



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.10.2020
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

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W.P. (MD) No.2333 of 2013
and
M.P. (MD) No.2 of 2013

V.Subramanian

... Petitioner

Vs.

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

2.The Superintendent of Police,
Dindigul.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned orders in Na.Ka.No.A11/Visu 767/2011 dated 17.10.2011 and in Na.Ka.No.A1/19751/426/2012 dated 25.07.2012 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondents to treat the period from 13.02.2008 to 25.03.2011 as duty period with monetary and service benefits and to revise the Basic Pay of the petitioner appropriately and to consider the claim of the petitioner for promotion to the post of Special Sub Inspector within the time stipulated by this Court.

For Petitioner : Mrs.Kanimozhi
for M/S T.Lajapathy Roy

For Respondents : Mr.P.Mahendran,
Additional Government Pleader.

ORDER

The impugned orders passed by the second respondent are under challenge in the present writ petition. Further direction is sought for to direct the respondents to treat the period from 13.02.2008 to 25.03.2011 as duty period with all monetary and service benefits and to revise the basic pay of the petitioner and further consider the claim of the petitioner for promotion to the post of Special Sub Inspector of Police.

2.The learned counsel appearing for the petitioner, at the first instance, brought to the notice of this Court that the writ
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petitioner had already been promoted to the post of Special Sub Inspector of Police. However, the period of dismissal was not treated as duty for the purpose of salary. Thus, the petitioner is contesting the case.

3.The writ petitioner was working as Head Constable at Dindigul South Police Station. He was placed under suspension with effect from 13.02.2008. The charge memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The petitioner, after enquiry, was dismissed from service with effect from 13.10.2008, by an order dated 13.10.2008. An appeal was preferred and the order of dismissal was confirmed by the second respondent. Further appeal was filed before the first respondent and the said appeal was allowed by an order dated 10.02.2011 modifying the punishment of dismissal from service to reduction in time scale of pay for a period of three years with effect from 13.12.2013. The order of punishment became final. The writ petitioner has not challenged the modified punishment of reduction in time scale. However, the present writ petition filed challenging the order of regulating the period of absence as leave without salary and further order of rejection denying promotion to the post of Special Sub Inspector of Police.

4.The learned counsel appearing on behalf of the petitioner made a submission that as per Rule 54 of the Fundamental Rules once punishment is set aside, the employee is entitled for full salary for the period of dismissal. Therefore, the case of the petitioner is to be considered and accordingly, the period of dismissal to be treated as duty for all purposes and further promotion to the post of Special Sub Inspector of Police is to be issued.

5.The learned Additional Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the punishment of dismissal was modified as reduction in scale of pay for three years. The writ petitioner was not exonerated from the service. When the punishment is modified and lesser punishment is imposed, the period of absence are to be regulated and the petitioner cannot claim the same as duty period with salary for all purposes.

6.This Court is of the considered opinion that as per Rule 54 of Fundamental Rules the Authorities while passing final orders on appeal shall regulate the period of absence and it is not as if in all the cases where punishments are set aside, the period of absence should be treated as duty for all the purposes. No work no pay principle is to be adopted as per the judgment of the Hon'ble Apex Court of India. The petitioner had not worked when he was under dismissal from service. When he had not in service during the relevant point of time, he is not entitled for getting full salary for the said period. The principles of no work no pay is to be applied in cases as the tax payers money cannot be paid in



respect of the employees, who had not worked during the period of dismissal. Only in certain exceptional cases, where the entire allegations are vexatious and malicious then alone the period of dismissal is to be treated as duty period with salary for all purposes.

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7. In the present case, punishment of dismissal was modified by the Appellate Authority and lesser punishment of reduction of scale of pay for three years was ordered. This being the factum, this Court is of the considered opinion that the petitioner is not entitled for salary in respect of the period under which he was suffering dismissal from service. This apart, the impugned order dated 17.10.2011 states that the period from 13.02.2008 to 10.08.2008 is regulated as Earned Leave on private affairs. Rest of the period from 11.08.2008 to 25.03.2011 is regulated as leave without salary. Thus, the period of non-duty was regulated as per rules and under these circumstances, claim of the writ petitioner to regulate the period as duty with full salary cannot be considered. This writ petition is devoid of merits and accordingly, dismissed. The pay of the writ petitioner is to be regulated as per rules in force. The pay scale and other benefits of the writ petitioner will be fixed as per rules in the post of Special Sub Inspector of Police in which he is working as of now. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

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

2.The Superintendent of Police,
Dindigul.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-19855[F] dated
13/10/2020)

+1 CC to M/s.Special Govt.Pleader (SR-19906[F] dated 13/10/2020)

W.P. (MD) No.2333 of 2013
12.10.2020

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