

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.27503 of 2010
and M.P.No.1 of 2010

R.Lakshmana Singh

.. Petitioner

Vs.

1.The Agriculture Production Commissioner and
Secretary to Government,
Agricultural Department,
Fort St. George, Chennai 9.

2.The Commissioner of Agriculture,
Chepauk, Chennai 5.

3.The Joint Director of Agriculture,
Villupuram.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the Letter No.Pa.O.Na1 (2) 42486/2005 dated 03.02.2010 quash the same and direct the respondents to treat the period of suspension from 21.07.1979 to 21.05.1985 as duty and to award selection and special grade with effect from 01.01.1987 and 07.10.1997 respectively on awarding consequently refix the pay scale and refix the pensionary benefits, disburse the same within short date.

For Petitioner : Ms.G.Sridevi

For Respondents : Mr.R.S.Selvam,
Government Advocate

O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the respondents in Letter No.Pa.O.Na1 (2) 42486/2005 dated 03.02.2010 and for a direction to the respondents to treat the period of suspension from 21.07.1979 to

21.05.1985 as duty and to award selection grade and special grade with effect from 01.01.1987 and 07.10.1997 respectively.

2. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

3. According to the petitioner, he was appointed as an Agricultural Officer on 07.10.1974. While he was working as an Agricultural Officer, he was placed under suspension from 21.07.1979 to 21.05.1985 for certain irregularities. Criminal proceedings were initiated against the petitioner. In the criminal proceedings, he was acquitted by the judgment dated 27.10.1984, on benefit of doubt by the Judicial Magistrate, Villupuram. The respondents initiated departmental proceedings against the petitioner and on the conclusion of departmental proceedings, he was awarded stoppage of increment for one year by the proceedings in No.A130915/81 dated 29.08.1985. According to the petitioner, he was appointed on 07.10.1974 and completed 10 years of service on 07.10.1984 and 20 years of service on 07.10.1994. The punishment of stoppage of increment for one year was over in the year 1986. The respondents ought to have awarded selection grade in the year 1986. He became due for special grade on 07.10.1994, which was also not awarded to the petitioner. The petitioner was on medical leave from 22.06.1993 to 17.11.1994 without pay. The respondents initiated proceedings and charge memo was issued on 26.05.1999 for unauthorized absence. The said proceedings were pending till his date of superannuation on 31.05.2003. Hence, the petitioner was not permitted to retire and he was placed under suspension on the date of superannuation on 31.05.2003. The order of suspension dated 26.05.2003 was revoked by the proceedings in Reference No.DCS1/1/98436/94 dated 30.07.2007 and subsequently by the proceedings dated 05.12.2005, the petitioner was permitted to retire without prejudice to the disciplinary action pending against him. The Government by G.O.(3D).No.306 [Agricultural (VeNi) Department] dated 10.10.2007, passed final orders in charge memo dated 26.05.1999, issued for unauthorized absence and the punishment of recovery of Rs.200/- per month from pension for three years was ordered. The petitioner further submitted that period of suspension from 20.07.1979 to 04.05.1985 was not regularized. Hence, he gave representations dated 18.01.2010 to the respondents 1 and 2 to treat the suspension period as duty.

4. The learned counsel appearing for the petitioner further contended that the petitioner also made another representation on the same day for awarding selection grade and special grade.

The 2nd respondent by the impugned order dated 03.02.2010, rejected the claim of the petitioner with regard to regularization of suspension period as 'on duty'. In the impugned order, the respondents have not stated anything about granting selection grade and special grade. The impugned order of the respondents is in total violation of G.O.Ms.No.544 [P & AR Department] dated 19.06.1987, wherein it has been held that when a Government servant had been acquitted in criminal proceedings and reinstated in service, the period of suspension must be treated as duty period. The learned counsel appearing for the petitioner further contended that as per G.O.Ms.No.228 [P & AR Department] dated 13.04.1989 and G.O.Ms.No.261 [P & AR Department] dated 04.08.1982, if a Government employee is reinstated into service with specific direction of the Court, the period of suspension must be treated as duty and prayed for allowing the Writ Petition.

5.The 3rd respondent filed counter affidavit on his behalf and on behalf of the respondents 1 and 2. The learned Government Advocate appearing for the respondents contended that after acquittal in the Criminal Court, the disciplinary proceedings were initiated by the respondents and the punishment of stoppage of increment for one year was issued and recovery of 25% of loss also was ordered. The period of suspension from 21.07.1979 to 21.05.1985 was regularized by the proceedings in Proc.No.B1/251514/87 dated 07.07.1987 as earned leave from 21.07.1979 to 30.10.1979 (102 days), unearned leave on private affairs from 31.10.1979 to 16.01.1980 (78 days) and leave on loss of pay without medical certificate from 17.01.1980 to 21.05.1985 (1951 days). The punishment imposed was implemented. His appeal against the punishment was rejected. The petitioner has not obtained any order for treating the period of suspension as duty. As per the Government Order, for awarding selection grade and special grade, the period of 10 years and 20 years respectively has to be calculated from the date of regular appointment excluding the period of reversion and extra-ordinary leave (leave on loss of pay) without medical certificate. The departmental proceedings was initiated against the petitioner for irregularities and punishment was imposed. Further, he was not permitted to retire on his date of superannuation on 31.05.2003 and by the Government letter No.414623/AA7/96 dated 19.04.2004 his order of suspension was revoked and he was permitted to retire on 05.12.2005, imposing punishment. The period of suspension from 21.07.1979 to 21.05.1985 was regularized by the proceedings Proc.No.B1/251514/87 dated 07.07.1987. Hence, the petitioner is not entitled to relief sought for now in the present Writ Petition and prayed for dismissal of the Writ Petition.

6.The grievances of the petitioner is that the petitioner ought to have been granted selection grade in the year 1984 or in any event in the year 1986 and subsequently, the petitioner has become eligible for grant of special grade in the year 1994. The petitioner gave a representation dated 18.01.2010 for regularization of suspension period from 21.07.1979 to 21.05.1985 as duty and the same was rejected by the impugned order. From the impugned order, it is seen that the period of suspension from 21.07.1979 to 21.05.1985 was regularized by the proceedings dated 07.07.1987 from leave on loss of pay to earned leave, unearned leave on personal affairs and leave on loss of pay without medical certificate. The said order has become final as the same had not been set aside in any further proceedings. In view of the proceedings in Proc.No.B1/251514/87 dated 07.07.1987 which has become final, the contention of the petitioner to regularize the said period as 'on duty' is without merits.

7.Further, the petitioner faced departmental proceedings for misconduct committed by him during the period from 1990 to 1993 and punishment was imposed for the said misconduct also. The petitioner is seeking selection grade and special grade for the year 1984 and 1994, after 26 years and 6 years after he was permitted to retire from service. In view of the regularization of period of suspension from 1979 to 1985 as earned leave, unearned leave on personal affairs and leave on loss of pay without medical certificate by the proceedings in Proc.No.B1/251514/87 dated 07.07.1987, the impugned order rejecting the petitioner's representation is valid and legal. Further, in view of the subsequent departmental proceedings and punishment imposed on the petitioner and on the ground of delay and laches, the Writ Petition is dismissed as devoid of merits. The Government Orders relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

8.In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1.The Agriculture Production Commissioner and
Secretary to Government,
Agricultural Department,
Fort St. George, Chennai 9.

2.The Commissioner of Agriculture,
Chepauk, Chennai 5.

3.The Joint Director of Agriculture,
Villupuram.

+1 cc to M/s.G.Sridevi Advocate sr71987

+1 cc to the Government Pleader sr71142

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