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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.3554 OF 2012

Mr.Ragupathy

..Petitioner

VS.

1. The Director General of Police,
Police Head Quarters,
Mylapoer, Chennai-4.
2. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai-600 008.
3. The Joint Commissioner of Police,
West Zone, Egmore,
Chennai-600 008.
4. Deputy Commissioner of Police,
Ambathur District,
Avadi, Chennai-54.
5. The Deputy Commissioner of Police,
Head Quarters,
O/o. The Commissioner of Police,
Egmore, Chennai-8.
6. The Deputy Commissioner of Police,
Avadi, Chennai-54.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in connection



with Charge Memo Tha.Pa.No.184/2004 dated 28.11.2004 passed by the Deputy Superintendent of Police, Avadi Circle, the 6th respondent herein and order of punishment PR/184/H1/2004 dated 19.03.2010 passed by the Deputy Commissioner of Police, Ambattur, the 4th respondent herein and order of punishment modified C.No.H1/360/14558/2010 dated 16.04.2010 passed by the Commissioner of Police, Chennai Sub-Urban, now merged with Commissioner of Police, Greater Chennai, the 2nd respondent herein and order of regularization on the period of suspension RC No.LI/873/23054/2011 dated 15.04.2011 passed by the Deputy Commissioner of Police (HQ) now merged with Commissioner of Police, Greater Chennai, the 5th respondent herein and C.No.H1/442/024637/2010 dated 22.02.2011 passed by Deputy Commissioner of Police, Ambattur Division now merged with Commissioner of Police, Greater Chennai, the 4th respondent herein and P.R.No.H1/442/024637/2010 dated 9.4.2011 passed by Commissioner of Police, Sub-Urban, now merged with Commissioner of Police, Greater Chennai, the 2nd respondent herein and order of cancellation R.C.No.31/9739/A-I(2)/2011 dated 29.04.2011 passed by Commissioner of Police, Sub-Urban, now merged with Commissioner of Police, Greater Chennai, the 2nd respondent herein and quash the same, consequently, direct the Commissioner of Police, Greater Chennai the 2nd respondent herein to regularize the petitioner suspension period as duty with all monetary benefits and to fix the pay in the post of Special Sub-Inspector of Police and to calculate the terminal benefits.

For Petitioner : Dr.R.Sampath Kumar

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader
for R1 to R6

O R D E R

The case of the petitioner is that he joined the police department on 15.04.1977 and while he served in Thirunindravur Police Station, he was placed under suspension with effect from 03.06.2004 A.N. by the then Superintendent of Police, Chengai (East) District vide order dated 03.06.2004. Charges were framed against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 for the following delinquency:



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"Reprehensible conduct in violation of Rule 8(8) of the TNPSS Conduct Rules of 1964 by giving "Kanduvatti" during the year 2000 to 2004 with the help of his wife, son and brother-in-law to poor people, threatened them and grabbed their properties and thereby discredit the police force."

2. An Enquiry Officer was appointed and after conclusion of enquiry, the Enquiry Officer held that the charges were not proved against the petitioner. The Deputy Commissioner of Police, Ambathur District, Avadi, Chennai, who is the Disciplinary Authority, has disagreed with the findings of the Enquiry Officer and issued a dissenting minute, for which the petitioner has submitted his explanation. The Disciplinary Authority / Deputy Commissioner of Police, St. Thomas Mount District, after considering the explanation of the petitioner, awarded the punishment of "Black Mark" on 19.03.2010. The petitioner had submitted an appeal petition to the then Commissioner of Police, Chennai Sub Urban Police on 05.04.2010 and the same was considered and the punishment of "Black Mark" was modified to that of "Deferred Black Mark" for a period of six months, vide order dated 16.04.2010.

3. The petitioner had submitted a Mercy Petition to the Director General of Police, Chennai / first respondent for consideration of his request to cancel the punishment of "Deferred Black Mark" for six months and the first respondent, vide order dated 11.01.2011 had ordered that the above said punishment of Deferred Black Mark for six months has to be cancelled after completion of the deferment period and the period of suspension may be settled as eligible leave. Accordingly, the period of suspension has been settled as under:

From 04.06.2004 to 15.10.2004 - 134 days (E.L)(p)
From 16.10.2004 to 13.01.2005 - 90 days UEL (p)
From 14.01.2005 to 09.10.2007 - 994 days LWP(p)

Accordingly, the Deferred Black Mark for six months was cancelled after completion of the deferment period and the period of suspension was ordered to be settled as eligible leave, vide order of the first respondent dated 08.02.2011. Challenging the aforesaid order passed by the respondents, the



petitioner has filed this writ petition seeking for a direction to regularize the petitioner's suspension period as duty period with all monetary benefits and to fix the pay in the post of Special Sub Inspector of Police and to calculate the terminal benefits.

4. The learned counsel appearing for the petitioner would submit that though the charges levelled against the petitioner were not proved, as held by the Enquiry Officer in his enquiry report, the Disciplinary Authority has disagreed with the findings of the Enquiry Officer and passed the impugned punishment order and therefore, it is liable to be set aside and would further submit that for the period between 04.06.2004 and 09.10.2007 the petitioner was under suspension due to the charges framed against him and since the punishment is only a minor punishment, the period of suspension should be regularized in a proper manner. The learned counsel for the petitioner would also submit that even the representations submitted by the petitioner for the illegal regularization of 994 days as EOL were rejected without any reason and that the criminal proceedings initiated against the petitioner had also ended in acquittal and therefore, prays for appropriate orders regularizing the period of suspension as duty period and consequential calculation of terminal benefits in accordance with law.

5. Mr.T.Arun Kumar, learned Additional Government Pleader would submit that though the enquiry officer had held that the charges were not proved against the petitioner, the Disciplinary Authority, based on records had passed a dissenting minute and held that the charges were proved and imposed the punishment of "Black Mark" against the petitioner and taking into consideration the explanation submitted by the petitioner, the Appellate Authority has modified the punishment to one of Deferred Black Mark for a period of six months and the Disciplinary Authority as well as the Appellate Authority had rightly passed the impugned orders and therefore, the impugned punishment orders does not require interference and prays for dismissal of this writ petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.



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7. It is not in dispute that the charges levelled against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 2004, were not proved as per the findings of the Enquiry Officer and the Disciplinary Authority had disagreed with the findings of the Enquiry Officer and passed the impugned order of punishment of "Black Mark", which was subsequently modified into "Deferred Black Mark" for a period of six months and the modified punishment order was also subsequently came to be cancelled after completion of the deferment period and the period of suspension may be settled as eligible leave, as per the order of the first respondent dated 11.01.2011. It is the grievance of the petitioner that punishment of Deferred Black Mark is a minor punishment and however, the respondents had treated the entire period of suspension of the petitioner as eligible leave period, by taking into consideration the period between 04.06.2004 and 15.10.2004 totalling 134 days as EL (Earned Leave), from 16.10.2004 to 13.01.2005 totalling 90 days was treated as UEL Unearned Leave and from 14.01.2005 and 09.10.2007, totalling to 994 days was treated as LWP (Leave Without Pay) and prays for regularization of the aforesaid periods as duty period for calculation of terminal benefits.

8. It is pointed out by the learned counsel for the petitioner that on the same set of facts, criminal proceedings was also initiated against the petitioner and the same had ended in acquittal and therefore, on that ground also the disciplinary proceedings are liable to be set aside. It is a well settled position of law that criminal proceedings and departmental proceedings are entirely different and are to be dealt with separately and on that ground, this Court cannot interfere on the impugned orders of punishment.

9. As far as treating the entire period of suspension between 04.06.2004 and 09.10.2007 as leave period is concerned, this Court is of the view that the excluding the Deferred Black Mark period of six months, the remaining period shall be treated as Duty Period, since the punishment imposed on the petitioner is a minor one. Therefore, to that extent, the impugned orders passed by the respondents are liable to be interfered with and this Court is inclined to pass the following order:

- (i) the impugned orders are set aside insofar as considering the period of suspension of the petitioner between



04.06.2004 and 09.10.2007 as eligible leave period ;

(ii) The first respondent is directed to treat the period between 04.06.2004 and 09.10.2007, by excluding the period of six months Deferred Black Mark, as Duty Period for regularization and consequently, calculate and settle the terminal benefits to the petitioner within a period of four months from the date of receipt of a copy of this order.

10. This Writ Petition is partly allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

Jvm

To

1. The Director General of Police,
Police Head Quarters,
Mylapoer, Chennai-4.
 2. The Commissioner of Police,
Greater Chennai, Egmore,
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 5. The Deputy Commissioner of Police,
Head Quarters,
O/o. The Commissioner of Police,
Egmore, Chennai-8.
 6. The Deputy Commissioner of Police,
Avadi, Chennai-54.
- +1cc to the Government Pleader, S.R.No.59499

W.P.No.3554 of 2012

PCH(CO)
RLP(26/11/2021)