



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2019

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THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

WEB COPY

W.P(MD)No. 9213 of 2013

A. Jayasankar

... Petitioner

Vs.

1. The Joint Registrar,
Co-operative Societies,
Virudhunagar Region,
Virudhunagar Town & District.

2. The Deputy Registrar,
Co-operative Societies,
Srivilliputtur Circle,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent in Na.Ka.1514/2013/PaTho(2) dated 09.05.2013 and consequential order of the second respondent in Na.Ka.683/2013 PaTho(3) dated 15.05.2013 and to quash both the impugned orders and consequently direct the respondents herein to regularise the period of compulsory wait from 02.08.2002 to 22.12.2003 as duty period for the purpose of attendant, service and monetary benefits.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

The order of the 1st respondent, dated 09.05.2013 regulating the period of suspension, as leave eligible to the writ petitioner, is under challenge in the present writ petition.

2. The grievance of the writ petitioner is that the writ petitioner was issued with a charge memo in respect of the allegation of misappropriation of funds of the co-operative Society, in which, he served as Special officer. The petitioner was placed under suspension and simultaneously, a criminal case was also registered against him.

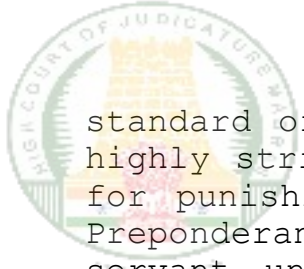


3. The learned counsel appearing for the writ petitioner states that the writ petitioner was acquitted from the criminal charges, however, departmental disciplinary proceedings were initiated and were continued in accordance with the discipline and appeal rules. He further states that the order of suspension initially issued was challenged by the writ petitioner before the Tamilnadu Administrative Tribunal and the Tribunal set aside the order of the suspension. The writ petitioner also submitted a representation immediately to implement the order of the Tribunal passed during the year 2002, however, there was a delay of more than one year in implementing the order of the Tribunal in respect of the revocation of suspension and infact the order of suspension was revoked in the year 2003. Such a delay would not prejudice the claim of the writ petitioner for regulating the period of suspension as duty.

4. In this regard, this Court is of the considered opinion that the delay in implementing the order would not provide any concession for the writ petitioner to claim the period of suspension as duty period. If at all, the writ petitioner states that there was a delay in implementing the order of Tribunal an appropriate proceedings would have been initiated during the relevant point of time. Now after a lapse of several years, the delay in implementation of the Tribunal order cannot be a ground to grant the regulation of period of suspension as duty with full salary.

5. It is an admitted fact by the parties to the lis on hand that the writ petitioner was imposed with the punishment of stoppage of increment for two years with cumulative effect. In view of the fact that the departmental disciplinary proceedings were ended in an order of punishment, the writ petitioner cannot seek regularisation of leave period as duty period with full pay.

6. The legal principles in this regard, as per fundamental rules are that if an employee is exonerated from the departmental disciplinary proceedings, he is entitled to get full salary as duty period for the period of suspension. In other words, if the disciplinary proceedings were dropped and the delinquent official was exonerated from the charges, the period of suspension is to be treated as duty for all purposes and full salary has to be paid to the employee. If the employee was punished under the discipline and appeal rules, then the regularisation of period of suspension has to be done by the competent authority in the proceedings. In the present case on hand, admittedly, the writ petitioner was imposed with a punishment of stoppage of increment for three years with cumulative effect. Thus, he was not exonerated from the charges. Mere acquittal from the criminal case would not be a bar for imposing penalty under Rule 8 of the Tamilnadu Civil Services (Discipline and Appeal) Rules. The nature of criminal proceedings are in no way connected with the departmental disciplinary proceedings. An acquittal from the criminal Court would not exonerate from the departmental disciplinary proceedings. The



standard of proof required for convicting a Government employee is highly strict proof in nature and no such strict proof is required for punishing the employee under the discipline and appeal rules. Preponderance of probabilities are enough to punish the Government servant under the discipline and appeal rules. This being the settled proposition of law, the punishment imposed under the discipline and appeal rules is unconnected with the order of acquittal passed by the competent Criminal Court of Law.

7. In respect of relief sought for in the present writ petition, the period of suspension was already regulated as leave eligible, as per the leave rules in force. The claim of the writ petitioner is to regulate the period of suspension as duty period with full salary cannot be considered.

8. In view of the fact that the writ petitioner was imposed with a punishment of stoppage of increment for two years with cumulative effect in the departmental disciplinary proceedings and therefore, such a regulation of period of suspension of salary is not permissible under law. This being the legal principles to be followed, the writ petitioner has not submitted/averred any acceptable legal ground for the purpose of grant of relief as such sought for in the present writ petition.

9. In fine, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (Crl.side)

/ True Copy /

Sub Assistant Registrar (CS-)

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To

1. The Joint Registrar,
Co-operative Societies,
Virudhunagar Region,
Virudhunagar Town & District.

2. The Deputy Registrar,
Co-operative Societies,
Srivilliputtur Circle,
Virudhunagar District.

+1CC to Mr.M.THIRUNAVUKKARASU, Advocate (SR-66967[F] dated 06/06/2019)

W.P[MD] No. 9213 of 2013
04.06.2019