



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.11.2021

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THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 12686 of 2013
and M.P.No. 1 of 2013

G.Kathirvel (Ex.PC 373)

..Petitioner

Vs

1. The Director General of Police,
Office of the Director General of Police,
Tamil Nadu, Mylapore,
Chennai-4.

2.The Deputy Inspector General of Police,
Villupuram.

3.The Superintendent of Police,
Villupuram.

..Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of Certiorarified mandamus, Calling for the records relating to the Proceedings in D.O.857/2010 C.No.D3/4140/2003 DT.13.08.2010 passed by the 3rd Respondent and quash the same and direct the Respondents to pay salary and other monetary for the period of suspension and out of employment i.e. from 9.5.1989 to 20.05.1989 and 21.05.1989 to 24.03.1992 to the petitioner.

For Petitioners : Mr. N.R.Jasmine Padma

For Respondents : Mr.T.Arun Kumar, AGP

O R D E R

The petitioner was appointed as Police Constable Grade II in the year 1972. The Departmental proceedings initiated against the petitioner for the charges levelled against him and punishment of compulsory retirement was imposed. The petitioner has preferred and appeal against the order of compulsory retirement and the same was dismissed, confirmed the said order of punishment. The petitioner has preferred a original



application in O.A.No.3802/1990 before the tribunal. The punishment of compulsory retirement was set aside by the tribunal and directed to reinstate the petitioner into service. Challenging the same, the respondent had preferred SLP before the Hon'ble Supreme Court and the same was dismissed. The petitioner made representation to the respondent to treat the suspension period from 09.05.1989 to 24.03.1992 as duty period and to grant pay for the said period as the charges framed against him were not proved. The respondent had rejected the said claim, hence the present writ petition.

2. According to the learned counsel for the petitioner, the impugned order passed by the respondent denying the benefit of regularisation and treats the suspension period as earned leave and not paying salary for the period is against the order of the Tribunal as well as total misconception of Fundamental Rules in FR 54-A(3) and 53-A(4), therefore on this ground the impugned order is liable to be quashed.

3. The learned Additional Government Pleader appearing for the respondents would submit that the respondent after careful consideration, had passed the impugned order as per Fundamental Rule 54 (2), therefore, the said order is perfectly valid and does not require any interference by this Court.

4. Heard both sides and perused the materials available on record.

5. The learned counsel for the petitioner has relied upon the Fundamental Rule 54-A(3). The relevant portion is read as follows;

"54 A(3). If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowance for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be."

6. According to the petitioner, since the tribunal had set aside the order of compulsory retirement, the respondent ought to have taken into account the period of out of employment and pay the salary for the said period as per the above said Rule.



7. The learned Additional Government Pleader on the other hand, disputing the above said Rule relied upon by the learned counsel for the petitioner, has submitted that in the instant case, the petitioner has not been fully exonerated of the charges by the Tamil Nadu Administrative Tribunal and therefore, the petitioner is not eligible to treat the suspension period as duty for all purposes as per Fundamental Rules 54(2). Therefore, impugned order passed by the respondent is valid and requires no interference.

8. Though the learned Additional Government Pleader strongly contended that the impugned orders came to be passed by the respondent by relying upon Fundamental Rule in FR 54A-(2), there is no mention about the said rule in the impugned order. On this ground, the impugned order is liable to be set aside.

9. Considering the facts and circumstances of the case, it is clear that the provisions of Rule i.e FR 54-A(3) which relied upon by the learned counsel for the petitioner is applicable to the facts of the present case. Therefore, it would be appropriate for this Court to direct the 3rd respondent to consider afresh the case of the petitioner and pass final orders.

10. Accordingly, the impugned order dated 13.08.2010 is quashed, the 3rd respondent is directed to consider the case of the petitioner afresh after providing opportunity to the petitioner and pass orders on merits, taking note of the observations made by this Court, within a period of twelve (12) weeks from date of receipt of a copy of this order.

11. In fine, the writ petition is allowed to the above extent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Director General of Police,
Office of the Director General of Police,
Tamil Nadu, Mylapore,
Chennai-4.



2.The Deputy Inspector General of Police,
Villupuram.

3.The Superintendent of Police,
Villupuram.

+1 cc to Mr.L.Chandra kumar, Advocate Sr.NO. 61412

+1 cc to Government Pleader Sr.NO. 62198

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PL (CO)

A.SK(21.12.2021)