



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.05.2017

CORAM :

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)No.5562 of 2016
and
W.M.P(MD)No.4983 of 2016

A.Abdul Bhasheer

... Petitioner

vs.

1. The State of Tamil Nadu,
by its Secretary
Rep School Education Department,
Fort St.George, Chennai - 9.

2. The Director of School Education (Elementary),
O/o the Directorate of School Education Department,
College Road, Chennai.

3. The District Elementary Educational Officer,
Trichy, Trichy District.

4. The Assistant Elementary Educational Officer,
Vaiyampatti, Manaparai Taluk,
Trichy District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the 3rd respondent in his proceedings in ந.க.எண்.7140/ஆ1/ஆ3/2006 dated 11.03.2016 and quash the same as illegal and consequently to direct the respondents to pay salary for the period between 04.11.2006 to 12.12.2013 by treating the said period as spent on duty in accordance with Fundamental Rule 54(9) within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mrs.S.Bharathi,
Government Advocate

**ORDER**

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings in ந.க.எண்.7140/ஆ1/ஆ3/2006 dated 11.03.2016 and quash the same and consequently direct the respondents to pay salary for the period between 04.11.2006 to 12.12.2013 by treating the said period as spent on duty in accordance with Fundamental Rule 54(9) within a time to be stipulated by this Court.

2. The short facts leading to the filing of this Writ Petition as has been averred in the affidavit filed in support of the Writ Petition is that, the petitioner was appointed as a Secondary Grade Teacher at Panchayat Union Primary School, Thoppanayakanpatty, Trichy District, on 15.10.2004 and his service was regularized from 01.06.2006. When he was working as Secondary Grade Teacher as such, the petitioner's wife committed suicide on 08.10.2006 and on account of which, a criminal case in Crime No.440 of 2006 was registered on the file of Manaparai Police Station for offences punishable under Sections 304(B), 498(A) and 306 IPC. In view of the registration of the F.I.R., the petitioner was placed under suspension by order dated 08.11.2006 and the suspension was with effect from 04.11.2006.

2.1. On completion of trial, the lower Court, though acquitted the petitioner for the alleged offences under Sections 498(A) and 304(B) IPC, had convicted him for the offence punishable under Section 306 IPC and sentenced him to undergo rigorous imprisonment for three years. Aggrieved by the said order of conviction, the petitioner preferred an appeal in CrI.A.No.396 of 2007 before this Court. This Court, by order dated 19.03.2013, has allowed the appeal and thereby acquitted the petitioner.

2.2. Since the petitioner has been acquitted from all the three charges, the respondent Department had allowed him to rejoin duty on 23.12.2013, as per the order dated 12.12.2013 of the third respondent. During this period, there was no departmental proceedings initiated against the petitioner for any alleged misconduct. The acquittal by the Court below as well as by this Court is a honourable acquittal. Insofar as the petitioner is concerned, he claims that he would be entitled to get full salary for the entire suspension period by treating the said period as duty period. Therefore, the petitioner had requested the respondent Department to treat the suspension period of the petitioner as duty and to pay full salary and other service benefits available to him. But his request was rejected by the order dated 11.03.2016 passed by the third respondent. Challenging the said order of the third respondent, which is impugned herein, the present Writ Petition has been filed with the aforesaid prayer.



3. Mr.H.Mohammed Imran, learned counsel appearing for the petitioner, would submit that, the Government servants, who were suspended in view of pendency of any criminal case or conviction and subsequently the criminal case ended in acquittal, either honourably or otherwise, the Government servants have to be reinstated by revoking the suspension and in case of such reinstatement, the Government servants shall be entitled to claim the said period of suspension as duty period, for which, the Government Servant would also be entitled to claim full salary as well as all other attendant benefits. In support of the said submission, the learned counsel would rely upon Ruling No.9 of Fundamental Rule 54, as inserted by G.O.M.S.No.228, Personal and Administrative Department, dated 13.04.1989. In this regard, the learned counsel would rely upon G.O.M.S.No.228, which reads thus:

"Order:

*The following amendment is issued to the Fundamental Rules:
The amendment hereby made shall be deemed to have come into force on the 19th June, 1987.*

Amendments

In the said Fundamental Rules, in Rule 54, after ruling 8, the following ruling shall be added, namely:

"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

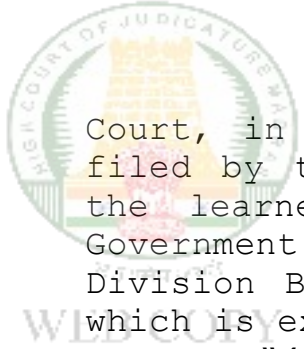
the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his 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."

(By order of the Governor)

A.Selvaraj

Deputy Secretary to Government"

4. In further support of his contention, the learned counsel would rely upon the Division Bench Judgment of this Court in W.A.No.1026 of 2016 dated 06.09.2016, in **"Superintendent of Police, Salem District and others v. C.Govindan"**. In the said judgment, the Division Bench of this Court, after having considered an earlier judgment of the Division Bench of this



Court, in an identical situation, has dismissed the Writ Appeal filed by the employer/department as against the order passed by the learned Single Judge in the Writ Petition filed by the Government servant. The relevant portion of the order of the Division Bench Judgment cited supra is at Paragraph Nos.4 to 6, which is extracted hereunder for better appreciation of the issue,

"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.

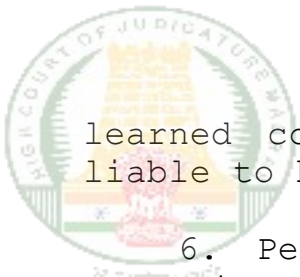
11. Since the learned single Judge has taken into consideration the factual and legal position and has rightly arrived at the conclusion to allow the writ petition, this Court is of the view that there is no error or infirmity in the impugned order.

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."

5. In view of the rule position as well as the law laid down by this Court interpreting the said amended rule in the Division Bench judgment cited supra, the learned counsel would submit that the petitioner shall be entitled to get his suspension period as duty and for the same, he shall also be entitled to get full salary as well as service benefits. Since the same has been rejected through the impugned order of the third respondent, the



learned counsel would submit that, the said impugned order is liable to be interfered with.

6. Per contra, Mrs.S.Bharathi, learned Government Advocate appearing for the respondents, would contend that, first of all, the petitioner was not a permanent employee, as he was appointed on 09.10.2004 as Secondary Grade Teacher and thereafter, even his service was regularized, he had been placed under suspension on 08.11.2006, with effect from 04.11.2006 on the ground that he was arrested by the police concerned for the alleged involvement in a criminal case. The learned Government Advocate would also submit that though subsequently, he has been acquitted from all the charges, firstly by the Trial Court and subsequently in respect of one charge by this Court, though he would be entitled to get reinstated, he would not be eligible to claim full salary, as his long absence period, because of suspension, cannot be treated as duty period for the purpose of giving full salary or any other financial benefits.

7. In support of this contention, the learned Government Advocate would rely upon Rule 54(B)-1(1) and 54(B)-1(5) as well as Ruling 5 of Rule 54. In order to appreciate the said contention of the learned Government Advocate, the Rules 54(B)-1(1), 54(B)-1(5) and Ruling 5 of Rule 54 quoted by her are re-produced here under,

"54-B-1 (1) - When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation or compulsory retirement while under suspension, 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 this period of suspension ending with reinstatement or the date of his retirement on superannuation 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.

54-B-1 (5) - In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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.



Ruling 5 of Rule 54 - (5)(i) The decision of the competent authority under Fundamental Rules 54, 54-A or 54-B, is in respect of two separate and independent matters, namely:-

(a) pay and allowances for the period of absence; and
(b) whether or not the period of absence should be treated as duty.

It is not necessary that the decision on sub-clause (a) above should depend upon the decision on sub-clause (b) above. The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose or only to pay the proportionate pay and allowances. There is no discretion to pay full pay and allowances when the period is treated as "non-duty".

If no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as "non-duty". In such an event, the past service (i.e.) service rendered before dismissal, removal, compulsory retirement or suspension will not be forfeited.

(ii) As rule 54 is absolute, the law of limitation need not be invoked at the time of paying the arrears of pay and allowances for the period from the date of dismissal / removal / compulsory retirement / suspension to the date of reinstatement in respect of all cases where the pay and allowances are regulated on reinstatement in accordance with the provisions contained in rules 54, 54-A and 54-B, with the exception of those covered under sub-rule (4) of rule 54 and sub-rule (2)(i) of rule 54-A."

8. In view of the said Rules, the learned Government Advocate would submit that Ruling 9 of Rule 54 may not be applicable to the case in hand and only these Rules namely 54(B)-1(1) and 54(B)-1(5) and Ruling 5 of Rule 54 alone would be made applicable in the case of the petitioner, as he was temporary employee, as his service was not regularized. Therefore, on this ground, the learned Government Advocate would submit that though he was reinstated by revoking the suspension order, after having been acquitted by the Trial Court as well as this Court from the criminal charges, he would not be entitled to claim the said suspension period as duty period and consequently he was not entitled to claim salary or service benefits, as he has claimed in this Writ Petition and therefore, the learned Government Advocate would submit that the impugned order passed by the third respondent is fully justifiable and sustainable one. Hence, it requires no interference at the hands of this Court.

<https://hcservices.ecourts.gov.in/hcservices/>

9. This Court has considered the said rival submissions made



by both sides as well as the Rule position and the Judgments of this Court as cited by the learned counsel appearing for the petitioner.

10. Insofar as the first contention raised by the learned Government Advocate that the petitioner since was a temporary employee, a different Rule alone would be made applicable and not the one as claimed by the petitioner's counsel is concerned, this Court, after having perused the Rules quoted by the learned Government Advocate as well as the Rule quoted by the learned counsel for the petitioner, is of the firm view that the learned Government Advocate may not be correct. This is the only possible view because, the petitioner, though was appointed on 09.10.2004, had subsequently been regularized by order dated 27.06.2006, only with effect from 01.06.2006. Assuming that the petitioner has been regularized from 01.06.2006, as on 04.11.2006, the date on which, he was arrested for the criminal case, and 08.11.2006, the date on which the suspension order was issued and all subsequent dates, he was only a permanent employee, as his service was regularized with effect from 01.06.2006. Therefore, the Rule as quoted by the learned Government Advocate would no way connected with the case of the petitioner, as he is a permanent employee, atleast, from 01.06.2006 and since everything had happened only subsequent to that date.

11. Moreover, exactly a similar issue has arisen for consideration before this Court, atleast on two occasions. In earlier occasion, the said Ruling 9 of Fundamental Rule 54 was considered by this Court in W.A.No.1430 of 2013 by order dated 02.09.2013 and the relevant portion of the said judgment has been extracted by a subsequent Division Bench order in W.A.No.1026 of 2016 cited supra at Paragraph No.4, which has been extracted herein above. This Court, by the said two Division Bench Judgments, have categorically held that in a situation, where a Government servant has been acquitted either Honourably or otherwise, even in the case, where disciplinary action has been taken and a punishment was awarded for such Government servant on the basis of criminal conviction, which has subsequently ended in acquittal by the decision of the Higher Courts, then, certainly the period, where the Government servant was out of duty, because of suspension or removal or dismissal from service, such period till reinstatement taken place, shall be treated as duty period for all purposes including monetary benefits. This is the import of the decision cited supra in the two Division Bench Judgments and if the said Judgments are taken into account, as the facts have been culled out in those decisions are almost identical or similar to that of the facts herein, certainly, the question, as to which Rule would be applicable to the case in hand, can be easily answered.



12. The very language used in Ruling 9 of Rule 54 is exhaustively and unambiguously given a situation, where, if a Government servant is subsequently reinstated in service on his acquittal by the Court, either, on merits or on the ground that the charges have not been proved against him or even by giving benefit of doubt or 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 shall be treated as duty for all purposes and he shall be paid full pay and allowances, which he would have been entitled to. These languages used in Ruling 9 of Rule 54, as amended through G.O.M.S.No.228 dated 13.04.1989, specifically given leverage to the Government servant to claim the said period of suspension or dismissal or removal of service before reinstatement on acquittal either honourably or otherwise, shall be treated as duty period, for which the Government servant shall be entitled to claim full salary as well as other service benefits.

13. After two Rulings of this Court by Division Benches, as has been referred to above, the respondent's side cannot make any faint attempt to give a different interpretation of the Rule position, as if that Rule 54(B)-1(1) or Ruling 5 of Rule 54 would be made applicable to the case in hand.

14. On having gone through the Rule as well as the Ruling and the Judgments cited supra, this Court is of the firm view that the plea raised by the petitioner claiming benefit of salary and other perquisites for the entire suspension period is worthy to be accepted. In fact, the issue raised in this Writ Petition can be said to be covered by the said decisions of the Division Benches and therefore, this Court has no hesitation to hold that the impugned order passed by the third respondent is fully unjustifiable and unsustainable.

15. Accordingly, the impugned order is quashed and the petitioner's plea to claim full backwages as well as other service benefits, for which, he is entitled to for the said period of suspension from the date of suspension till the date of reinstatement, shall be calculated and to be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

16. With these directions, this writ petition is allowed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/



To

1. The Secretary
School Education Department,
Fort St.George, Chennai - 9.
 2. The Director of School Education (Elementary),
O/o the Directorate of School Education Department,
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 3. The District Elementary Educational Officer,
Trichy, Trichy District.
 4. The Assistant Elementary Educational Officer,
Vaiyampatti, Manaparai Taluk,
Trichy District.
- + 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 56051
+ 1 cc TO The Special Government Pleader in SR No. 56121

GK/TA/RR

AE/SKN RSK/SAR1/06.12.2017/10P/7C

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and
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