

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.516 and 517 of 2015

and MP No.1 of 2015 in WA No.516 of 2015

MP No.2 of 2015 in WA No.517 of 2015

1. The Principal Secretary to Govt.,
Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai 9.
2. The Secretary to Government,
Revenue Department,
Fort St. George, Chennai 9.
3. The Secretary to Government,
Government of Tamil Nadu,
Fort. St. George, Chennai 9.
4. The Secretary to Government,
Public (Rehabilitation -I) Department,
Fort St. George, Chennai 9.
5. The Director/
Commissioner of Rehabilitation
Chepauk, Madras 600 005. ... Appellants/Respondents
in both the Writ Appeals

versus

T.Suryanarayanan ... Respondent/Petitioner
in both the Writ Appeals

Appeals filed against the common order passed by this Court
dated 09.01.2014 passed in W.P. Nos. 5670 and 27179 of 2012.

Prayer in W.P.No.5670 of 2012:

Writ Petition filed under article 226 of Constitution of India seeking writ of Certiorarified Mandamus to call for the records of the 1st respondent in G.O.(D) No.319 Revenue Ser. 2 (1) Department dt. 23.6.2009 consequent upon the Letter No. 6330/Ser.2(1)/99/39 dt. 1.4.2003 sent by the Secretary to Government without any department portfolio the third respondent herein and quash the same as unconstitutional ultra vires arbitrary against the Rule of Law against the principles of natural justice and against the Tamil Nadu Civil Servants (Discipline & Appeal) Rules and consequently direct the 5th respondent to disburse forthwith the entire service benefits both monetary and promotional from 22.1.2001 by refixing pay and allowances from 22.1.2001 and further refixing pay and allowances as per the recommendations as of the VI pay commission, to the petitioner, with interest at 24% per annum on the total arrears of benefits payable to the petitioner from 22/01/2001.

W.P.No.27179 of 2012:

Writ Petition filed under article 226 of Constitution of India seeking writ of Certiorarified Mandamus to call for the records in Lr.No.20294/Ma.Va.1/2010-11 public (Rehabilitation I) Department dt. 16.4.2012 on the file of 4th respondent followed by the letter Na.Ka.D1/11427/99 dt. 30.4.2012 by the 5th respondent and quash the same as unconstitutional ultra vires arbitrary against the Rule of Law against the principles of natural justice and against the fundamental rules pension rules against the Tamil Nadu Civil Servants (Discipline & Appeal) Rules and consequently direct the 5th respondent to disburse forthwith the entire arrears of salary right from 22.1.2001 and service benefits both monetary and promotional from 22.1.2001 by refixing petitioner pay and allowances from 22.1.2001 and further refixing the petitioners pay and allowances as per the recommendations of the VI pay Commission to the petitioner with interest at 24% per annum on the total arrears of benefits payable to the petitioner from 22/1/2001 in compliance of G.O.MS.146, dated 16/02/2006 of 4th respondent as well as the order dated 24/7/2001 in O.A.1921/2001 and MA 2737/2001 passed by the Tamil Nadu Administrative Tribunal Chennai.

For appellants : Mr.V.Anandhamoorthy
Additional Government Pleader

For Respondent : Mr.R.Shanmugam
for M/s. Shanmuga Associates

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These Intra Court Appeals have been filed by the respondents in WP No.5670 and 27179 of 2012, challenging the common order dated 09.01.2014 made in the said Writ Petitions.

2. The facts that led to the filling of the Writ Petitions are as follows:

The appellant had entered the services of the respondent as a Typist on 24.07.1969. He was promoted as an Assistant on 11.11.1997 and on 07.08.1995 promoted as Section Superintendent.

An order of suspension came to be passed on 22.01.2001, under Rule 17(e)(1)(i) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, when the respondent was awaiting for promotion as P.A. to the Director of Rehabilitation. The order of suspension was challenged by the respondent herein in OA No.1921 of 2001 on the file of the Tamil Nadu Administrative Tribunal, though an order of interim stay was granted on 13.03.2001, it is the case of the respondent that the stay order was not implemented, preventing the petitioner from joining the duty even after 13.03.2001. The final order came to be passed in the said OA No.1921 of 2001 on 24.07.2001, setting aside the suspension. By an order dated 14.09.2001, the respondent was reinstated in service. Within two months, thereafter, the respondent was again placed under suspension on 15.11.2001 and a charge memo was issued to him. On receipt of the charge memo, the respondent submitted his explanation on 07.07.2003, the explanation was not accepted by the appellants. One of the charges was dropped on 16.02.2006 and a Departmental Enquiry was conducted, in respect of the other charges.

3. During the pendency of the disciplinary proceedings, the respondent reached the age of superannuation on 30.04.2006, and he was allowed to retire, subject to the result of the disciplinary proceedings. In the disciplinary proceedings, the respondent was imposed with the punishment of a cut in pension at the rate of Rs.500/-per month for a period of three months. The Disciplinary Authority, while imposing the punishment had not spelt out as to how the period of suspension should be

treated. Thereafter, without notice to the respondent, the order impugned in WP No. 27179 of 2012 came to be passed on 16.04.2012, by the 1st appellant, in and by which, he had directed the period of suspension undergone by the respondent to be treated as leave on loss of pay without Medical Certificate. The 2nd respondent by his letter dated 30.04.2012 communicated the said order to the petitioner. Hence, the petitioner had come forward with the above two Writ Petitions.

4. In WP No.5670 of 2012, the respondent herein has challenged the order dated 23.06.2009 imposing punishment and in WP No.27179 of 2012, the respondent has challenged the order directing the period of suspension to be treated as leave on loss of pay without Medical Certificate. Both the Writ Petitions were heard together and disposed of by a common order dated 09.01.2014. The learned Single Judge had in the course of the order, with reference to the proceeding dated 26.03.2009, which were impugned in WP No.5670 of 2012 observed as follows:

"For the proved charges the respondents passed G.O.Ms.319 Revenue Ser.2 (1) Department dated 23.06.2009, imposing the punishment of a cut in pension at the rate of Rs.500/- per month for a period of three months. The proposed punishment was also communicated to the petitioner. Finally, he has also accepted the imposed punishment. Only thereafter, the Government has come forward to confirm the provisional conclusion and to impose the punishment of a cut in pension at the rate of Rs.500/- per month for a period of three months, on the petitioner for the charges held proved against him."

5. From the above observations, it could be seen that the respondent has in fact accepted the order dated 23.06.2009, imposing the punishment of cut in pension for a period of three months at the rate of Rs.500/- per month. This is also borne out by the impugned order itself, wherein, it is stated that the delinquent officer had informed that he is willing to accept the proposed punishment by his letter dated 03.04.2009. Hence, the challenge to the proceedings dated 23.06.2009 cannot be sustained and the said Writ Petition has to be dismissed.

6. However, subsequent to the order imposing the punishment for the proved delinquencies, the authorities thought it fit to pass a further order on 16.04.2012 and which is communicated to the respondent on 30.04.2012 treating the period of suspension as leave on loss of pay without Medical Certificate. It is this

order that is challenged by the respondent in WP No.27179 of 2012. With reference to the same, the learned Single Judge has concluded that the Original Order imposing punishment being silent as to the manner in which the suspension period is to be treated and the Department having allowed the respondent to retire on attaining the age of superannuation on 30.04.2006, the employer-employee relationship had come to an end and therefore, there cannot be an order on 16.04.2012 treating the period of suspension as leave on loss of pay without Medical Certificate.

7. On the above conclusions, the learned Single Judge had found that the further order that is challenged in WP No.27179 of 2012, denying the service benefits by treating the entire period under suspension as leave on loss of pay without Medical Certificate, is without jurisdiction or authority. We do not see any illegality or irregularity in the said conclusion of the learned Single Judge. We wish to add that the second Order, viz. order dated 16.04.2012, in any by which, the respondents have treated the entire period of suspension as leave on loss of pay without Medical Certificate is actually in excess of the punishment awarded to him in the disciplinary proceedings. In the disciplinary proceedings, while imposing the punishment, by an order dated 23.06.2009, the authorities had only thought it fit to impose a punishment of a cut in pension of a sum of Rs.500/- per month that too only for a period of three months. The total monetary loss for the respondent because of the punishment is only Rs.1,500/-, but by treating the period of suspension as leave on loss of pay, the appellants have effectively denied the respondent the benefit of service of nearly six years. This, in our considered opinion, is in excess of the powers conferred on the authorities with regard to treatment of the period of suspension.

8. It will be pertinent to point out at this juncture, the period of suspension is also not treated as a punishment in the original order imposing punishment dated 23.06.2009. We are, therefore, of the view that the order of the learned Single Judge, with reference to the order impugned in Writ Petition No.27179 of 2012 does not call for interference. However, the concluding portion of the order of the learned Single Judge is to the effect that both the Writ Petitions are allowed, but the impugned orders that are set aside only the order dated 16.04.2012 and 30.04.2012, which are the orders impugned in the second Writ Petition, viz. WP No.27179 of 2012.

9. We have already found that the respondent had accepted the order proposed provisional punishment by its letter dated

03.04.2009, pursuant to which an order dated 23.06.2009 came to be passed. Therefore, the Writ Appeal in WA No.516 of 2015 filed against WP No.5670 of 2012 will have to be allowed and the Writ Appeal No.517 of 2015, challenging the order passed in WP. No.27179 of 2012 will stand dismissed. We make it clear that the respondent will be entitled to all monetary benefits as if he has worked during the period of suspension. Any subsistence allowances paid to him will be adjusted, when the monetary benefits are worked out.

10. In fine, the Writ Appeal No.516 of 2015 will stand allowed the Writ Petition in WP No.5670 of 2012 will stand dismissed. The Writ Appeal No.517 of 2015 challenging the order in WP No.27179 of 2012 will stand dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Principal Secretary to Govt.,
Revenue Department,
Government of Tamil Nadu,
Fort St. George, Chennai 9.
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