

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2019

Delivered on : 11.03.2019

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A No.2489 of 2012

P.M.Ramadass

...Appellant

Vs

- 1.The Director General
Railway Protection Force,
Railway Board, New Delhi.
- 2.The Chief Security Commissioner
Railway Protection Force,
6th Floor, Moore Market Complex,
Chennai - 600 003.
- 3.The Deputy Chief Security Commissioner,
Railway Protection Force,
6th Floor, Moore Market Complex,
Chennai - 600 003.
- 4.The Senior Divisional Security Commissioner,
Railway Protection Force,
Vth Floor, NGO Annexe,
Southern Railway,
Chennai - 600 003.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent, against the order dated 13.09.2011 made in W.P.No.13454 of 2009.

Writ Petition praying to call for the records connected with the proceedings No.X/P.3/Mis./Vol.III dated 20.04.2009 passed by the second respondent and quash the same and direct the second respondent to regularize the period from 14.6.1993 to 1.5.2001 as duty and pay the consequential benefits arising therefrom.

For Appellant : Mr.Govardhanan

For Respondents: Mr.C.V.Ramachandramoorthy

J U D G M E N T

K.K.SASIDHARAN, J.

This intra court appeal is directed against the order dated 13 September 2011 in W.P.No.13454 of 2009, dismissing the writ petition filed by the appellant challenging the order dated 20 April 2009 regularising the period from 14.06.1993 to 01.05.2001 and declining to grant the relief of treating the said period as duty and pay him the consequential benefits.

2. The appellant was working as a Head Constable in the Railway Protection Force. He was dismissed from service by order dated 14.06.1993. The appellant ignoring the said order filed a writ petition before this Court in W.P.No.11883 of 1993. In the said writ petition, charge memos dated 16.10.1992 and 23.2.1993 were challenged. Since the dismissal order was served in the mean time, the appellant filed a statutory appeal.

3. The writ petition was disposed of by order dated 24.03.2000 with a direction to the Appellate Authority to decide the appeal on merits. The Appellate Authority by order dated 15.06.2000 dismissed the appeal. The appellant thereafter filed appeal to the Director General of Railway Protection Force, New Delhi. The Appellate Authority by order dated 17.04.2001 directed reinstatement of the appellant into service. The authority directed the competent authority as per the relevant Rules to decide the question of regularisation of the intervening period from the date of dismissal from service till the date of re-instatement.

4. The competent authority imposed the punishment of penalty of reduction in scale of pay by two stages for a period of one year with cumulative effect. The period of absence from 17.08.1991 to 10.10.1991 was treated as leave without pay.

5. On appeal, the Senior Divisional Security Commissioner set aside the punishment of reduction in time scale of pay by order dated 18.10.2004. The order was passed on account of certain technical defects. The competent authority regularised the period from 14.06.1993 to 30.08.1993 as Leave on Average Pay and the period from 31.08.1993 to 13.06.1998 was treated as leave without pay. The period from 14.06.1998 to 01.05.2001 was treated as Dies non.

6. The Chief Security Commissioner by order dated 20.04.2009 regularised the period of absence as follows:-

- a) From 14.06.1993 to 30.08.1993 - 78 days Leave on Average Pay
- b) From 31.08.1993 to 01.05.2001 - 2801 day EOL on LWP

7. The learned counsel for the appellant contended that as per Rule 1343 of Indian Railways Establishment Manual, the Railway servant has to be given such amount to which he will be entitled had he not been dismissed from service. According to the learned counsel, the employee should have been given notice before regularising the relevant period.

8. The relevant rule in the subject case is Rule 1343 (5). The Rule very clearly provides that the period of absence from duty including the period of suspension preceding the dismissal, removal or compulsory retirement as the case may be, shall not be treated as the period spent on duty unless the competent authority specifically directs that it shall be so treated for any specific purpose.

9. In the subject case, there was no such direction given by the Appellate Authority. The authority permitted the competent authority for regularizing the period of absence. Since the case of the appellant would come under Rule 1343(5), the competent authority was justified in regularizing the period from 31.08.1993 to 01.05.2001 as EOL treated as Leave without pay and Dies non.

10. The learned single Judge considered the entire issue raised by the appellant and the writ petition was rightly dismissed. We do not find any ground made out by the appellant to take a different view in the matter.

11. In the upshot, we dismiss the intra court appeal. No costs.

Sd/-

Assistant Registrar

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सत्यमेव जयते

Sub Assistant Registrar

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To

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+lcc to M/s.A.J.Alwyn Prabakar, Advocate sr.22356
+lcc to Mr.C.V.Ramachandrmorthy, Advocate sr.22568

W.A No.2489 of 2012

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