



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.3482 of 2019

and

W.M.P.(MD) No.2743 of 2019

WEB COPY

R.Ramasubbu

... Petitioner

-Vs-

1.The Deputy Inspector General of Police,
Madurai Range, Madurai.

2.The Superintendent of Police,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed in C.No.A2/15058/WP/2018 RO.No.685/18, dated 14.12.2018 by the first respondent and quash the same and consequently direct the respondents to regularize the period of suspension ie., from 11.08.2011 to 06.12.2011 and out of employment period from 10.04.2015 to 12.04.2018 with all monetary benefits.

For Petitioner : Mr.C.Jeganathan,

For M/s.Veera Associates.

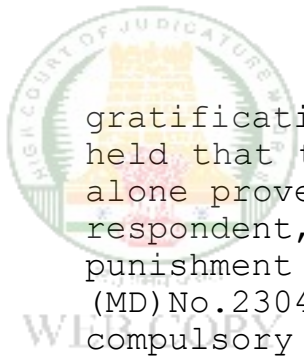
For Respondents : Mr.C.Ramar,

Additional Government Pleader.

ORDER

The order of the first respondent dated 14.12.2018 is sought to be quashed in the present Writ Petition and further direction is sought for to direct the respondents to regularize the period of suspension i.e., from 11.08.2011 to 06.12.2011 and out of employment period from 10.04.2015 to 12.04.2018 with all monetary benefits.

2.According to the petitioner, he was appointed as Sub-Inspector of Police on 28.09.1987 and was promoted as Inspector of Police on 18.08.1999. While he was working as Inspector of Police at Avaniapuram Police Station in the year 2009, a case in Crime No.130 of 2009 for the offence under Section 304(a) IPC was registered on 16.04.2009, based on the complaint received from the Village Administrative Officer, for the death of one Pandya Rajan. Subsequently, on 22.07.2009, he was transferred to Virudhunagar District. After lapse of two years, the said case was altered from 304(a) IPC to 302 IPC and an alteration report was filed on 30.07.2011. In view of the said alteration, the petitioner was placed under suspension from 11.08.2011 and charge memo under Rule 3 (b) of Tamil Nadu Police Civil Services (D & NA) Rules, 1955 in PR.155/2012, consisting of two charges, was issued against the petitioner. The first charge is with regard to the perfunctory investigation and other charge is that he has received illegal

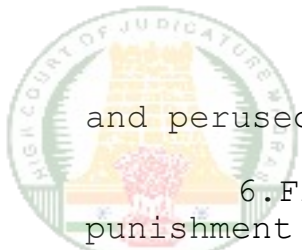


gratification of Rs.50,000/- in the said case. The enquiry officer held that the second charge was not proved and the first charge was alone proved. Based on the report of the enquiry officer, the first respondent, by the proceedings dated 09.04.2015, has imposed punishment of compulsory retirement. The petitioner has filed W.P. (MD)No.23041 of 2015 to quash the order of the punishment of compulsory retirement from service. This Court, by the order dated 07.02.2018, has set aside the order of the first respondent, imposing the punishment of compulsory retirement and held that the said punishment is disproportionate to the charges levelled against the petitioner and remanded the matter to the first respondent for imposing any other lesser punishment. After remand, the first respondent has imposed punishment of stoppage of increment for three years to take effect from the date of compulsory retirement. The petitioner was reinstated on 13.04.2018 and allowed to retire on 31.05.2018, on attaining the age of superannuation. After retirement, the first respondent has issued show cause notice, dated 03.10.2018, as to why the period of out of employment spent by the petitioner should not be treated as eligible leave, including the extraordinary leave. The petitioner has submitted his explanation. Without considering the explanation submitted by the petitioner, the first respondent has passed the impugned order dated 14.12.2018. Against the said order, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the impugned order amounts to double jeopardy, as the first respondent has already imposed punishment of stoppage of increment for three years, after remand. He further submitted that as per Rule 54(A)(1) of the Fundamental Rules, if the Government servant is reinstated, without holding further enquiry, the period of suspension must be regularized. As per Fundamental Rule 54(A)(3), if punishment of compulsory retirement is set aside on merits, the intervening period from the date of compulsory retirement and the date of reinstatement shall be treated as duty period and therefore, prayed for setting aside the order of the first respondent dated 14.12.2018.

4.The respondents have filed counter affidavit and made submissions on merits with regard to the alleged misconduct committed by the petitioner. The learned Additional Government Pleader appearing for the respondents submitted that after remand, the first respondent, considering the materials, has imposed lesser punishment. After following all the procedures and considering the explanation of the petitioner, the impugned order was passed and the same is not double jeopardy. It is actually continuation of process in set righting the consequential benefits and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents



and perused the materials available on record carefully.

6.From the materials on record, it is seen that originally, punishment of compulsory retirement was set aside by this Court on the ground that the same is disproportionate to the proven charges and the matter was remanded to the first respondent. After remand, the first respondent has imposed punishment of stoppage of increment for three years with effect from the date of compulsory retirement and reinstated the petitioner into service on 13.04.2018 and allowed him to retire from service on 31.05.2018, on attaining the age of superannuation. Subsequently, by the present impugned order dated 14.12.2018, another punishment was imposed, treating the period of out of employment as leave period. This amounts to imposing second punishment for the very same misconduct. The contention of the learned Additional Government Pleader that the impugned order is only the continuation of earlier punishment imposed, is not correct. After remand, the petitioner was imposed punishment of stoppage of increment for three years and after reinstatement on 13.04.2018, he was permitted to retire on 31.05.2018. As per Rule 54(B) of the Fundamental Rules, the respondents have power to pass orders with regard to the pay allowances for the period of suspension ending with reinstatement and to pass orders, whether such period shall be treated as duty period. The Sub-Rules under Rule 54(B) of the Fundamental Rules enumerate the circumstances under which, the authority can pass orders. In the facts and circumstances of the present case, Rule 54(B) of the Fundamental Rules is not applicable and only the Sub-Rules 1 and 3 of Rule 54(A) of the Fundamental Rules are applicable to the facts of the present case.

7.This Court set aside the order of compulsory retirement, after considering all the materials on record on merits and remanded the matter. After remand, the first respondent has imposed lesser punishment and reinstated the petitioner into service, without holding any further enquiry. When the said order was passed, the petitioner is entitled to the benefits under Fundamental Rules 54(A) (1) and (3). Having imposed punishment, reinstating the petitioner into service and allowing the petitioner to retire, the first respondent has not entitled to pass further orders by invoking Fundamental Rule 54(B). Therefore, the impugned order amounts to double jeopardy and liable to be set aside, accordingly set aside.

8.With the above observation, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //



To

1.The Deputy Inspector General of Police,
Madurai Range, Madurai.

2.The Superintendent of Police,
Madurai District.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-97615[F]
dated 12/11/2019)

+1 CC to M/s.SPL GP (SR-97755[F] dated 12/11/2019)

myr/sma/28/11/19/4p/5c

W.P. (MD) No.3482 of 2019
11.11.2019