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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.21586 of 2007

U.Ravindran
Head Constable 770
North Traffic, Tirupur
Coimbatore District.

...Petitioner

-Vs.-

- 1.The Director General of Police
Kamarajar Salai
Mylapore, Chennai-4.
- 2.The Deputy Inspector General of Police
Coimbatore Range
Coimbatore-18.
- 3.The Superintendent of Police
District Police Officer
The Nilgiris
Udagai.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the proceedings of the third respondent passed in Rc.No.H3/3423/2006 dated 28.02.2006 and D.O.452/2006 / C.No.H3/7758/2006 dated 9.06.2006 and quash the same with the consequential direction, directing the respondents to treat the period from 16.07.1998 to 12.03.2004 as duty period with all monetary benefits in accordance with the orders of the Hon'ble Tribunal passed in O.A.No.1298/1996 dated 16.07.1998, as it was confirmed by the Division Bench of the Hon'ble High Court in W.P.No.19428/1998 dated 25.11.2003.

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.C.Selvaraj
Government Advocate



O R D E R

Mr.V.Ravikumar, learned counsel for writ petitioner and Mr.C.Selvaraj, learned State counsel for all the three respondents are before this Virtual Court.

2. This Court, with the consent of the aforementioned learned counsel for writ petitioner, learned State counsel took up the captioned writ petition and heard out the same for final disposal.

3. Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 03.08.2021 which reads as follows:

'Mr.V.Ravikumar, learned counsel for sole writ petitioner and Mr.C.Selvaraj, learned State counsel for all the (three) respondents are before this Virtual Court.

2. From the case file placed before this Court and the submissions of learned counsel and learned State counsel, it comes to light that the writ petitioner joined Tamil Nadu Police Subordinate Services as Grade-II police constable on 15.07.1980; that writ petitioner was upgraded as Lance Naik in the year 1986; that while serving as Lance Naik, writ petitioner was alleged to be delinquent and alleged act of delinquency is desertion from 30.04.1989; that writ petitioner had applied for medical leave on 24.03.1989, was due to join duty on 30.04.1989 but he did not report for duty, therefore, he was alleged to have deserted the force from 30.04.1989; that the third respondent passed an order (dated 07.06.1995) of removal from service by resorting to what according to third respondent is procedure under Rule 3(b) of the 'Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955' [hereinafter 'TNPSS(D&A) Rules' for the sake of convenience and clarity]; that writ petitioner assailed this order of removal from service in the erstwhile 'Tamil Nadu Administrative Tribunal' (TAT) which by order dated 16.07.1998 made in O.A.No.1298 of 1996 set aside the order of removal from service dated 07.06.1995 and directed reinstatement of petitioner in service within six weeks albeit without backwages for the period for which writ petitioner was out of employment and holding that the entire period shall be taken into account for granting all other service benefits; that writ petitioner and State carried the matter to this Court by way of



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two separate writ petitions namely, W.P.No.19428 of 1998 (State writ petition) & W.P.No.936 of 1999 (delinquent's writ petition) both of which came to be disposed of by a common order by a Hon'ble Division Bench of this Court on 25.11.2003 confirming 16.07.1998 order of TAT; that it is to be noticed that the entire matter turned on Article 311(2) of the Constitution of India necessarily on the ground that the proceedings of removal from service was without giving reasonable opportunity of being heard in respect of those charges (to be noted, this is for completion of facts); that the order of Division Bench was given quietus and pursuant to this order, the writ petitioner was reinstated vide order (dated 12.03.2004) made by third respondent; that thereafter the writ petitioner was visited with a 'show cause notice dated 28.02.2006 bearing reference Rc.No.H3/3423/2006' (SCN) calling upon the petitioner to explain as to why the out of employment period from 1989 to 2004 should not be settled as Non-Duty period without any backwages; that writ petitioner sent a detailed reply dated 31.03.2006 to SCN; that post reply, third respondent made an order dated 09.06.2006 bearing Reference No.C.No.H3/7758/2006 styled settlement of out of employment period holding that the period from 24.03.1989 to 12.03.2004 is settled as eligible leave and duty; that assailing this SCN (first impugned order) and settlement of out of employment period dated 09.06.2006 (second impugned order) instant writ petition has been filed.

3. Learned counsel for petitioner submits that the aforementioned order of TAT having been confirmed by the High Court, writ petitioner is entitled to reinstatement atleast from 16.07.1998 and at the highest or at the lowest from the writ petitioner's point of view from 25.11.2003, when the writ petitions came to be disposed of by a common order by a Hon'ble Division Bench of this Court.

4. At this stage, learned State counsel submits that he has filed a counter affidavit, but the same has not been placed before this Court and learned counsel for petitioner submits that he has also not been favoured with copy of the counter affidavit.



5. Faced with the above situation, learned State counsel submits that he will do the needful forthwith.

6. List on Friday 06.08.2021.'

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4. Pursuant to paragraph No.4 of the aforementioned earlier proceedings made in previous listing, learned State counsel has since refiled counter affidavit dated 20.08.2007 after favouring counsel for writ petitioner with a copy of the same.

5. Aforementioned earlier proceedings dated 03.08.2021 captures essential facts imperative for appreciating this order and it also captures the trajectory the captioned writ petition and the proceedings leading to the same have taken besides capturing in a nutshell arguments of learned counsel for writ petitioner.

6. Learned State counsel, today, advertent to counter affidavit more particularly second page of the counter affidavit, submitted that even prior to alleged desertion on 30.04.1989, writ petitioner had absented himself from duty and was awarded punishment of 'Black Mark' for gross neglect of duty and indifferent conduct. This is for the period from 30.11.1986 to 06.12.1986 and this order was made by Deputy Superintendent of Police, Udahgai vide P.R.No.41/87. There is a reference for one more punishment thereafter. This may really not be germane to the case on hand as this writ petition pertains to order dated 07.06.1995 made by third respondent removing writ petitioner from service inter-alia by resorting to proceedings/powers under TNPSS(D&A) Rules. As it would be evident from the facts captured supra, this order was assailed in the erstwhile TAT, which by order dated 16.07.1998 set aside the order of removal from service dated 07.06.1995 and (a) directed reinstatement of petitioner in service within six weeks (b) without backwages for the period for which writ petitioner was out of employment and (c) holding that the entire period shall be taken into account for granting all other service benefits.

7. The writ petitioner as well as State carried the matter to this Court by way of writ petitions (assailing the order of erstwhile TAT) and the same came to be disposed of by a Hon'ble Division Bench of this Court vide common order dated 25.11.2003 confirming 16.07.1998 order of erstwhile TAT. This means that the order made by third respondent i.e., order dated 07.06.1995 removing writ petitioner from service stands neutralized/erased. Therefore, the earlier punishments said to have been inflicted on writ petitioner is not really of no consequence qua the case on hand. What is of utmost significance is, this is articulated in paragraph No.9 of the affidavit filed in support of writ



petition which reads as follows:

'9. I humbly state that, without considering my detailed explanation dated 31.03.2006 to the show cause notice, simply in an arbitrary manner, by virtue of the impugned proceedings of the third respondent in D.O./452/2006 / C.No.H3/7758/2006 dated 09.06.2006 the periods from 24.03.1989 to 29.04.1989, totally 37 days are considered as unearned leave and the periods from 30.04.1989 to 12.03.2004 are treated as duty for all purposes but without any backwages.

The impugned order passed by the third respondent is arbitrary, illegal and as against the spirit of the orders of the Hon'ble Tribunal passed in O.A.No.1298/1996 dated 16.07.1998 as it was confirmed by the Division Bench of this Hon'ble Court in W.P.No.19428/98 dated 25.11.2003.'

8. Paragraph No.9 is more than in the nature of extract of order of the Hon'ble Division Bench. In response to paragraph No.9, in the counter affidavit of the State, it has been averred thus:

'With reference to para (9) of the affidavit it is submitted that the Hon'ble High Court, Chennai in their order dated 25.11.2003 in W.P.Nos.19428 of 1998 and 936 of 1999 had stated that the petitioner is not eligible for backwages for the period during which he was out of employment, but, however, held that the entire period shall be taken into account for grant of all other service benefits, namely, for the purpose of seniority, pension, gratuity etc.,'

9. The above only means that the respondents have clearly understood the scope and purpose of order of the Hon'ble Division Bench. If that be the case, it goes without saying that the writ petitioner is entitled to have the period from 16.07.1998 to be treated as duty period for all monetary benefits (except backwages) in accordance with the aforementioned order of erstwhile TAT dated 16.07.1998 made in O.A.No.1298 of 1996 except backwages.

10. In this view of the matter, SCN (first impugned order) and order dated 09.06.2006 (second impugned order) [which was made after writ petitioner responded to first impugned order (SCN) vide representation from writ petitioner dated 31.03.2006] are clearly not tenable and they deserve to be set aside. In other words, they deserve to be set aside as they run contrary to the order of the Hon'ble Division Bench, which has been



directly and clearly understood with specificity by the respondents as would be evident from the averment in counter affidavit of State in response to paragraph No.9 of writ affidavit [extracted and reproduced supra]. If the order of the Hon'ble Division Bench has been clearly understood by respondents, it follows as an inevitable sequitur that the question of going into eligible leave or unearned leave and treating the remaining period as duty period does not really arise. In other words, paragraph 7 of the second impugned order clearly runs contrary to the letter and spirit of order of the Hon'ble Division Bench.

11. The sequitur is, the first impugned order and the second impugned order are set aside and consequential direction sought for by writ petitioner i.e., direction to treat the period from 16.07.1998 to 12.03.2004 as duty period with all monetary benefits (except backwages) deserves to be acceded to and answered in affirmative.

12. To put in a nutshell, Writ Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Director General of Police
Kamarajar Salai, Mylapore, Chennai-4.
- 2.The Deputy Inspector General of Police
Coimbatore Range, Coimbatore-18.
- 3.The Superintendent of Police
District Police Officer
The Nilgiris,Udagai.

+1cc to Mr.V.Ravikumar, Advocate, S.R.No.39009
+1cc to the Government Pleader, S.R.No.39108

W.P.No.21586 of 2007

NR(CO)
RGA(31/08/2021)