

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.14303 of 2018

WMP.No.16894 of 2018

K.Subham

.. Petitioner

Vs

1. The Secretary,
Department of School Education,
Secretariat,
Fort St. George,
Chennai-600 009
 - 2.The Director,
Directorate of School Education,
Chennai-600 006
 - 3.The Joint Director (Service),
Department of School Education,
Chennai-600 006
 - 4.The Chief Educational Officer,
CEO Office,
Erode District-638 101
- ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.74922/C3/E3/2017 dated 26.12.2017, quash the same and consequentially, for a direction, directing the third respondent herein to pay full salary and other allowances for the period of suspension between 28.01.2014 and 10.02.2016 treating the period as spent on duty with 18% interest from the date of suspension till the date of payment with all other attendant benefits.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.K.Karthikeyan, GA

ORDER

This petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.74922/C3/E3/2017 dated 26.12.2017, quash the same and consequentially, for a direction, to direct the third respondent herein to pay full salary and other allowances for the period of suspension between 28.01.2014 and 10.02.2016 treating the period as spent on duty with 18% interest from the date of suspension till the date of payment with all other attendant benefits.

2. The petitioner was placed under suspension pending contemplation of charges against him on 28.01.2014 under Rule 17(e) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. Subsequently, a charge memo was issued and the departmental enquiry was initiated against the petitioner, which ultimately ended in the penalty imposed on the petitioner, viz., stoppage of increment for a period of six months vide order dated 19.12.2016. Thereafter, the petitioner represented to the authorities on 04.08.2017 to regularize the period of suspension. The petitioner appears to have been reinstated in service on 10.02.2016, without prejudice to the pending disciplinary proceedings initiated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the meanwhile, the petitioner appears to have approached this Court in WP.No.26587 of 2017 seeking benefits under FR 54-B for the period in which the petitioner was placed under suspension. The said writ petition is for issuance of a Mandamus to consider the representation. Notice was ordered in the said writ petition and the same is pending.

3. While so, by impugned order dated 26.12.2017, the third respondent rejected the claim of the petitioner by treating the period of suspension as eligible leave period standing to the credit of the petitioner (excluding medical leave). The said order is put to challenge in the present writ petition.

4. According to the learned counsel for the petitioner, in terms of FR 54-B of the Fundamental Rules, she is entitled to suspension period to be treated as spent on duty and salary and allowances to be paid. In fact, the authority did not pass any order immediately when the petitioner was reinstated in service on 10.02.2016. The learned counsel would rely on the decision of the Hon'ble Supreme Court reported in (2015) 17 SCC 625 (Vijay Kumar Agarwal Vs. Union of India and Another). He would draw the attention of this Court to para 20 of the aforesaid order, which is extracted

"20. The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54B and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the Government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period May 01, 1988 to May 13, 1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its own but to facilitate petitioner's inter- cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of suspension was not in exercise of power to revoke the suspension on the ground that the petitioner was no longer required to kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal."

5. According to the learned counsel for the petitioner, in view of the authority not passing any order pertaining to pay and allowances for the period of suspension while ordering the reinstatement, the authority is precluded from passing any order, consequently, the petitioner is therefore, entitled to full salary and allowances for the period of suspension.

6. This Court is unable to appreciate the arguments advanced by the learned counsel for the petitioner for the simple reason that the petitioner herself approached

direction to the authorities to pass orders on her representation seeking benefits in terms of FR 54 -B.

7. While so, the authority considered and rejected the same and held that the period of suspension will be regularised as leave standing to the credit of the petitioner excluding medical leave. This Court finds no infirmity in such order since the petitioner is not exonerated from the charges for her to be paid full salary and other allowances for the suspension period. The disciplinary action was initiated and the punishment was imposed on the petitioner vide order dated 19.12.2016 and while ordering reinstatement, the period of suspension has been regularised and adjusted to the leave standing to the credit of the petitioner without medical leave. When the disciplinary action is followed by imposition of penalty, the petitioner is not entitled to pay full salary and allowances for the period of suspension, otherwise, it would amount to complete exoneration of the employee from the charges. In case the employee is exonerated from the charges only, the employee is entitled to the benefit of full salary and allowances for the period of suspension. In this case, admittedly the petitioner was imposed with the penalty viz., stoppage of increment for a period of six months. Therefore, under no circumstances, the petitioner is entitled to the full salary and allowance for the period of suspension and also regularization of the period of suspension as spent on duty.

8. In the said circumstances, the order passed by the authority does not call for interference of this Court and this Court finds no merit in this writ petition. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of School Education,
Secretariat,
Fort St. George,
Chennai-600 009

2.The Director,
Directorate of School Education,
Chennai-600 006

3.The Joint Director (Service),
Department of School Education,
Chennai-600 006

4.The Chief Educational Officer,
CEO Office,
Erode District-638 101

+1cc to Mr.S.Sathiaseelan , Advocate SR.No. 64494

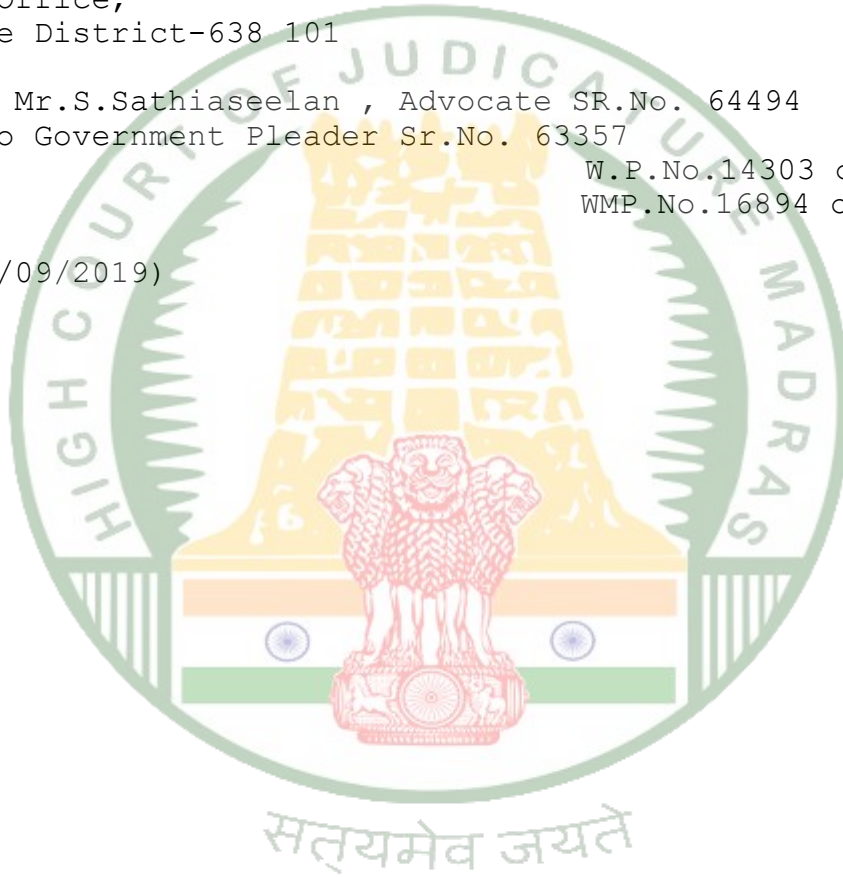
+1 cc to Government Pleader Sr.No. 63357

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A.SK(05/09/2019)



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