IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.25261 of 2012

K.Thirupurasundarammbal ... Petitioner

Vs

1.The Deputy Commissioner of Commercial Taxes,
Old No.150/8, Korkai Pandian Street,
Erode-1.

2.The Assistant Commissioner of Commercial Taxes,
Erode.

3.The Accountant General (A & E),
Teynampet, Chennai-18. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned proceedings issued by him in Ref No.4571/09/A1 dated 30.04.2010 and quash the same and direct the respondents to treat the period from 10.03.1998 to 12.02.2002 as duty period for all purposes and to grant the petitioner all consequential benefits, including revision in retirement and pensionary benefits and disburse to her all the arrears thereon with interest on delayed payment.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.M.Hariharan,
Addl. Govt. Pleader (Taxes) for RR 1 and 2
: Mr.V.Murali for R3

O R D E R

Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the first and second respondents and Mr.V.Murali, learned counsel appearing for the third respondent.

2. The petitioner has approached this Court, seeking the following relief:-

> "To issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in connection with the impugned proceedings issued by him in Ref No.4571/09/A1 dated 30.04.2010 and quash

the same and direct the respondents to treat the period from 10.03.1998 to 12.02.2002 as duty period for all purposes and to grant the petitioner all consequential benefits, including revision in retirement and pensionary benefits and disburse to her all the arrears thereon with interest on delayed payment."

3. The case of the petitioner is as follows:-

The Petitioner was employed in the office of the second respondent as Typist. She entered into a medical leave and was absent for sometime. However, the medical leave application was not accepted by the department, a disciplinary action was initiated against her. Ultimately, on conclusion of the disciplinary action, she was removed from service. The order of removal from service is the subject matter of challenge before the then Tamil Nadu Administrative Tribunal in O.A. No. 2625 of 1998. On adjudication of the application, the learned Tribunal modified the penalty of removal from service into one of stoppage of increment for a period of one year with cumulative effect with a further direction to the respondents to reinstate her into service within 2 months from the date of receipt of a copy of that order. Thereafter, the petitioner came to be reinstated in service and after attaining the age of superannuation, she also stood retired from service.

4. The Petitioner submitted a representation to the respondents to treat the period when she was not employed from 10.03.1998 to 12.02.2002 as a period spent on duty. However, the representation came to be rejected by proceedings dated 30.01.2004, stating that the period between 10.03.1998 and 12.02.2002 was treated as extraordinary leave on loss of pay. In the said circumstances, the petitioner approached this Court in W.P.No.38786 of 2005. This court by order dated 05.11.2009, allowed the writ petition on the ground that the above said order was a non-speaking order and further directed to re-consider the claim of the petitioner on merits.

5. In pursuance of the above direction, the first respondent by proceedings dated 30.04.2010, once again rejected the request of the petitioner and the said rejection order is under challenge before this court. According to the rejection order, the authority has invoked fundamental rule 54 ruling 10, which reads as follows:-

> "10. When a Government servant, who was suspended, is fully exonerated of the charges on appeal, the period of suspension shall be treated as duty; and he shall be entitled to pay and allowances for the entire period of suspension, provided the period of suspension ended before the date of his superannuation."

6. According to the learned counsel for the petitioner that invoking the said ruling is completely misconceived and

untenable for the reason that the petitioner was never placed under suspension. What she pleaded before the authority was that during the period of her non-employment when she was removed from service, which penalty came to be modified by an order passed by the Tamil Nadu Administrative Tribunal, that period ought to be treated as a period spent on duty, since the punishment has been modified as one of stoppage of increment for one year with cumulative effect. Once the punishment of removal from service was substituted by minor penalty, the consequent of such modification, the petitioner is deemed to have served the department during the period of her non-employment in view of the modified punishment which was set in motion.

7. According to the learned counsel for the petitioner, in view of setting aside the order of removal from service, the proper rule to be invoked is 54(A)(1). According to the said rule, once the Government Servant is reinstated in service without any further enquiry after setting aside the order of removal from service, is entitled to be paid the pay and allowance for the period of non-employment.

8. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and made his submissions.

9. Upon consideration of the submissions made on behalf of the respondents, this court finds some force in the arguments advanced on behalf of the petitioner. The reasons on which, the rejection order came to be passed, cannot be sustained in law for the simple reason that the petitioner was not placed under suspension at all. Therefore, invoking ruling 10 of Rule 54 is completely incorrect and misconceived. Therefore, the rejection order is unsustainable and calls for an interference from this Court.

10. As rightly contended by the learned counsel for the petitioner that once punishment has been modified by the orders of the Tribunal, it is needless to mention that the period of her non-employment has to be treated as period spent on duty for all purposes. In any event, invoking ruling 10 of Rule 54, cannot be a correct position of the fundamental rule in respect of the present case, wherein, admittedly, the petitioner was not placed under suspension.

11. For the above said reasons, this court has no hesitation in allowing the writ petition. In the said circumstances, the impugned order in Ref No.4571/09/A1 dated 30.04.2010, is hereby set aside and the respondents are directed to treat the period from 10.03.1998 to 12.02.2002, as duty for all purposes and grant the petitioner all consequential benefits thereof. The third respondent is directed to implement the direction of this Court, within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Deputy Commissioner of Commercial Taxes,
Old No.150/8, Korkai Pandian Street,
Erode-1.

2.The Assistant Commissioner of Commercial Taxes,
Erode.

3.The Accountant General (A & E),
Teynampet, Chennai-18.

+1cc to Mr.V.Murali, Advocate SR.NO.52213
+1cc to Mr.M.Ravi, Advocate SR.NO.58587
+1cc to Spl.Government Pleader SR.NO.52600

BR(CO)
sm:3.10.2018