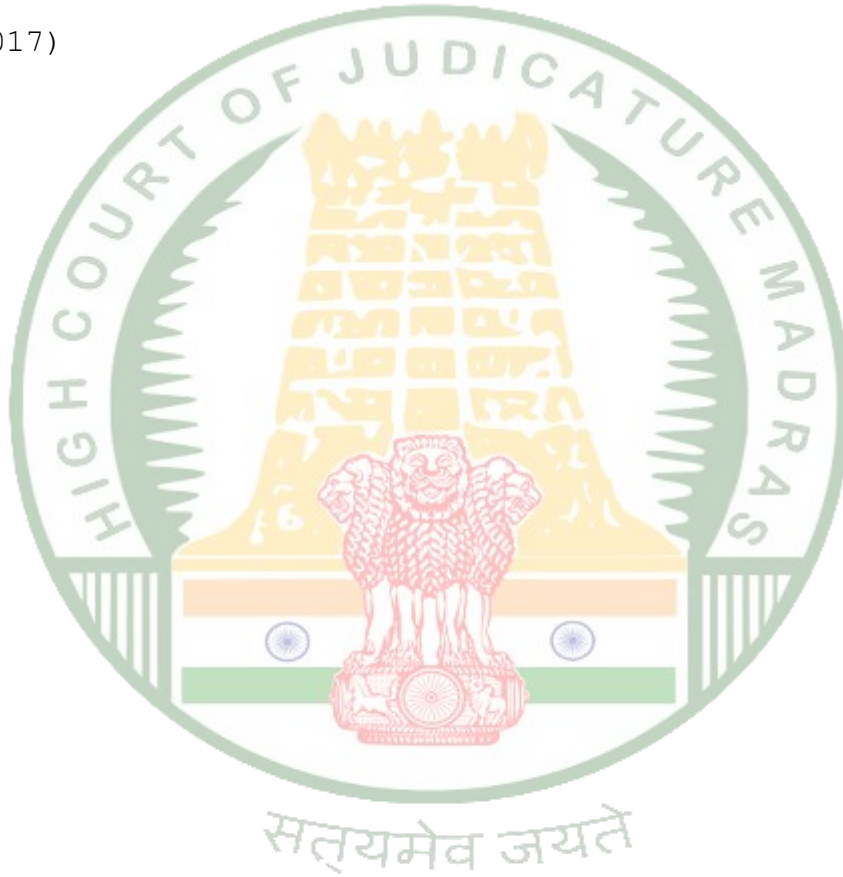
2. The Deputy Commissioner of Police,
Motor Transport,
In-charge Armed Reserve,
Chennai-600 008.

+1cc to Mr.Ravishanmugam,Advocate sr.17409

+1cc to The Government Pleader sr.17942

W.P.No.31036 of 2013

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