BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 08.07.2020
PRONOUNCED ON : 27.07.2020
CORAM:
THE HONOURABLE MR.JUSTICE RMT.TEEKAARAMAN
W.P.(MD)No.1335 of 2013

S.Nallaiah ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Finance Department (T &A-II),
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Treasuries and Accounts,
Panagal Building,
Saidapet,
Chennai - 600 015. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the second respondent in his proceedings R.C.No.6791/2012/Q3 dated 30.03.2012 confirmed in his proceedings G.O.(D).No.281 dated 25.09.2012 on the file of the first respondent and quash the same as illegal and consequently to direct the first respondent to treat the period of suspension from 21.09.1984 to 05.12.1991 as duty period in the light of Rule 54-B-1(3)&(4) of the Fundamental Rules, and pay all monetary benefits including revision of pension within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s. Ajmal Associates

For Respondents : Mr.D.Muruganandam
Additional Government Pleader

O R D E R

The petitioner, who is the retired Superintendent Grade-II has filed this writ petition seeking a writ of certiorarified mandamus to call for the records relating to the impugned order issued by the second respondent in his proceedings in R.C.No.6791/2012/Q3 dated 30.03.2012 confirmed by the first respondent in G.O.(D).No.281, dated 25.09.2012 and quash the same as illegal and consequently to direct the first respondent to treat the period of suspension from 21.09.1984 to 05.12.1991 as duty period in the light of Rule 54-B-1 (3)&(4) of the Fundamental Rules, and pay all monetary benefits including revision of pension within the period that may be stipulated by this Court.

2. Notice of motion was ordered on 24.01.2013. The second respondent filed his counter.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the records.

4. It is seen from the records that during the annual inspection of the Sub Treasury, Ottapidaram, Tuticorin District by the Regional Deputy Director of Treasuries and Accounts, Madurai, on 21.09.1984, an embezzlement of Government money to the tune of Rs.3,90,000/- in the currency chest of the Sub Treasury, Ottapidaram, was detected and the petitioner was on among the staff of Sub Treasury, Ottapidaram, was placed under suspension by the Treasury Officer, Tuticorin.

4(a). The following are the lapses found against the petitioner S.Nalliah, which paved the way for embezzlement of Government money.

1. The petitioner took charge as Sub Treasury Officer of Sub Treasury, Ottapidaram, from his predecessor, namely, Mr.R.Subramanian on 12.09.1984, but failed to obtain written inventory from his predecessor.

2. The petitioner left some gap in the "Strong Room Entrance Register" for the above purpose but actually put his signature in the said gap on 19.09.1984.

3. The petitioner obtained the Strong Room key from the mother of Mr.R.Subramanian through the Office Assistant but failed to check the cash in the Chest, and certified its correctness by T.E.1.

4. The petitioner affixed his signature in the C.T.C., without verification of the cash and other Valuables in the Strong Room. He behaved as a layman, which is unbecoming of a public servant that too in the capacity of Sub Treasury Officer.

5.The petitioner has also sent T.E.3 Slip (Currency Chest Slip) to the Currency Officer of Reserve Bank of India on 13.09.1984, 14.09.1984, 15.09.1984, 17.09.1984, 18.09.1984 and 19.09.1984 without verifying the balance in the Currency Chest.

4(b). The petitioner has filed an O.A.No.2354 of 1990 before the Tamil Nadu Administrative Tribunal against the order of Suspension and the Tamil Nadu Administrative Tribunal has set aside the Suspension Order. Therefore, the petitioner's suspension was revoked and he was reinstated into Government service on 06.12.1991 and posted as Superintendent at District Treasury, Tiruvallur. Since the Disciplinary action was initiated against the petitioner under Rule 17(b) of TNCS(D&A) Rules, the petitioner was permitted to retire on 31.03.1992 without prejudice to the disciplinary action. Subsequently, the Disciplinary proceedings initiated against the petitioner Mr.S.Nalliah, under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, was continued under Tamil Nadu Pension Rules and punishment of pension cut at the rate of Rs.50/- per month for one year was awarded for the proved charges vide Government Order in G.O.(2D).No.3, Finance (T&A-1) Department, dated 07.01.2002.

4(c). The Specific punishment was awarded in the disciplinary action. A show cause Notice was issued by the second respondent vide R.C.No.28210/92/3Q, dated 20.02.2002 to explain as to why the period of suspension should not be regulated as leave to which he is eligible for which the petitioner in his representation dated 13.03.2002 has requested to treat those period as “Duty”. Since his request can not be complied as per the rules in force, the period of his suspension from 21.09.1984 tp 05.12.1991 was regulated as follows vide proceedings R.C.No.28910/92/Q3, dated 10.05.2002 of the second respondent.

From 21.09.1984 to 18.03.1985 - 179 days Earned Leave
From 19.03.1985 to 16.06.1985 – 90 days Un Earned Leave on Private Affairs
From 17.06.1985 to 28.11.1991 - Extraordinary Leave on Loss of Pay
From 29.11.1991 to 05.12.1991 – 7 days Joining time.

5. It is to be stated that as against the order of suspension, initially the petitioner filed W.P.(MD).No.8996 of 2008 before the High Court and by an order dated 02.01.2012, the High Court has set aside the orders of regularisation of suspension period issued by the second respondent, which was confirmed by the first respondent and directed to consider the same in the light of Rule 54-B (1)(3). Thereafter, the second respondent issued a show cause notice on 09.03.2012 and reply was received wherein the petitioner has stated that suspension was unjustified and further requested to regulate the period of suspension from 21.09.1984 to 05.12.1991 as “Duty” and the second respondent in his proceedings in R.C.No.6791/2012/Q3, dated 30.03.2012 issued the following orders:

> “The petitioner Mr.S.Nallaiah was placed under suspension, as shortage of a sum of Rs.3,90,000/- was found in the currency chest of Sub Treasury, Ottapidaram, during his tenure of serve as Sub Treasury Officer. His suspension was justified. Hence non initiation of the criminal case may not be considered and regulation of the suspension period under FR 54B(1)(3) is not applicable to his case. There is no merit in the claim of the petitioner to treat the suspension period as duty as the individual failed in his duty which resulted in a substantial loss to the Government. Hence, the request of the individual to regulate the suspension period from 21.09.1984 to 05.12.1991 is rejected. The suspension period from 21.09.1984 to 05.12.1991 is regulated as follows as per Fundamental Rules 54(B):

From 21.09.1984 to 18.03.1985 - 179 days Earned Leave
From 19.03.1985 to 16.06.1985 - 90 days Un Earned Leave on Private Affairs
From 17.06.1985 to 28.11.1991 - Extraordinary Leave on Loss of Pay
From 29.11.1991 to 05.12.1991 – 7 days Joining time."

6. Aggrieved against the said order, an appeal was preferred to the second respondent and the same was rejected and hence the present writ petition.

7. After hearing the learned counsel for the petitioner and the learned Additional Government Pleader and also taking into consideration the fundamental rules of Tamil Nadu Government Servants Rules 54, applying the said Rule to the factual matrix of the case in hand, this Court finds that as per Fundamental Rule 54, the authority competent to order reinstatement is the authority to regulate the suspension period. As such, the Show Cause Notice has been issued by the second respondent, who is the competent authority. As specific punishment was awarded in the disciplinary action initiated against the petitioner, the period of his suspension was regulated as leave to which he was eligible as per Fundamental Rule 54(B). Though there was no criminal proceedings initiated against him, and the investigation agency also concluded that the petitioner is not at all responsible for the embezzlement of the Government funds, the failure of the petitioner in his official duty as Sub Treasury Officer resulted in Substantial loss to the Government Exchequer and hence for the above lapses found in his official work, he was awarded punishment of cut in pension at Rs.50/- per month, for one year by the first respondent and hence Fundamental Rule 54-B(1)(3) cannot be applicable to his case.

8. Admittedly, the no appeal provision has been made no Fundamental Rules in respect of the orders passed under Section 54-B and hence the order of rejection of appeal passed by the first respondent cannot be countenanced. On perusal of the records, it is seen that the petitioner was placed under suspension as a sum of Rs.3,90,000/- was found short in the currency chest of Sub Treasury, Ottapidaram. Though criminal case has not been registered against him, his suspension was justified for dereliction of his official duties, that is, the petitioner signed in the Certificate of Transfer of Charge without verification of cash and other valuables in the Strong Room. Therefore, the regulation of the Suspension period under Fundamental Rule 54-B(1)(3) is not applicable in his case. There is no merit in the claim of the petitioner to treat the suspension period as "Duty"as the failure of the petitioner in his official duty, which has resulted in substantial loss the Government and hence his suspension period was not regulated as per the Fundamental Rule 54-B(1)(3).

9. Since a specific punishment was awarded in the disciplinary action initiated against the petitioner, a case does not fall under Section 54-B(1)(3). Since the period of suspension is not totally unjustifiable in order to fall or to take embrace in Rule 54-B(3) the competent authority to order for reinstatement is of the opinion that suspension was "unjustified" wholly in those cases 54-B (3) can be invoked. In short, only when the material available on record leads to the opinion that the suspension is wholly unjustifiable, the Rule 54-B(3) can be invoked to treat the period of suspension as duty. In the case in hand, having regard to the charges that was extracted supra, which are proved in disciplinary proceedings, I find that the opinion arrived at by the competent authority that suspension is justifiable since in respect of the charges relating to handing over of the CTC and issuance of currency Check Leaf to the RBI on various dates as stated in the charges, which are proved in the enquiry the decision by the competent authority is perfectly justifiable and hence on the above factual matrix, the second respondent/competent authority has clearly held that the facts and circumstances of the case will fall under Rule 54-B(7) only and accordingly treated the suspension period as a leave under various category as could be seen in the preceding paragraphs and hence in view of the above factual position, this Court is of the considered view that the petitioner is not entitled for the relief sought for. The order passed by the second respondent and confirmed by the first respondent in respect of inflicting punishment of pension cut at the rate of Rs.15/- per month for one year does not appear to be excessive and the same is found to be reasonable and incommensurate with the charge.

10. In this view of the matter, this writ petition stands dismissed. No Costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

PJL

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary, to Government
Government of Tamil Nadu,
Finance Department (T &A-II),
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Treasuries and Accounts,
Panagal Building,
Saidapet,
Chennai - 600 015.

ORDER MADE IN
W.P.(MD)No.1335 of 2013

27.07.2020

SPU(03.08.2020)6P 3C