

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2529 of 2018
C.M.P.No.20416 of 2018

1. The Director General of Police,
Mylapore, Chennai - 4.
2. The Superintendent of Police,
Q Branch CID, Chennai - 4.
3. The Superintendent of Police,
Theni District.

... Appellants/Respondents

vs.

P.Raju

... Respondent/Petitioner

Prayer:

Writ Appeal is filed under Clause 15 of the Letters Patent,
against the order made in W.P.No.5622 of 2014, dated 18.09.2017.

W.P.No.5622 of 2014:-

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of Writ calling for records relating to the 2nd respondents order made in C. No.D1/Q/6613/ 2007::D O Q/1027/2013 dt 28.11.2013 to quash the same and consequently direct the respondents to treat the period between 20.03.2004 and 17.08.2012 as duty for all purposes as per Fundamental Rules and to extend all benefits both service and monetary and revision of pay forthwith thereto.

For Appellants : Mr.R.Udayakumar
Additional Government Pleader.

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J)

Challenge in this appeal to an order made in W.P.No.5622 of 2014, dated 18.09.2017, by which, the Writ Court, set aside the

impugned order in C.No.D1/Q/6613/2007:DOQ/1027/2013, dated 28.11.2013 and directed the appellants herein, to pass a consequential order, regularising the period of non-employment of the respondent herein, within a period of two months from the date of receipt of a copy of the order.

2. Short facts leading to the appeal are that the respondent was enlisted as Grade II Police Constable on 15.01.1979 in Ramanathapuram District. He was promoted as Grade I Police Constable, during 1994 and thereafter, as Head Constable in 1999. While working as Head Constable, he was proceeded with departmental action and a punishment of removal from service was imposed against him. The said punishment of removal from service was challenged in W.P.No.2471 of 2007, while setting aside the order of removal from service, this Court, vide order, dated 02.07.2012, remitted the matter to the disciplinary authority to re-consider the quantum of punishment, in the light of the orders passed by the Hon'ble First Bench of this Court in R.Ramesh v. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram [W.A.No.58 of 2011, dated 27.01.2011].

3. Pursuant to the same, the Superintendent of Police, Q Branch CID, Chennai, second appellant herein, vide proceedings, dated 13.08.2012, awarded a punishment of reduction in rank for a period of two years. On appeal, the punishment was further modified as postponement of increment for three years, with cumulative effect, vide proceedings, dated 13.05.2013. In the mean time, the respondent was allowed to rejoin duty on 18.08.2012.

4. By proceedings in C.No.D1/Q/6613/2012, dated 30.11.2012, the Superintendent of Police, 'Q' Branch CID, Chennai, second appellant herein, issued a show cause notice, calling upon the respondent to offer his explanation, with regard to the settlement of the period, during which, he was out of employment. The respondent has given a reply, dated 10.01.2013, stating that the notice indicating settlement of period, has to be treated as eligible leave, including Extraordinary Leave to the extent necessary.

5. However, the appellants herein, by order, dated 28.11.2013, passed orders, treating the period of 3073 days, as 'out of employment', by dividing certain period, as earned leave, unearned leave (private affairs) and leave without pay. The said order is challenged in W.P.No.5622 of 2014. In the said writ petition, the respondent has sought for a direction to the appellants to treat the period between 20.03.2004 and 17.08.2012, as duty for all purposes, as per Fundamental Rules and to extend all the benefits, both service and monetary and revision of pay forthwith thereto.

6. After considering the facts and circumstances of the case, vide order, dated 18.09.2017 in W.P.No.5622 of 2014, this Court ordered as hereunder:-

"10.This Court has considered the rival submissions of the learned counsels appearing for the parties and also considered the relevant materials and the pleadings placed on record. This Court has to first see whether the order passed by the learned Judge dated 21.03.2017 in W.P.No.31036 of 2013 can be applied to the factual matrix of the present case. After going through the order, this Court is of the view that the petitioner's case is similarly circumstanced and therefore, the order passed by the learned single Judge in the aforesaid writ petition has to be applied in toto. Moreover, as rightly contended by the learned counsel for the petitioner, this Court originally set aside the order of removal from service which was set aside only on the ground that such punishment was not warranted, in which case, the petitioner is entitled to the benefit incorporated in the aforesaid F.R.54 A(3). However, while granting the benefit of the said Fundamental Rule, this Court has to see whether the petitioner is entitled to pay and allowances for the period of his non- employment from 20.03.2004 till 17.08.2012. Admittedly, the petitioner was not on duty during the said period and therefore, by applying the principle of "No Work No Pay", the petitioner is not entitled to the backwages. As stated by the learned single Judge in the aforesaid decision, the petitioner is also entitled for other service benefits except backwages for the said period.

11.In the aforesaid circumstances, the impugned order in C.No.D1/Q/6613/2007:DOQ/1027/2013 dated 28.11.2013 is set aside and the writ petition stands allowed. The respondents are directed to pass consequential order regularising the period of non-employment of the petitioner as directed above and the order shall be passed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

7. Being aggrieved by the same, appellants herein have filed the instant writ appeal, on the following grounds:-

(i) Writ Court has failed to appreciate the order of desertion, dated 06.05.2004 passed by the appellant on merits in accordance with law. The respondent was continuously absent from his lawful duties for more than 21 days without any intimation and thereby

committed a delinquency of Deserter from 20.03.2004. Further, the respondent continued his absence from duty for more than 60 days, the appellant passed deserter confirmation order dated 19.05.2004 and thus, the order impugned in Writ Petition, is in accordance with the provisions of 95(1) of Police Standing Orders.

(ii) Writ Court did not appreciate the fact that the respondent did not appear before this appellant and not chosen to submit any lawful explanation for his absence from duty and approached this Hon'ble court, by way of Writ Petition No.27942/2004 and the said writ petition was dismissed on 02.07.2012, as infructuous.

(iii) Writ Court did not appreciate the fact that the appellants have initiated disciplinary proceedings against the respondent for his delinquency of desertion of service, vide PR.No.1/2005, dated 20.04.2005. After following the Principles of Natural Justice, the appellants have passed an order, dated 15.11.2005, for the removal of the respondent from service w.e.f. 20.03.2004, on merits in accordance with law.

(iv) Writ Court did not appreciate that the respondent preferred an appeal petition against the appellant order dated 15.11.2005, before the Deputy Inspector General of Police, Intelligence, Chennai. Though the appeal petition of the respondent was under consideration by the DIGP, (Intelligence), Chennai, the respondent approached this Court seeking direction and this Court, vide its order, dated 25.10.2006, has directed the appellants to consider the appeal filed by the respondent on 23.11.2005 and pass appropriate orders on merit and in accordance with the law.

(v) Writ Court has failed to appreciate the fact that the Deputy Inspector General of Police, CID Intelligence considered the appeal petition of the respondent on merits and rejected the appeal petition of the respondent, vide its order, dated 11.12.2006. The respondent filed another writ petition before the Madurai Bench of this Court in W.P(MD).No.2471/2007 seeking to quash the said order. While disposing the said writ petition, writ Court had never set aside or quashed any of the orders of the appellant, as challenged by respondent.

(vi) It is submitted that interpretation given by writ Court, with regard to the Fundamental Rules 54-A (3), is not correct and unsustainable in law."

8. Heard the learned counsel for the appellants and

perused the materials available on record.

9. Order of the Superintendent of Police, Q Branch, CID, Chennai, 2nd appellant, dated 28.11.2013, impugned in W.P.No.5622 of 2014, is extracted hereunder:

C.No.D1/Q/6613/2007 O/o the Superintendent of Police
D.O.Q/1027/2013 Q Branch CID, Chennai - 4.

Dated: 28/11/2013

SETTLEMENT OF OUT OF EMPLOYMENT PERIOD

Sub: Police - 'Q' Branch CID - Ex.H.C.325 P.Raju of 'Q' Branch CID, Theni - Removal from service - Reinstated into service with modified punishment in implementation of the orders of the High Court - Settlement of out of employment period - Orders issued.

Ref: 1.D.O.No.353/2004 in Rc.No.A2/Q/12895/2004, Dated 06.05.2004 of the Supdt. of Police 'Q' Branch CID, Chennai.
2.D.O.No.379/2004 in Rc.No.A2/Q/12895/2004, Dated 19.05.2004 of the Supdt. of Police 'Q' Branch CID, Chennai.
3.D.O.No.978/2005 in Rc.No.D1/Q/26369/2004, Dated: 15.11.2005 of the Supdt. of Police, 'Q' Branch CID, Chennai.
4.Orders of the High Court of Madras, dated 02.07.2012 in W.P.Nos.93/2008, 27942/2004, 21740/2008 and 2471 of 2007.
5.This office proceedings Rc.No.D1/Q/6613/07, Dated: 13.08.2012 and Slip Order No.2/2012, Dt.13.08.2012.

Ex. HC 325 P.Raju of 'Q' Branch CID Theni was enlisted as a PC on 16.01.1979 and was promoted as HC on 05.12.1999. He joined Q Branch Theni on transfer from Theni District on 03.12.2003. While serving in Q Branch Theni, he entered on one day's casual leave on 15.03.2004 and extended the same for another four days. He did not report back for duty on expiry of the C.L. and deserted the force for more than 21 days. Hence he was treated as a deserter w.e.f 20.03.2004 vide D.O.No.353/2004 in Rc.No.A2/Q/12895/2004, Dated 06.05.2004. As he did not appear before the competent authority within the stipulated period of 60 days, his desertion was confirmed vide D.O.No.379/2004 in

Rc.No.A2/Q/12895/2004, Dated 19.05.2004. He filed W.P.No.27942/2004 seeking for a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in his proceedings A2/Q/12895/2004/Ma.A.No.379/2004 dated 19.5.2004 quash the same and consequently direct the first respondent to allow the petitioner to join duty forthwith and to extend all service and other monetary benefits.

2. The Supdt. of Police, Theni District, in his letter C.No.C2/2454/545/2004, dated 13.10.2004 intimated that the said HC was involved in Andipatti PS Cr.No.345/2003 u/s 302 IPC as A3 and that he had obtained anticipatory bail from the Hon'ble High Court, Madras in Crl.OP.No.24249/2004 on 13.07.2004 with certain conditions.

3. In the disciplinary action taken against him in PR No.1/2005, dated 20.04.2005 for desertion, he was removed from service w.e.f 20.03.2004, ie., the date of his desertion, vide orders of Supdt. of Police, 'Q' Branch CID, in Rc.No.D1/Q/26369/2004, in D.O.Q/978/2005, dated 15.11.2005. He preferred appeal petition against the above orders on 23.11.2005. He also obtained a direction from the High Court dated 25.10.2006 directing the appellate authority to consider the appeal filed by the petitioner on 23.11.2005 and pass appropriate orders on merit and in accordance with the law. Accordingly, appellate authority viz. Dy. Inspector General of Police, CID intelligence rejected the appeal of the petitioner vide his order No.D1/Q/Appeal 1/2006, dated 11.12.2006. Following the orders passed by the Dy. Inspector General of Police, Intelligence he filed a W.P.No.2471 seeking for a writ of Certiorarified Mandamus to call for the records relating to the orders passed by the Supdt. of Police, 'Q' Branch CID imposing a punishment of removal from service and also the appeal rejection order passed by the Dy. Inspector General of Police, CID, Intelligence and to quash the same and consequently direct Supdt. of Police, 'Q' Branch CID to reinstate the petitioner with all consequential, monetary and service benefits.

4. In the meantime, the criminal case against the said HC, in Andipatti PS Cr.No.345/2003 u/s 302 IPC ended in acquittal on 26.06.2008 in S.C.No.90/2007 of the Additional District and Sessions Judge cum Fast Track Court, Periyakulam.

5. The Hon'ble High Court of Madras, has in their

order in WP. 2471/2007 filed by the writ petitioner challenging the rejection of his appeal against removal from service, passed the following order on 02.07.2012.

"In a similar matter, the First Bench of this Court in R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheepuram and another in W.A.58 of 2011, by its order dated 27.1.2011 set aside the punishment of dismissal for unauthorised absence termed it as excessive and disproportionate to the charges levelled against him. Therefore the order of removal from service is set aside and the matter is remanded to the disciplinary authority, who shall reconsider the matter within six weeks regard to the quantum of punishment in the light of the order passed by the First Bench. Writ petition is ordered as stated above. No costs." The Hon'ble High Court has in their order dated 2.7.2012 dismissed the W.P.No.27942/2004 as infructuous in view of subsequent proceedings and removal of Ex.H.C.325 Raju from service by order dated 11.12.2006 which is the subject matter of W.P.No.2471/2007.

6. In view of the specific direction of the Hon'ble High Court of Madras remitting the case of this HC to the disciplinary authority to reconsider the matter in the light of the earlier order of the First Bench of Hon'ble High Court in R.Ramesh vs. DIG/Kanchipuram and another in W.A.58/2011 by its order dated 27.01.2011, PR No.1/2005 u/r. 3 (b) of the TNPSS (D&A) Rules was reconsidered. In deference to the orders of the Hon'ble High Court of Madras dated 02.07.2012 in W.P.No.2471/2007, as per this office orders in the reference 5th cited, Ex.HC 325 P.Raju was reinstated to duty with immediate effect and he was awarded a punishment of reduction in rank for a period of 2 years. The period of punishment is to be spent on duty and the impact of this punishment on his pension has been considered and is intended.

Subsequently Gr.I.PC 325 P.Raju, Theni District had submitted an appeal petition on 10.09.2012 to cancel or set aside the aforesaid punishment imposed on him or to modify the punishment to that of deferred punishment to the Inspector General of Police, Intelligence (IS), Chennai-4. On considering the appeal petition of above individual the IGP, Int(IS), Chennai-4 has in his proceedings Rc.No.D1/Q/6613/2007, Dt. 13.5.2013 modified and awarded a punishment of postponement of increment for three years with cumulative effect.

HC 325 Raju of Theni District formerly of 'Q' Branch CID was out of employment from 20.03.2004 to 17.08.2012. Hence, the above period is to be settled. As

such the out of employment period from 20.03.2004 to 17.08.2012 is treated as eligible leave including extraordinary leave to the extent necessary as detailed below.

Desertion : 20.03.2004

Out of employment period : 20.03.2004 to 17.8.2013 = 3073 Days
Settlement of out of employment period of HC 325 Raju, Theni District formerly of 'Q' Branch CID, Theni.

Earned Leave

20.03.2004 to 31.3.2004	-12
1.4.2004 to 30.4.2004	-30
5/2004	-31
6/2004	-30
1.7.2004 to 12.07.2004	-12

Total	115

Unearned Leave (Private Affairs)

13.7.2004 to 31.7.2004	-19
8/2004	-31
9/2004	-30
10/2004	-31
11/2004	-30
12/2004	-31
1.1.2005 to 8.1.2005	-8

Total	-180

Leave Without Pay

9.1.2005 to 31.5.2005	-357
2006	-365
2007	-365
2008	-366
2009	-365
2010	-365
2011	-365
1.1.2012 to 17.8.2012	-230

Total	-2778

Sd/- K.Bhavaneeswari,
Superintendent of Police,
'Q' Branch CID, Chennai-4."

10. While setting aside the abovesaid order, writ court, followed an similar order passed in W.P.No.31036 of 2013, in

which, the petitioner therein challenged an order, treating the period of out of employment, from 25.06.1993 to 13.02.2003, as eligible leave, including Leave Without Pay and consequently, sought for a direction to the respondents therein to treat the out of employment period from 25.06.1993 to 13.02.2003 as duty for all purposes except backwages, as per Fundamental Rule 54-A. (3). Vide order, dated 21.03.2017, in W.P.No.31036 of 2013, writ court ordered as hereunder:-

"6. The controversy centered around the issue raised in this writ petition lies in a very short compass as to whether the petitioner's absence period of ten years between 25.06.1993 and 13.02.2003 shall be treated as duty period without backwages or leave period without pay.

7. In this regard, the actual direction given by the Tribunal in O.A.No.5885/1994 filed by the petitioner, where his punishment of removal from service has been set aside, can be usefully referred to as hereunder:

"5. Therefore, we are inclined to set aside the order of removal passed against the applicant. The applicant no doubt is guilty of having absented himself for more than two months and therefore, he must be adequately punished and a punishment of stoppage of increment for one year with cumulative effect and denial of backwages for the period of unemployment would be sufficient and adequate and this will also provide an opportunity for the applicant to improve himself and try to be useful to the department.

6. In the result, the application is allowed and the order of removal is set aside and instead the applicant is imposed with punishment of stoppage of increment for one year with cumulative effect and denial of backwages. The period of absence shall be regularised as per Rules." 8. The Tribunal has set aside the punishment of removal of service. However, the Tribunal itself has given a modified punishment of stoppage of increment for one year with cumulative effect. The Tribunal also denied backwages to the petitioner for the period of unemployment. Therefore in respect of these aspects, since the Tribunal has given a clear verdict, the respondents do not have any discretionary power to give relief in accordance with their assessment of the case. However, in so far as the question of regularising the absence period of the petitioner for ten years is concerned, it was the direction of the Tribunal that the period of absence shall be regularised as per Rules. Therefore, it is also unavoidable to regularise absence period of the petitioner. But the only thing is that, under which

rule such regularisation shall be made.

9. In this regard, the learned Government Advocate would submit that Rule 54(1) and (2) would be the opt rule. Only by invoking the said Rule, the present impugned order has been passed. The said rule has been extracted above and on a perusal of the same, this Court feels that the said Rule 54(1) and (2) is not the relevant Rule to be invoked in the case on hand. At the same time, as has been rightly pointed out by the learned counsel appearing for the petitioner, Rule 54-A.(3), which has also been extracted herein above, would make it clear that, if any punishment of dismissal, removal or compulsory retirement of the Government servant is set aside by the Court of Law on the merits of the case, the intervening period between the date of dismissal and the period of suspension preceding such dismissal and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances. Here in the case on hand, the punishment of removal from service has been set aside by the court law. Once the said punishment is set aside as per the import of Rule 54-A.(3), then, certainly the petitioner shall be entitled to claim full pay and allowances for the period between dismissal or removal and reinstatement. However, in this case since the Tribunal itself has given a modified punishment and also denied backwages, such benefit cannot be conferred on the petitioner and he would also not entitled to seek the same.

10. However, in so far as the said absence period on the part of the petitioner is concerned, whether it is to be treated as duty period without backwages or to be treated as leave period without pay is concerned, the said Rule 54(1) and (2), as has been quoted by the learned Government Advocate, on a perusal and in the opinion of the Court, may not be applicable to the present facts of the case.

11. Then, the only option available to the second respondent is to invoke F.R. 54-A.(3) and if the said Rule is invoked without giving any backwages, the said absence period shall be treated as duty for all purposes. If it is treated as duty for all purposes, it goes without saying that the petitioner shall be entitled to get other service benefits for which, he is entitled to, as per the Rules, which are in force except backwages.

12. In view of the above Rule position and the discussions made, this Court is of the considered view that the impugned order is liable to be set aside.

13. In the result, the impugned order is quashed.

The petitioner's period of absence between 25.06.1993 and 15.07.2003 shall be treated as duty period for all purposes. However, the petitioner shall not be entitled for any backwages or monetary benefits for the said period, which has been regularised now. It is needless to mention that in view of this, the petitioner shall be entitled to seek other service benefits.

14. With these directions, the writ petition is allowed to the extent indicated above. No costs."

13. Rules 54(1) and (2) and 54-A(3) of Fundamental Rules, considered are extracted hereunder:

"54. (1) When a Government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), 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 the period of his absence from duty including the period of suspension preceding his dismissal, removal, 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.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole), of such pay and allowances as it may determine.

.....

54-A. (3) 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 100 reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be."

14. Judgment, stated supra, has rightly been considered and applied by the writ Court, to the facts on hand and set aside the impugned settlement order of out of employment period. We do not find any valid ground to interfere with the order of the writ Court. Hence, Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm/dm

To

1. The Director General of Police,
Mylapore, Chennai - 4.
2. The Superintendent of Police,
Q Branch CID, Chennai - 4.
3. The Superintendent of Police,
Theni District.

+1cc to the Government Pleader, S.R.No.79526

W.A.No.2529 of 2018
C.M.P.No.20416 of 2018

AK(CO)
CS/11/02/2019