



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.12.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P. (MD)No.3665 of 2019

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M.Ajithakumari

... Petitioner

/vs./

1.The Director General of Police,
Law and Order,
Chennai - 600 004.

2.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

... 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 proceeding of the 1st respondent in R.C.No.175493/AP.2(1)/2018, dated 03.01.2019, quash the same as illegal and consequently direct the 2nd respondent to treat the period of suspension of the petitioner from 10.11.2016 to 17.08.2017 as duty for all purposes.

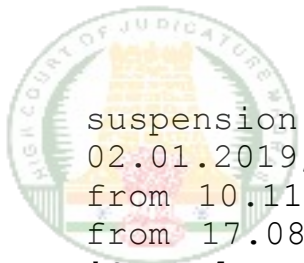
For Petitioners : Mr.V.Balaji
For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

ORDER

The brief facts of the case are as follows:

(i) The petitioner herein, who was serving as a Typist in the respondent Department, was dealt with charges under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 in P.R.No.3/2017 for her involvement in criminal case in Crime No.652 of 2016, for the offences under Sections 498 (A) and 304 (B) IPC as well as for failing to maintain integrity and devotion of duty. The petitioner was placed under suspension from 10.11.2016 and thereafter, the suspension order came to be revoked on 17.08.2017. The oral enquiry conducted by the Assistant Superintendent of Police ended by having both the charges proved.

(ii) Based on the proved minutes, the second respondent herein had issued a show cause notice on 21.12.2018 in order to settle the period of suspension from 10.11.2016 to 16.08.2017 as 'Eligible Leave'. The petitioner submitted an explanation on 27.12.2018 requesting the second respondent to settle her



suspension period as 'Duty Period'. However, by order dated 02.01.2019, the second respondent herein had treated the period from 10.11.2016 to 16.08.2017 as 'Eligible Leave' and the period from 17.08.2017 forenoon to 17.08.2017 afternoon was treated as 'Compulsory Wait'. The second respondent herein had conducted a disciplinary and oral enquiry and awarded a punishment of postponement of increment for a period of three years to the petitioner, which shall operate to postpone her future increment. The petitioner had filed a Review petition, which was taken as Mercy petition and through an order dated 03.01.2019, the first respondent confirmed the punishment imposed by the second respondent. Challenging the same, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that the criminal case, in which the petitioner was involved, came to be quashed by this Court, by an order dated 16.08.2018 in CrI.O.P. (MD)No.7279 of 2017 and since the basis of the charges was common to the criminal proceedings, the impugned orders imposing the punishment cannot be sustained. He also submitted that pursuant to the show cause notice, the petitioner had given a reply bringing to the notice of the respondents that the criminal proceedings of the petitioner was quashed, which aspect has not been considered by the respondents.

3. Learned Additional Government Pleader submitted that under Rule 54-B (5) of 'Tamil Nadu Fundamental Rules' [hereinafter referred to as 'the Fundamental Rules' for the sake of convenience and clarity], the respondents are entitled to treat a portion of the suspension order as 'Eligible Leave' and in view of the sub-rule, there is no infirmity in the orders of the respondents. By reiterating the averments made in the counter affidavit, the learned Additional Government Pleader submitted that the delinquencies committed by the petitioner were proved by the prosecution witnesses originally and she was awarded with a punishment of postponement of next increment for a period of three years, which shall operate to postpone her future increment on 29.06.2018. In view of the Rule 54-B (5) of Fundamental Rules, there is no infirmity in the orders passed by the respondents.

4. I have given careful consideration to the submissions made by respective counsel.

5. Rule 54-B (5) of the Fundamental Rules reads as follows:

'54-B-1.(1)When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on



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superannuation or compulsory retirement while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a).....

(b).....

(2).....

(3).....

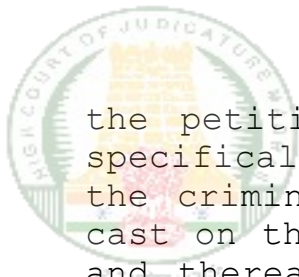
(4).....

(5) In cases other than those falling under sub-rules (2) and (3), the Government Servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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.

.....'

6. In conformity with the aforesaid Rule, the second respondent herein had also issued a show cause notice on 21.12.2018. In response to the show cause notice, the petitioner had given a reply on 27.12.2018, in which there was a categorical statement by the petitioner that the criminal proceedings against the petitioner was quashed and therefore, requested the second respondent to treat her suspension period as duty period for all purposes as per the Rule prescribed in Rule 54-B of the Fundamental Rules. The very purpose for which Rule 54-B (5) of the Fundamental Rules prescribes issuance of show cause notice to the Government Servant specifying the quantum proposed is for the purpose of considering the reply to the show cause notice and thereby extending an opportunity to them. As a matter of fact, Sub Rule (5) clearly specifies that the authority shall pass orders after considering the representation given pursuant to the show cause notice.

7. The impugned order passed by the second respondent was perused. Though a reference has been made in the order of the second respondent dated 02.01.2019 to the show cause notice dated 21.12.2018 as well as the petitioner's explanation dated 27.12.2018, there is absolutely no reference to the consideration of the objections raised by the petitioner in her reply. When the charges itself are based on the criminal case initiated against



the petitioner and when the petitioner in her explanation, had specifically brought to the notice of the second respondent that the criminal case has been quashed by this Court, there is duty cast on the second respondent to have considered such a statement and thereafter ought to have been proceeded with the show cause notice.

8. In the Mercy Petition, in which orders were passed under Rule 36 (1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the petitioner's representation was not given any consideration. As such, very purpose of show cause notice has been defeated. While that being so, consequently, order treating a portion of the suspension period as Compulsory Wait cannot be sustained.

9. In the light of the above observations, order dated 02.01.2019 passed in D.O.No.04/2019 C.No.L1/PR.03/2017 on the file of the second respondent as confirmed by the first respondent on 03.01.2019 in Rc.No.175493/AP.2(1)/2018 are set aside. Consequently, the matter is remanded back to the second respondent for fresh consideration. The petitioner is at liberty to file a fresh reply to the show cause notice issued on 21.12.2018 atleast within a period of fifteen (15) days from the date of receipt of a copy of this order. On receipt of such reply, the second respondent herein shall duly consider all the objections raised by the petitioner and pass a speaking order, on its own merits and in accordance with law.

10. It is made clear that the second respondent is at liberty to take his/her own decision, based on the reply given by the petitioner, and shall not be influenced by any of the observations made by this Court in the present order. With such observations, Writ Petition stands ordered. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Director General of Police,
Law and Order,
Chennai - 600 004.



2.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

+2 CC to MR.V.BALAJI, Advocate (SR-104362,104624[F] dated
11/12/2019)

+1 CC to M/s.SPL.GP (SR-104655[F] dated 12/12/2019)

Order made in
W.P.(MD) No.3665 of 2019

Dated:
10.12.2019

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