



W.P.No.6062 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.6062 of 2021
and WMP No.7112 of 2020

P.Sivakumar

... Petitioner

Vs.

1. The Joint Director,
School Education Department,
College Road,
Chennai 600 006.

2. The Chief Educational Officer,
Dharmapuri District,
Dharmapuri.

3. The Head Master,
Government Boys Higher Secondary School,
Marandahalli, Pallacode Taluk,
Dharmapuri District.

... 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 the impugned order in Na.Ka.No2037/E1/2011 dated 28.06.2019 passed by the 2nd respondent and quash the same as illegal



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and consequently, direct the 2nd respondent to regularise my suspension period from 06.04.2011 to 22.11.2014 as a duty period with all monetary benefits.

For Petitioner : Mrs.D.Shobana
For Respondents : Mr. T.Cheziyan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned order in Na.Ka.No.2037/E1/2011 dated 28.06.2019 passed by the 2nd respondent and for a consequential direction to the 2nd respondent to regularise the suspension period from 06.04.2011 to 22.11.2014 as a duty period with all other monetary benefits.

2. The petitioner is now working in Government Higher Secondary School, Marandahalli/3rd respondent, as a Maths Teacher. When he was working under the 3rd respondent school, on 24.01.2011 his wife had committed suicide by hanging due to her “Conversation Mental disorder”. A case was registered against the petitioner in Crime No.126 of 2011 under Section 174 of Cr.PC. Later, charge sheet has been filed, after completion of the investigation under Section 306 IPC. Thereafter, the



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case has been taken on file in SC No.100 of 2014 and after full pledged

trial, the petitioner was acquitted on 27.11.2015 from all charges.

However, in view of the pendency of the criminal proceedings, the petitioner was given with a charge memo and after conclusion of the disciplinary proceedings, the period during which the petitioner was under suspension has been extracted as under :-

“The suspension period from 06.04.2011 to 22.12.2014 was ordered as

- (i) From 06.04.2011 to 15.10.2011 totally 193 days treated as Earned leave
- (ii) From 16.10.2011 to 13.01.2012 totally 90 days treated as unearned Leave (half salary)
- (iii) From 14.01.2012 to 20.12.2014, 2 years 11 months and 12 days treated as Medical leave without salary.

The said order was served on the petitioner only on 10.07.2019. The petitioner had given a representation seeking for regularization of suspension period as duty period along with monetary benefits. The



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respondent without considering the representation had passed the impugned order on 28.06.2019. Challenging the said impugned order, the present writ petition has been filed before this Court.

3. Mrs.D.Shobana, learned counsel for the petitioner submitted that as per Fundamental Rules 54(A), if the individual is acquitted on the finding that he is not guilty, the period of suspension should be treated as duty period along with salary. He further submitted that censure is not a punishment.

4. Once a punishment is awarded under Rule FR 54A(1), the discretion is vested with the authority, who imposed the punishment either to treat the period of punishment is a duty period or not. The above rule is treated as under:-

54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government Servant is reinstated without holding any further enquiry, the period of absence from



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duty shall be regularised and the Government Servant shall be paid pay and allowance in accordance with the provisions of Sub-Rule (2) or (3) subject to the directions, if any of the Court.

5. Mr. T.Cheziyan, learned Additional Government Pleader submitted that there is appellate remedy available to the petitioner but he did not opt to invoke the appellate remedy and he has straight away filed this writ petition.

6. When the petitioner has got appellate remedy and he has to exhaust the same by filing an appropriate application before the authority concerned and get an order, he cannot straight away approach this Court by way of filing a writ petition. However, the petitioner is given with the liberty to file a representation before the appellate authority and on receipt of the same, the 2nd respondent shall consider and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of the appeal petition.



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7. Accordingly, this writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes

Internet : Yes/No

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R.N.MANJULA, J.



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To

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