



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.15597 of 2013
and M.P. (MD) No.1 of 2013

K.Naganathan

... Petitioner

Vs.

1.The Director General of Police,
Chennai - 600 004.

2.The Deputy Inspector General of Police,
Madurai Range, Madurai,
Madurai District.

3.The Superintendent of Police,
Madurai,
Madurai District.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Roc.No. /2013 (C.No.A2/11300/2007) dated 14.08.2013 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to treat the period from 17.09.2002 to 20.12.2007 as the duty period with all service benefits including continuity of service and to award necessary promotion within the time stipulated by this Hon'ble Court.

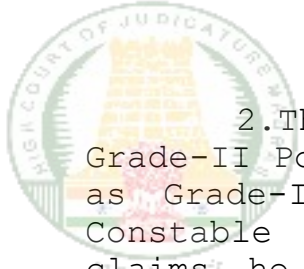
For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.V.Muruganantham

Additional Government Pleader

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 14.08.2013, on the file of the 2nd Respondent and quash the same and consequently to direct the Respondents to treat the period from 17.09.2002 to 20.12.2007 as the duty period with all service benefits including continuity of service and to award necessary promotion within the time stipulated by this Court.



2. The petitioner joined at the respondents department as Grade-II Police Constable on 13.01.1981. Thereafter, he was promoted as Grade-I Police Constable in the year 1996 and as the Head Constable in the year 2000. During the year 2002, the petitioner claims he fell sick and applied for medical leave. Since the petitioner had absented for duty for a long period, as claimed by the petitioner on medical ground, a charge memo was filed against the petitioner in PR 29/03 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. On enquiry a punishment of compulsory retirement was inflicted on the petitioner. Though the petitioner preferred appeal, he became unsuccessful. Therefore, he approached this Court by filing W.P.No.7503 of 2005, wherein this Court by order dated 25.10.2007, directed the respondents to reconsider the issue after affording an opportunity to the petitioner and thereafter the punishment of compulsory retirement was set aside, pursuant to the direction issued by this Court, and the second respondent had passed the revised order dated 10.12.2007, wherein the punishment of the petitioner was modified into stoppage of increments for two years and also he was directed to be reinstated and his absent period from 17.09.2002 to 08.01.2003 is ordered to be settled as eligible medical leave and further absent period of the petitioner was also directed to be settled as eligible leave including extraordinary leave. Subsequent to this order, the petitioner herein was reinstated and he joined duty. With regard to the absent period, for treating it as leave period, such as medical leave and extraordinary leave, the petitioner has given representation to the respondent No.1 on 13.07.2009, thereafter the petitioner approached this Court by filing W.P.(MD) No.2065 of 2010, wherein he had challenged the order dated 10.12.2007, and for a consequential direction to the respondents to consider the claim of the petitioner for promotion as Sub Inspector of Police by including the period between 2002 to 20.12.2007 as duty period. In the said writ petition, this Court by order dated 25.03.2013, directed the second respondent to issue show cause notice to the petitioner proposing as to the manner in which the period of his absence is to be regularised. Thereafter, on submitting the reply to the said notice, the second respondent on receipt of the said reply was directed to pass orders on merits and in accordance with law bearing in mind the legal principles referred to in the said judgment and the rule given under FR54. Only pursuant to the said directions issued by this Court, notice was given to the petitioner and petitioner's reply dated 14.06.2013 was received and thereafter the present impugned order dated 14.08.2013 was issued. In the present impugned order, the second respondent has rejected the claim of the petitioner to regularise his absent period as duty period by considering the provisions of FR54. Challenging the said order, the petitioner has come out with the present writ petition.

3. Heard both sides.

4. The learned counsel appearing for the petitioner would contend that though the petitioner's period of absence was directed



to be settled as eligible leave including extraordinary leave as per the original order dated 10.12.2007, itself, the second respondent by wrongly quoting FR54(b) has refused to accept the plea of the petitioner to treat the absent period as duty period.

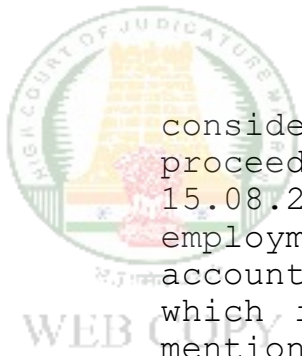
5. The learned counsel appearing for the petitioner would further contend that for the petitioner's absence from duty, punishment of stoppage of increments for two years has already been inflicted, when that being so, refusal to treat absence of the petitioner as duty period is nothing but a double jeopardy as it would amount to enhancement of punishment and it will go against the very order passed by the second respondent dated 10.12.2007. The learned counsel appearing for the petitioner would also submit that the present impugned order is against the directions issued by this Court by order dated 15.03.2013, wherein a specific direction was issued to pass orders in accordance with law bearing in mind the legal proposition referred to in the decision quoted in the order itself. Therefore, according to the learned counsel for the petitioner the impugned order is liable to be interfered with.

6. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the guilty on the part of the petitioner in absenting himself to duty for a longer period has been proved and therefore, the punishment of compulsory retirement was inflicted on the petitioner. When this Court by order dated 15.03.2013 remanded the matter for reconsideration, of course after giving opportunity to the petitioner, accordingly, the case was again reconsidered after giving due opportunity and after considering the relevant materials, the second respondent has passed the impugned order dated 10.12.2007. In the said order the punishment was modified from compulsory retirement to stoppage of increments for two years. Therefore, the petitioner was directed to be reinstated and also his eligible medical leave was directed to be settled and further his non-duty period can be settled by way extraordinary leave to the extent necessary. Though the said order was unsuccessfully challenged by the petitioner, the only order issued by this Court was that after giving further opportunity to the petitioner the second respondent shall decide the absent period on the part of the petitioner either to be treated as duty period or otherwise. Only for the limited scope such direction was issued by this Court on 15.03.2013.

7. The learned Additional Government Pleader would further submit that pursuant to the said order of this Court opportunity was given to the petitioner, his reply was taken into account and order dated 14.08.2013 was passed. No doubt in the operative portion of the order, the provision of Rule 54(B) was quoted in stead of FR 54 (1)(b). That is the reasons why the subsequent clarificatory order dated 14.05.2014 has been passed, wherein the following clarification has been given:

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

2. The orders passed by the Hon'ble High Court, Madurai in W.P.(MD) No.2065/2010, dated 15.03.2013 has been



considered by the authority who has issued orders vide proceedings in C.No.A2/11300/2007 (R.O.No.347/2013), dated 15.08.2013 that the period of absence period and out of employment period could not be settled as duty by taken into account of rule in F.R.54(B). However, the Fundamental Rule which is taken into account in the present case should be mentioned as F.R. 54(1)(b).

3) Accordingly, it is hereby ordered that the absence period and out of employment period spent by HC 731 Naganathan of Madurai District in P.R.No.29/2003, r/r 3(b) is settled as eligible leave including extraordinary leave to the extent necessary as per rule in F.R.54(1)(b). Hence, the earlier order issued by the authority in this office R.O.No.347/2013 (C.No.A2/11300/2007), dated 14.08.2013 in the reference 4th cited is corrected to that extent."

In view of the said clarification having been issued, and the impugned order has been passed strictly in consonance with FR 54, which was specifically directed by the order of this Court dated 15.03.2013, there is no further infirmity or illegality in the impugned order, he contended.

8.This Court has considered the rival submissions of the respective learned counsel for the parties.

9.Admittedly, the petitioner was inflicted with a punishment of compulsory retirement. Subsequently, on the intervention of this Court by order dated 25.10.2007, the matter was reconsidered and after affording an opportunity to the petitioner modified order was passed by the second respondent on 10.12.2007. In the said order the following directions have been issued:

"13. Under the above circumstances and based on the available records the unauthorized absence of writ petitioner beyond 08.01.2003 is well substantiated and merely as per orders of the Honourable High Court in the Judgment dated 25.10.2007 in W.P.No.7503/2003. I have reviewed and assessed overall circumstances of the above case and imposed a modified punishment of "Postponement of Increment for the period of 2 years which shall operate and effect his future increment" on the writ petitioner for the proven delinquency established during this review and he is also ordered to be reinstated into service immediately and directed to report before Superintendent of Police, Madurai District for further posting. The Medical Leave period availed by him from 17.09.2002 to 08.01.2003 is ordered to be settled as eligible leave including extraordinary leave to the extent necessary as per eligibility. The period of out of employment is also settled as eligible leave including extraordinary leave to the extent necessary."

Only pursuant to the said order of the second respondent, the petitioner was immediately reinstated. Insofar as his request to treat his absence period as duty period is concerned, fortunately, in the said order of the second respondent dated 10.12.2007 itself,



directions were issued that the period between 17.09.2002 to 08.01.2003 was ordered to be settled as eligible leave i.e., medical leave and the remaining period can also be settled as extraordinary leave to the extent necessary.

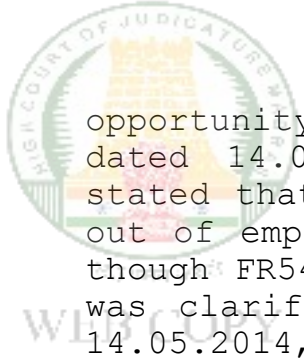
10. However, subsequently, the petitioner had challenged the said order dated 10.12.2007 in W.P.(MD) No.2065 of 2010, wherein this Court after having considered the entire aspects has passed the following order:

"11. After taking note of the decisions of the Hon'ble Supreme Court and the rulings given by the Government explaining the manner in which FR54 has to be made applicable and considering the case on hand, it has to be held that the respondents have not taken note of the above factors while settling the period of absence of the petitioner. Admittedly, the petitioner was not issued any notice prior to regulating the period of absence by settling the same as admissible leave and extraordinary leave. Hence, on this technical ground alone, this Court is inclined to interfere in the matter. Accordingly, the writ petition is allowed and the impugned orders are set aside only insofar it relates to regulating/settling the period of petitioner's medical leave from 17.09.2002 to 08.01.2003 and the period during which he was out of employment. In all other respects, the order passed by the second respondent dated 10.12.2007 does not call for any interference, as it has been done taking into consideration the observation made by this Court in the earlier writ petition and also taking note of the proved misconduct.

12. The second respondent is directed to issue a show cause notice to the petitioner proposing as to the manner in which the period of his absence, the period indicated above is to be regulated/settled. Thereafter, the petitioner shall submit a reply to the said notice and the second respondent on receipt of the reply shall pass orders on merits and in accordance with law bearing in mind the legal principles referred to in the decisions quoted supra and the rule given under FR54. The entire exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

Therefore, paragraph 13 of the said order dated 10.12.2007, having been set aside by this Court and only for the said purpose it has been remanded back for consideration, wherein this Court has considered the said plea on the part of the petitioner to treat the absent period as leave period, directing the second respondent that the decisions rendered by law Courts referred to in the order shall be taken into consideration and also Rule 54 of Fundamental Rules also be taken on account.

11. Only pursuant to this direction of this Court referred to above, further reconsideration was made, of course, after giving an



opportunity to the petitioner and only thereafter the present order dated 14.08.2013 was passed, wherein the second respondent has stated that as per FR 54(B), the petitioner's request to treat the out of employment period as duty period cannot be considered. Even though FR54 has been quoted at paragraph 25 of the order, the same was clarified by subsequent order of the second respondent dated 14.05.2014, and the relevant portion of the order has been extracted herein above. In the clarificatory order dated 14.05.2014, the correct provision of the FR has been quoted, which is FR 54(1) (b).

12. Rule 54 gives such power to the employer to decide the absent period of the employee as duty period or not. Here in the case on hand, the petitioner was admittedly in absence for a long period as years together. No plausible reason has been submitted. Though he was referred to medical board, he has not attended the medical board. However, the learned counsel for the petitioner would submit that the intimation referring the petitioner to attend medical board has not been reached the petitioner. Be that as it may, it is an admitted case that the petitioner had been absent for duty from 2002 to 2003, at least for a year, for which no acceptable reason has been given by the petitioner except by stating that he was suffering due to jaundice. Subsequently, enquiry was conducted. Based on enquiry report punishment was inflicted on him. Of course the same has been modified pursuant to the order of this Court to punishment of stoppage of increments for two years. When the petitioner questioned the inflicting of such punishment of stoppage of increments for two years, the same was confirmed by this Court. Further, only in respect of absent period on the part of the petitioner to treat it as leave period or duty period alone was interfered by this Court by order dated 15.03.2013 and a direction to that effect was issued to reconsider the issue based on Rule FR54. As extracted herein above, the actual Rule is FR 54(1) (b). Therefore, having understood the mistake the second respondent clarified the orders on 14.05.2014. When we look at FR 54(1) (b), a clear leverage has been given that the absent period on the part of the employee can be treated as duty period or otherwise. In this case, since the petitioner has been absent for one year he would be eligible for medical leave only to the available service of the petitioner and not beyond that. Therefore, this Court is of the view that the petitioner would be entitled to claim medical leave and extraordinary leave only for which he is entitled to be availed by him and for the said period his absence may be condoned not for the purpose for back wages but only for the purpose of continuity of service. Apart from the said period still any period is available the same need not be condoned within the meaning of FR 54(1).

13. Therefore, this Court is inclined to pass the following order:

(i) The impugned order rejecting the request of the petitioner to treat the entire period of his absence as a duty period for all purposes is quashed.

(ii) The matter is remanded to the second respondent for



reconsideration only to the limited extent as to whether the petitioner shall be entitled to claim absent period as duty period beyond his eligible leave of both medical leave and extraordinary leave.

(iii) In this regard, it is made clear that to the extent the petitioner would be eligible to claim medical leave or extraordinary leave, the absent period can be treated as duty period for the purpose of service benefits and the same need not be treated as duty period for the purpose of back wages.

(iv) Based on these observations and directions needful shall be done within a period of two months from the date of receipt of a copy of this order and a reasoned order as indicated above shall be passed within such period and a copy of the same has to be communicated to the petitioner.

14. With these observations and directions, this Writ Petition is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Madurai Range, Madurai,
Madurai District.

3. The Superintendent of Police,
Madurai,
Madurai District.

+ 1 CC TO Mr. T. LAJAPATHI ROY, ADVOCATE IN SR No. 1708.
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 1791

SJ

TE/SV-MMS/SAR-III : 03/03/2017 : 7P/6C

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and M.P. (MD) No. 1 of 2013
09.01.2017