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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.20406 OF 2021

S.Gurusamy

... Petitioner

Vs.

Senior Divisional Security Commissioner,  
Office of the Railway Protection Force,  
NGO Building, 5<sup>th</sup> Floor,  
Chennai - 3.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records and quash the order No.M/XP/500/Sett/2021 issued by the Respondent in the reply letter dated 24.08.2021 and to direct the Respondent to provide the retirement monetary benefits namely., Commuted salary payment, Gratuity payment, PF Settlement payment, Encashment of 300 days LAP payment, Family Pension payment, Transfer grant, Pensioner Identity Card, Retirement Medical Identity Card for the petitioner and his wife and Family Railway free pass First class to the petitioner.

|                |                       |
|----------------|-----------------------|
| For Petitioner | : Mr.A.V.Somasundaram |
| For Respondent | : Mr.M.Vijay Anand    |

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records and quash the order No.M/XP/500/Sett/2021 issued by the respondent in the reply letter dated 24.08.2021 and to direct the respondent to provide the retirement monetary benefits namely, Commuted salary payment, Gratuity payment, PF Settlement payment, Encashment of 300 days LAP payment, Family Pension payment, Transfer grant, Pensioner Identity Card, Retirement Medical Identity Card for the petitioner and his wife and Family Railway free pass First class to the petitioner.



2. The case of the petitioner is that he was appointed as a Rachak in the Railway Protection Force on 10.11.1980 and later re-designated as Constable and posted as Head Constable on 05.06.2009 and subsequently he retired on 29.02.2020 on attaining the age of superannuation. In 2012, the Central Bureau of Investigation initiated criminal proceedings against the petitioner for the offences under Sections 7 and 13(2) r/w 13(1) d of the Prevention of Corruption Act, 1988. The trial Court (Principal Special Court for CBI Cases, VIII Additional City Civil Court, Chennai), after protracted trial, acquitted the petitioner from all charges, vide judgment dated 10.02.2017 in Calendar Case No.21 of 2012 on the file .

3. Thereafter, departmental enquiry was ordered on 30.05.2018 and the Enquiry Officer, on conclusion of the enquiry, found that all the charges levelled against the petitioner in the departmental proceedings, were not proved. He submitted a report on 30.12.2019. After exoneration of the petitioner, his suspension period was also treated as "on duty".

4. Subsequently on 25.02.2020, the petitioner was sanctioned only provisional pension on the ground that the criminal appeal in CrI.A.No.109 of 2018, is pending before this Court as against the trial Court's acquittal. The petitioner, vide representation dated 29.02.2020, requested the respondent to grant him all the arrears of pay and allowances and other pensionary benefits, as filing an appeal against the trial Court's judgment cannot said to be in continuance of the criminal case. However, vide order dated 24.08.2021, the respondent informed the petitioner that, in view of the pendency of the judicial proceedings against him, the retiral benefits cannot be settled till the outcome of the pending appeal before this Court. Challenging the same, the petitioner is before this Court by filing the present Writ Petition for the relief stated supra.

5. The learned counsel for the petitioner straightaway drew the attention of this Court in regard to the legal contention that filing an appeal against the Trial Court's judgment acquitting the petitioner, cannot be construed as a pendency of the judicial proceedings for the authority to withhold the pensionary benefits that are otherwise admissible and payable to the petitioner. In this connection, a reference is drawn to the Division Bench order of this Court in W.P.No.18949 of 2014 dated 27.08.2015 (S.Rajagopal Vs. The Registrar, Central Administrative Tribunal, Chennai Bench and two others). The learned counsel particularly relied on the following observations and the ruling of the Division Bench:



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'16. In [R.C.Dubey v. M.P.State Electricity Board](#) reported in 2013 SCC Online MP 1004, the petitioner therein was granted the benefit of First Higher Pay Scale, by order, dated 23.8.1990, in the post of Junior Engineer. He was entitled to Second Higher Pay Scale, which was not granted, because of the criminal prosecution launched against the petitioner, under the [Prevention of Corruption Act](#), by Lokayukt, which led to suspension. On 12.12.2000, the petitioner therein was acquitted. Thereafter, he was reinstated on 3.1.2001. As his request for grant of higher pay scale, was not considered, he preferred a Writ Petition, which was disposed of, on 8.3.2006, with a direction to the respondent therein to consider his claim. Subsequently, the Department rejected his claim, stating that the prosecution has filed a Criminal appeal, against acquittal and therefore, recommendations were given in a sealed cover. Selection Committee also approved that the recommendations, in respect of the second higher scale, would be considered, only after the outcome of the said Criminal Appeal. Contention of the petitioner therein was that having been acquitted, criminal case cannot be said to be pending merely because an appeal is directed against the acquittal order. He also prayed that the respondents therein be directed to open the sealed cover and extend the benefit of second higher pay scale to him. After considering the definition of the expression "judicial proceeding" "includes any proceeding in the course of which evidence is or may be legally taken on oath." and after considering the decision made in [Sheo Ram v. State](#) (AIR 1964 Allahabad 290), the Madhya Pradesh High Court held as follows:

"The preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceeding as the initial presumption of innocence gets re-enforced by the orders of acquittal. The contention, therefore, put forth by the respondents that the filing of revision against the judgment dated 12.12.2000 would tantamount to the pendency of judicial proceeding does not reason with the provisions as they stand under law. In the considered opinion of this Court, after acquittal, which lead to an affirmation of the innocence of the accused, an appeal or revision,



as the case may be, being not a continuation of trial, will not amount to a pendency of judicial proceedings."

... ..

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20. While that be the clear finding recorded in the judgment, acquitting the petitioner, under the premise of appeal, being filed and pending, against the order of acquittal, the petitioner cannot be deprived of the regularisation of the suspension period, endlessly. Disposal of the appeal may take a long time. The petitioner is stated to have retired from service. There is no certainty that the State would be satisfied, even if the appeal in the High Court fails. If the State chooses to prefer a further appeal to the Hon'ble Supreme Court, the Department may again contend that the appeal is pending before the Apex Court. Thus, if the arguments of the respondents 2 and 3 have to be accepted, then there is no finality to the judgment of acquittal. In the light of the discussion and decisions considered, the further contention of the learned counsel that Vigilance has not given a clearance, cannot be countenanced.

21. Though by placing reliance on a decision of the Hon'ble Apex Court in Garikapti Veeraya v. N.Subbiah Choudhry reported in AIR 1957 SC 540, learned counsel for respondents 2 and 3 contended that appeal is a continuation of the proceedings and that Vigilance has not given a clearance to the case of the petitioner, this Court is not inclined to accept the same. In the light of the discussion and decisions, stated supra, merely because the appeal is pending, it is not open to the respondents 2 and 3, not to regularise the period as duty. It has to be regularised.

22. Hence, the Writ Petition is allowed. Respondents 2 and 3 are directed to regularise the period of suspension, from 15.07.2004 to 14.02.2005, as duty, with all consequential benefits, including promotions, on par with his immediate juniors, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed. ''

6. According to the learned counsel, the above ruling of the Division Bench would clinch the issue in favour of the



petitioner. On the other hand, the learned Standing Counsel appearing for the respondent strongly opposed the grant of relief to the petitioner. He would reiterate the stand adopted by the respondent that, in view of the pendency of the Appeal against the acquittal of the trial Court, the petitioner cannot be favoured with the final settlement of the retirement benefits. However, when this Court confronted the learned Standing Counsel about the legal position as canvassed by the learned counsel for the petitioner, the learned Standing Counsel would have no plausible answer at all.

7. In view of the categorical ruling of the decision of the Division Bench of this Court, the rejection of the petitioner's claim herein cannot be countenanced both in law and on facts. In view of the same, the rejection order dated 24.08.2021 in No.M/XP/500/Sett/2021 is hereby set aside and the Writ Petition stands allowed. No Costs.

8. The respondent is directed to settle all the retirement benefits as payable and admissible to the petitioner and pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order, or on receipt of a web-copy of this order, whichever is earlier.

9. While passing orders, the respondent shall also take into consideration, the benefits that are stated to be admissible in the prayer as well as in the affidavit filed in support of the petition.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sli/ms

To  
The Senior Divisional Security Commissioner,  
Office of the Railway Protection Force,  
NGO Building, 5<sup>th</sup> Floor,  
Chennai - 3.

+lcc to Mr.A.V.Somasundaram, Advocate, S.R.No.68440

+lcc to Mr.M.Vijay Anand, Advocate, S.R.No.68216

W.P.No.20406 of 2021

UM(CO)  
RLP(27/01/2022)