HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.6405 of 2019

ORDER:

When the matter is taken up for hearing, learned counsel for the petitioner as well as learned Government Pleader appearing for the respondents submitted that the issue raised in this writ petition is squarely covered by the order passed by this Court in W.P.(TR).No.5220 of 2017, dated 05.07.2019, and contended that the present writ petition be disposed of in terms of the above said order.

Learned counsel for the petitioner contended that the respondents have imposed punishment of 'postponement of increments for two years with effect on future increments and pension' and the revisional authority modified the said punishment to that of 'postponement of increment for one year without effect on future increments and pension' vide G.O.RT.No.704 dated 18.05.2018. However, the respondents are treating the suspension period as 'not on duty'.

Learned counsel for the petitioner further contends that similar issue fell for consideration before this Court in W.P.No.35783 of 2007 and this Court disposed of the said writ petition vide order dated 21.06.2007 observing as follows:-

> "........I am of the opinion that treating the period of suspension as not on duty, while imposing a punishment of censure in the disciplinary proceedings, will lead to imposing a major punishment. As such, the action of the disciplinary authority in treating the period of suspension as not on duty is unreasonable and against the good conscience. Therefore, that portion of the order dated 24-12-1991 treating the period of suspension (about 18 months) as not on duty, as confirmed by the appellate authority, is liable to be set aside and are accordingly, set aside. Now, the Order dated 24-12-1991 as

> confirmed by the appellate authority on 3-8-1995 shall be read as "that the period of suspension will count as period spent on duty for all purposes including increments, seniority, promotion etc." However, the order denying payment of anything over and above the subsistence allowance granted for the period of suspension shall stand confirmed along with punishment of censure."

Following the said judgment, this Court was pleased to dispose of W.P.(TR).No.5220 of 2017 on 05.07.2019. Therefore, in the instant case also, the suspension period has to be treated as "on duty" by following the ratio laid down by this Court in W.P.No.35783 of 2007 dated 21.06.2007.

Learned Government Pleader has not disputed the submission made by the learned counsel for the petitioner.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that this writ petition can be disposed of directing the respondents to treat the suspension period of the petitioner as "on duty" with all consequential benefits and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 22.11.2019
Prv