



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7922 of 2013

R.Krishnamoorthy

... Petitioner

-vs-

The Commissioner,
Erode City Municipal Corporation,
Erode.

... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the Respondent relating to Pro.Na.Ka.No.C1/2934/2011 dated 12.06.2012 to quash the same and direct the Respondent to regularize the suspension period of 61 days as duty period, for all purposes and pay the salary for the 61 days earned leave deducted from the Petitioner.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.M.Rajamathivanan

O R D E R

This Writ Petition has been filed, challenging the order of the Respondent dated 12.06.2012 made in Pro.Na.Ka.No.C1/2934/2011, by which the petitioner's suspension was revoked with a direction to treat the period of suspension from 29.03.2011 to 29.05.2011 (61 days) was ordered to be treated as earned leave instead of duty period. The Petitioner also sought for a direction to the respondent to regularize the suspension period of 61 days as duty period for all purposes and pay the salary for the 61 days earned leave deducted from the Petitioner.

2. The learned Standing Counsel appearing for the Respondent, in order to sustain the impugned order dated 12.06.2012, has submitted that consequent to the proceedings of the District Collector, Erode dated 27.05.2011, the Respondent has revoked the order of suspension on 17.06.2011 and regularized the suspension period of 61 days as that of one of Earned Leave. Subsequently, the appeal preferred by the Petitioner on 01.06.2012 before the Respondent was rejected on the ground of delay and laches, aggrieved by which, the Petitioner, who already attained superannuation on 31.01.2012, is before this Court. According to the Respondent, as per Rule 27(3) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Appeal has to be filed within two months. Since the



Petitioner had not filed the appeal in time and sufficient cause was also not shown for the said delay, there is no warranting circumstances to interfere with the order impugned herein.

3. In reply to the above, the learned counsel for the Petitioner has submitted that that once there is an order passed in favour of the Petitioner, it is the duty cast upon the Respondent to extend all the benefits to him. The Petitioner had only submitted a representation dated 01.06.2012 to the Respondent for regularization and conversion of the suspension period as duty period and the same has been converted into an appeal and an order was passed thereon, which is not at all sustainable.

4. The learned counsel for the petitioner, in support of his submission, has relied upon a judgment of the Hon'ble Division Bench of this Court in the case of The Superintendent of Police, Salem and others vs. C.Govindan [W.A.No.1026 of 2016] decided on 06.09.2016, wherein it has been held as follows:

"3. When the matter came up for admission, learned counsel for the respondent / writ petitioner, produced a copy of the judgment dated 02-09-2013 in W.A.No.1430 of 2013 passed by the First Bench of this Court and prayed for a similar order in this writ appeal also.

4. We have perused the judgment produced on the side of the respondent / writ petitioner. In the said judgment, under similar circumstances, the First Bench of this Court has dismissed the writ appeal filed by the official respondents and confirmed the order passed by the learned single Judge in the writ petition, treating the period of suspension as "spent on duty" and directing the respondents therein to settle the consequential benefits within the stipulated time. For better appreciation, the relevant paragraphs of the said judgment are extracted hereunder:

"8. This Court, after careful consideration of the rival submissions and upon perusal of the materials placed before it, especially sub-rule 9(b) of FR 54-B, is of the considered opinion that there is no merit in this writ appeal.

9. It is relevant to extract sub-rule 9(b) of FR 54-B as under:

'9:- Where a Government servant is
:-
(a)



WEB COPY

(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 dismissed or removed or compulsorily retired from service.'

10. As per the above said Rule, if the Government servant is subsequently reinstated in service on his acquittal either on merits or by giving benefit of doubt, 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, but for the fact that he was not placed under suspension or dismissed from service. The said Rule is squarely applicable to the present facts of the case and in fact, in respect of one Ramadoss, who was arrayed as A-26 and who was also one of the appellants in CA.No.444/1999, which was allowed by this Court along with the other two criminal appeals in CA Nos.386 and 393/1999, his period of suspension has been treated as "spent on duty" and the consequential



WEB COPY

benefits were also directed to be paid to him.

11. Since the learned single Judge has taken into consideration the factual and legal position and has rightly arrived at the conclusion to allow the writ petition, this Court is of the view that there is no error or infirmity in the impugned order.

12. In the result, this writ appeal is dismissed at the admission stage itself. The appellants/official respondents are directed to comply with the order passed in W.P.No.17360/2010, within a period of one month from the date of receipt of copy of this judgment. However, there shall be no order as to costs. Consequently, connected MP is also dismissed."

5. We are of the view that the aforesaid judgment is squarely applicable to the case of the respondent / writ petitioner and by applying the same, the respondent / writ petitioner is entitled for the benefit of continuity of service and consequential monetary benefits including backwages. At this stage, it is submitted that the petitioner has been paid subsistence allowance during the suspension period.

6. In such view of the matter, the writ appeal is dismissed at the stage of admission itself. The appellants / official respondents are directed to settle all the benefits to the respondent / writ petitioner, if not already done so, within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

5. I find much force in the contention raised by the learned counsel for the Petitioner, inasmuch as there is no need for the petitioner to prefer an appeal for regularization, more particularly in the light of Rule 54(b)(3) of Tamil Nadu Government Fundamental Rules, which stipulates as under:

"(3) In a case falling under sub-rule (2) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes."



6. In view of the above provision and following the judgment of this Court, referred to above, the Writ Petition is allowed and the Respondent is directed to regularize the suspension period of 61 days of the petitioner as duty period for all purposes and pay the salary. It is needless to state here that the benefits, due to the Petitioner on account of invocation of the suspension shall be extended to him, within a period of 45 days from the date of receipt of a copy of this order.

7. It is made clear that if the above order is not complied with in letter and spirit, within the time stipulated, the arrears of wages payable for 61 days, if not already paid, will carry interest at the rate of 12% p.a. from the date of filing of this Writ Petition and the entire arrears towards payment of interest should be recovered from the personal fund of the Officer, who is responsible to pay the same in 45 days. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TO:

The Commissioner,
Erode City Municipal Corporation,
Erode.

+1cc to Mr.M.Rajamathivanan, Advocate sr.63985
+1cc to Mr.M.Ravi, Advocate sr.64329

W.P.No.7922 of 2013

kp(co)
nr 06/08/2019