

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.01.2018
Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.25775 of 2012 &
M.P.No.2 of 2012

T.Sundaram

.. Petitioner

versus

1. The State of Tamilnadu,
Rep. by its Secretary,
Higher Education Department,
Fort St. George, Chennai-600 009.
2. The Director of Elementary Education,
College Road,
Chennai-600 006.
3. The District Elementary Educational Officer,
Salem Division,
Salem.
4. The Secretary,
Heart of India Mission Aided
Elementary School,
Sikkampatti, Omalur, Salem-636 502
5. The Principal Accountant,
O/o. Accountant General (A & D),
Teynampet, Chennai-600 018.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's order made in G.O.(iD) No.373 dated 02.11.2011, to quash the same in so far as the denial of monetary benefits, for the suspension period between 24.04.1993 and 19.08.2001 is concerned and to consequently direct the respondents to extend all monetary benefits for the above mentioned entire period of suspension forth thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.K.Buvaneswari

Addl. Govt. Pleader for R1toR3

Mr.V.Murali for R5

R4- No appearance

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's order made in G.O.(id) No.373 dated 02.11.2011, to quash the same in so far as the denial of monetary benefits, for the suspension period between 24.04.1993 and 19.08.2001 is concerned and to consequently direct the respondents to extend all monetary benefits for the above mentioned entire period of suspension forth thereto."

2. The petitioner was appointed as Secondary Grade Teacher on 10.07.1967. He was thereafter granted special grade secondary grade teacher and he retired as Headmaster, Elementary School. In 1993, the petitioner was implicated in criminal case and thereafter, he was placed under suspension on 22.04.1993. The criminal case ended in conviction whereby the petitioner was sentenced to pay a fine of Rs.50,000/- and in default, a rigorous imprisonment for a period of one year. Aggrieved by the order of the trial Court, a criminal appeal in CrI.A.No.407 of 1995 was preferred before this Court and the said appeal came to be allowed vide order of this Court dated 25.07.2001.

3. In pursuance of the acquittal by this Court in criminal appeal, the petitioner was ultimately reinstated in service on 20.08.2001 and was allowed to continue till his superannuation during December, 2005 and the petitioner was allowed to continue till the end of the academic year upto 31.05.2006, on re-employment.

4. The petitioner has sent a representation to the authorities for regularization of the period of suspension between 22.04.1993 and 19.08.2001, in terms of the provisions of fundamental rules applicable to him. According to the petitioner that under the provisions of the fundamental rules, his suspension period was to be treated as 'duty' with all consequential monetary benefits. However, there was no action forthcoming from the authority concerned for sometime. However, finally the Government has passed an order dated 02.11.2011, vide G.O.(1 D) No.373 statin that the suspension period will be treated as duty, however, the petitioner would not be entitled to any consequential monetary benefits. According to the petitioner, the said Government Order is contrary to the rule position and the same cannot be countenanced in law. In the said circumstances, the said Government Order is put to

challenge in the present writ petition.

5.Mr.L.Chandrakumar, the learned counsel for the petitioner would draw the attention of this Court straight away to the fundamental rule 54 (A) (3) which reads as follows:

"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 further orders as contemplated in the Tamil Nadu Civil Services (Discipline and Appeal) Rules. A Government Servant who is undergoing a sentence of imprisonment shall also be dealt with in the same manner pending a decision on the disciplinary action to be taken against him. "

6.According to him, as per the above rule position, on being acquitted on merits in the criminal case, the petitioner is entitled to all monetary benefits during his non-employment. The learned counsel, in this regard would also rely on rule 54 (B) Clause-9, which reads as follows:

"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, *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 dismissal or

removed or compulsorily retired from service.

7.He would submit that for all practical purposes, the period of suspension ought to be treated as duty and an employee is entitled to all monetary benefits for the full period of suspension or period of non-employment. Therefore, the rejection by the Government that the petitioner is not entitled to monetary benefits, is contrary to the above said rule position and therefore, the same is liable to be interfered with.

8.Upon notice, Ms.K.Buvaneswari, the learned Additional Government Pleader, entered appearance for respondents and filed counter affidavit.

9.From the counter affidavit, the learned Additional Government Pleader would submit that the order was passed by the Government taking into consideration the representation submitted by the petitioner on 02.05.2011 and in the representation, he had specifically requested to grant annual increment notionally for the period of suspension and he is not claiming arrears for the period of suspension. It is only based on his request not claiming the arrears for the suspension period and on consideration of his request, the impugned G.O. was passed. She would further submit that having given such representation, the petitioner is not entitled to the relief sought for. This Court is unable to appreciate such arguments advanced on behalf of the Government. When the rule position provides for grant of full monetary benefits for the period of suspension or non employment, any undertaking given by the employee cannot be put against the employee as there cannot be any estoppel against a statute or a waiver of any statutory rights. Such undertaking obtained from the petitioner or in view of the representation given voluntarily, cannot be held against the petitioner, since the rule provided for grant of full monetary benefits for the period of suspension. The rule is very clear that once an employee is acquitted on merits and any period of non employment had arisen due to the pendency of the criminal action has to be regulated with full monetary benefits. In this case, the petitioner was placed under suspension only on the basis of conviction by the trial Court earlier and the suspension was continued even after conviction and thereafter, in criminal appeal, he was acquitted on merits and has reinstated in service on 20.08.2001. Thereafter, he was allowed to continue to work and retired from service on attaining the age of superannuation during December, 2005.

10.In the above circumstances, this Court does not see any iota of justification for not applying the above said rules to the claim of the petitioner. It is an admitted fact that the petitioner was placed under suspension only on the basis of

conviction and that being the case, once the acquittal order was passed by this Court in Crl.A.No.407 of 1995, as a natural corollary, the petitioner is entitled for promotion as per Fundamental Rule 54(B) Ruling-9 and entitled to be compensated with full monetary benefits. In the said circumstances, this Court is not able countenance the validity of the impugned G.O. issued by the Government. The impugned G.O. as such cannot be a valid order in the eye of law and therefore, the same is liable to be set aside.

11.For the above said reasons, the G.O.(1) No.373 dated 02.11.2011, is set aside and the competent authority is directed to grant all monetary benefits for the period of suspension from 22.04.1993 till 19.08.2001 and the said order shall be passed by the authorities concerned within a period of eight weeks from the date of receipt of a copy of this order.

12.With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamilnadu,
Rep. by its Secretary,
Higher Education Department,
Fort St. George, Chennai-600 009.
2. The Director of Elementary Education,
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4. The Secretary,
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Elementary School,
Sikkampatti, Omalur, Salem-636 502

5. The Principal Accountant,
O/o. Accountant General (A & D),
Teynampet, Chennai-600 018.

+1cc to Mr.V.Murali, Advocate, S.R.No.5222

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.5101

+1cc to the Government Pleader, S.R.No.5501

W.P.No.25775 of 2012
& M.P.No.2 of 2012

RRK(13/02/2018)



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