



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD) No.9618 of 2015

and

W.M.P. (MD).No.8655 of 2017

C.Arun

... Petitioner

vs.

1.The Deputy Inspector General of Police,
Trichirappalli Range,
Trichirappalli-1.

2.The Superintendent of Police,
Karur District,
Karur.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order DO.No.672/2011 C.No.A4/PR-13/2005 dated 11.11.2011 passed by the 2nd respondent and quash the same and consequently direct the 2nd respondent to treat the period of non-employment from 20.08.2005 to 20.03.2011 as one on duty for all purposes.

For Petitioner	:	Mr.T.Antony Arulraj
For Respondents	:	Mr.C.M.Marichellaiah Prabhu Additional Govt. Pleader

ORDER

According to the petitioner, he joined as Police Constable Grade-II on 24.05.1999. While working as such, he was placed under suspension with effect from 01.02.2005, which was revoked on 07.06.2005. In this connection, he was dealt with on a charge under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, in Punishment Roll No.13/2005, for the following delinquencies:

(i)Highly reprehensible conduct in having left Armed Reserve, Karur himself without obtaining prior permission from Superior Officers while on waiting for emergency duty at Armed Reserve from 17.00 to 20.00 hours on 30.01.2005.



(ii) Highly reprehensible conduct in having visited Puliyur on an un-assigned duty and involved in illegal activity of securing a lottery ticket seller one Murgesan S/o.Govindaraj, 113, Thillainagar, Industrial Estate, Karur and robbing Rs.2,100/- and lottery tickets worth Rs.600/- from him.

(iii) Highly reprehensible conduct in having brought the said Murgesan to Karur on the pretext of producing him before the Superintendent of Police, Karur and misused the name of the Superintendent of Police, Karur and demanded more illegal gratification and thus, tarnished the image and integrity of the Police force.

Following the same, the petitioner was awarded the punishment of removal from service on 19.08.2005. Challenging the same, he filed an appeal before the Deputy Inspector General of Police, Trichy Range, Trichy. The said appeal was rejected on 24.11.2005, against which, the petitioner preferred WP(MD) No.1291 of 2006 before this Court. By order dated 10.11.2010, the said writ petition was allowed and the matter was remanded to the first respondent for fresh consideration. Pursuant to the same, by order dated 03.03.2011 passed by the first respondent, the punishment of 'removal from service' was modified into one that of 'reduction in time scale of pay by two stages for two years' and the period of reduction shall operate to postpone his future increments. Accordingly, the petitioner reported for duty on 21.03.2011. Thereafter, he was issued with a show cause notice as to why the out of employment period from 20.08.2005 to 20.03.2011 should not be settled as eligible leave including EOL as per FR.54, as he was punished, to which he duly submitted his reply. Being not satisfied with the same, the second respondent passed an order dated 11.11.2011 treating the out of employment period as eligible leave including EOL to the extent if necessary. Aggrieved over the same, the petitioner has come up with this writ petition to quash the said order dated 11.11.2011 and consequently, direct the second respondent to treat the period of non employment from 20.08.2005 to 20.03.2011 as one on duty for all purposes.

2.The second respondent filed a counter affidavit, wherein, in paragraph No.5, it is stated as follows:

"5.The grounds which was raised by the petitioner in support of his claim was not legally correct.

a)It is submitted that the averments made in ground (a) is not correct. It is true that a show cause notice was issued to the petitioner on 29.10.2011 and the petitioner had submitted his explanation on 04.11.2011 with a request to treat the out of employment period from 20.08.2005 to 20.03.2011 as duty period.

b)It is submitted that the averments made in ground (b) is not correct. As per Fundamental Rule 54

(1) a Government servant, who has been dismissed,



removed or compulsorily retired, is reinstated as 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.

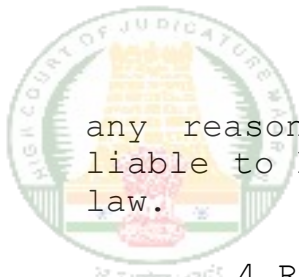
Fundamental Rule 54(a) Talks of the pay and allowances to be paid to the Government Servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be and Fundamental Rule 54(1)(b) talks about whether or not the said period shall be treated as a period spent on duty.

Fundamental Rule 54(4) states that in cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) Article 311 of the constitution and no further enquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rule (6) and (7), be paid such amount (not being the whole) of the pay and allowance 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 as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period, which, in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice.

Accordingly, a show cause notice was issued to the petitioner on 29.10.2011 and he had submitted his explanation on 04.11.2011 with a request to treat the out of employment period from 20.08.2005 to 20.03.2011 as duty period.

As per the above rule, the out of employment period spent by him from 20.08.2005 FN to 20.03.2011 is ordered to be treated as eligible leave including Extraordinary Leave to the extent, if necessary, vide this office D.O.No.672/2011 to C.No.A4/PR 13/2005 dated 11.11.2011."

3.The main ground raised by the learned counsel for the petitioner is that without considering the reply dated 04.11.2011 submitted by the petitioner to the show cause notice relating to the settlement of out of employment period, the second respondent passed the impugned order dated 11.11.2011 mechanically, without assigning



any reason with non-application of mind and hence, the same is liable to be set aside, as it is arbitrary, illegal and contrary to law.

4.Reiterating the averments made in the counter affidavit, the learned Additional Government Pleader appearing for the respondents made his submissions, supporting the order impugned herein.

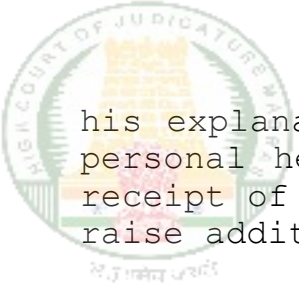
5.Heard both sides and perused the records.

6.Admittedly, related to the charge under Rule 3(b) in PR.No.13/05, the petitioner was awarded the punishment of removal from service with effect from 20.08.2005 and the same was modified into that of reduction in time scale of pay by two stages for two years and the period of reduction shall operate to postpone his future increments, vide order dated 03.03.2011. Pursuant to the same, the petitioner was reinstated into service with effect from 21.03.2011. Thereafter, the second respondent issued a show-cause notice calling upon the petitioner to submit explanation as to why the out of employment period from 20.08.2005 to 20.03.2011 should not be settled as eligible leave including EOL as he was punished. Upon receipt of the same, the petitioner submitted his detailed reply dated 04.11.2011 to treat the said period as duty period for all purposes. However, the second respondent passed the impugned order dated 11.11.2011 treating the said period as eligible leave including EOL to the extent if necessary. Hence, this writ petition.

7.It is the grievance of the petitioner that without considering the reply submitted by the petitioner, the second respondent passed the impugned order, mechanically, without assigning any reason and non-application of mind, whereas according to the respondents, the petitioner was punished under Rule 3(b) and hence, his out of employment period is ordered to be treated as eligible leave including EOL without pay to the extent if necessary.

8.Having regard to the rival submissions and upon perusal of the documents enclosed in the typed set of papers, more particularly, the order impugned herein, this Court is of the view that the manner in which the impugned order came to be passed by the respondent is nothing but a mechanical act and the said settlement for out of employment period of the petitioner cannot be made automatically by holding that he was punished under Rule 3(b). Further, the second respondent miserably failed to consider the explanation offered by the petitioner on 04.11.2011. On this ground alone, the impugned order is liable to be set aside, as it is arbitrary, illegal and contrary to law.

9.Accordingly, the order dated 11.11.2011 passed by the second respondent is set aside and the matter is remanded to the second respondent for passing fresh orders, in accordance with law, after considering each and every point raised by the petitioner in



his explanation dated 04.11.2011, after providing an opportunity of personal hearing, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is also permitted to raise additional grounds, if required.

10. The writ petition stands allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar (CS-)

vs

To

1. The Deputy Inspector General of Police,
Trichirappalli Range,
Trichirappalli-1.

2. The Superintendent of Police,
Karur District,
Karur

+1 CC to M/s. T. ANTONY ARUL RAJ, Advocate
(SR-58655[F] dated 03/04/2019)

+1 CC to M/s. SPL GP (SR-59117[F] dated 04/04/2019)

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ES/18.06.2019/5P/5C