



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.6038 of 2017

and

WMP.No.6464 of 2017

M.R.Kuppukrishnan

... Petitioner

Vs.

1. The State of Tamil Nadu rep. by its Secretary,  
Environment & Forest Department,  
Fort St. George, Chennai - 600 009.
2. The Principal Chief Conservator of Forests,  
Panagal Building, Saidapet, Chennai - 600 0015.
3. The District Forest Officer,  
Harur Post and Taluk, Dharmapuri - 636 903.
4. The Accountant General,  
O/o.The Principal Accountant General [A & E],  
Anna Salai, Teynampet, Chennai - 18.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records relating to the first respondent made in Letter No.18721/VANAM 2/2013-17 dated 27.11.2015, to quash the same and to consequently direct the respondents 1 to 4 to revise and re-fix the monetary benefits and other dues, instead of notional fixation and to disburse/settle all the arrears thereto with interest at 24% per annum on the belated payments coupled revised Pension and Pensionary benefits forthwith.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.M.Elumalai, AGP - R1 to R3  
Mr.T.S.Selvarani - R4

ORDER

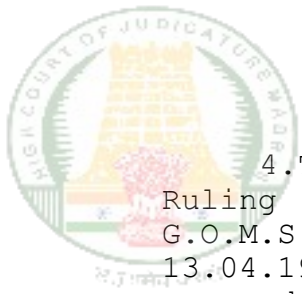
The relief made in this writ petition is to issue a writ of Certiorarified Mandamus to call for the records relating to the communication bearing No.18721/VANAM 2/2013-17 dated 27.11.2015



from the file of the first respondent and consequently direct the respondents to revise and re-fix the monetary benefits and other dues, instead of notional fixation and to disburse all the arrears thereto with interest at 24% per annum on the belated payment coupled with revised Pension and other benefits forthwith.

2.The case of the petitioner is that while he was working as Forester, Harur Division, he was dismissed from service with effect from 23.04.2003 on the ground that he was convicted in Special CC No.79/1992 on the file of the Special Judge / I Additional Sessions Judge - cum - Chief Judicial Magistrate, Salem. Challenging the said judgment of conviction, the petitioner preferred Crl.A.No.775/2001, which was allowed and the judgment of conviction was set aside, by judgment and decree dated 18.03.2011. Pursuant to the same, the order of dismissal passed against the petitioner was cancelled by G.O.(3D)No.71, Environment & Forest Department, Dated 31.08.2012. In the said Government Order, it was also observed that the petitioner would be entitled to all consequential relief of peaceful retirement on the actual date of his superannuation and other service benefits flow thereto. Following the same, the third respondent by proceedings in Che.Mu.Aa.No.4118/2011/Pa1 dated 25.10.2012, passed an order, permitting the petitioner to retire from service with effect from 31.08.2011. Thereafter, the Soil Conservation Officer, Salem, in and by his proceedings dated 12.11.2012, treated the suspension period from 22.03.1991 to 29.04.1993 as duty period and the period of dismissal from service from 23.04.2003 to 31.08.2011 as duty based on Rules 54A and 54B of the Tamil Nadu Fundamental Rules. On receipt of the same, the District Forest Officer, Harur, by letter dated 24.10.2013 sought clarification to the Government in regard to the payment of salary from the period of dismissal to the date of reinstatement, to which, the Government / first respondent by communication dated 27.11.2015 stated that the entire period of dismissal is to be treated notionally and monetary benefits has to be paid accordingly. Aggrieved over the same, the petitioner has come up with this writ petition for the aforesaid relief.

3.The respondents filed a detailed counter affidavit, inter alia stating that the first respondent considered the facts and circumstances of the case and arrived at the conclusion that the order of dismissal was due to the involvement of the petitioner in a criminal case and not at the instance of the department and hence, the revocation of dismissal after his acquittal will not entitle the petitioner for backwages; and therefore, the Government sanctioned the monetary benefits for the period between dismissal of service and the date of reinstatement notionally.



4.The learned counsel for the petitioner, relying upon Ruling No.9 of Fundamental Rule 54, as inserted by G.O.M.S.No.228, Personal and Administrative Department, dated 13.04.1989, submitted that the Government servants, who were suspended in view of pendency of any criminal case or conviction and subsequently the criminal case ended in acquittal, either honourably or otherwise, the Government servants have to be reinstated by revoking the suspension and in case of such reinstatement, the Government servants shall be entitled to claim the said period of suspension as duty period, for which, the Government Servant would also be entitled to claim full salary as well as all other attendant benefits. Hence, the petitioner is entitled to all the service and monetary benefits, for the entire period, including the suspension period, according to the learned counsel.

5.Per contra, the learned Additional Government Pleader appearing for the respondents reiterated the averments made in the counter affidavit and submitted that the petitioner was placed under suspension and dismissed from service, not due to the pendency of any departmental enquiry, but due to the fact that the criminal proceedings was launched against him and hence, such dismissal was held to be a statutory dismissal and hence, he is not entitled for any backwages during the period in question. Thus, according to the learned counsel, the impugned communication warrants no interference at the hands of this Court.

6.Heard both sides and perused the materials placed before this Court.

7.It is not in dispute that the petitioner was dismissed from service with effect from 23.04.2003, as he was convicted in a criminal case registered against him. After acquittal from the criminal proceedings, he was reinstated in service and was allowed to retire from service with effect from 31.08.2011. While settling the retirement benefits, the monetary benefit payable to the petitioner for said period of dismissal was calculated notionally, as per the clarification given by the Government, by communication dated 27.11.2015, which is impugned in this writ petition.

8.It is the specific contention of the learned counsel for the petitioner that once the punishment imposed on the petitioner was cancelled, he shall be entitled to full pay and allowances for the entire period between the dismissal from service and the reinstatement in service, as per Ruling No.9 of Fundamental Rule 54, as inserted by G.O.M.S.No.228, Personal and Administrative Department, dated 13.04.1989, by way of amendment on 19.06.1987, which is for better appreciation, extracted as



under:

"9. where a Government Servant is  
(a) Placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or trial; or  
(b) Dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge; and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service.

9. On the other hand, the learned Additional Government Pleader appearing for the respondent authorities, referring to Fundamental Rules 54-A and 54-B, submitted that the competent authority has the discretion to pay the proportionate pay and allowances and treat the dismissal period as duty for any specified purpose or only to pay the proportionate pay and allowances. He further submitted that though the petitioner was reinstated by revoking the dismissal order, after having been acquitted by the appellate court from the criminal charges, he would not be entitled to claim the said dismissal period as duty period and consequently he was not entitled to claim salary or service benefits, as he has claimed in this Writ Petition. Therefore, the impugned communication issued by the first respondent is fully justifiable and it requires no interference at the hands of this Court.

10. This Court is not inclined to accept the contention so raised on the side of the respondents, in the light of the Rulings 9 of Fundamental Rule 54, as well as the judgment of a Division Bench of this Court in Superintendent of Police, Salem District and others v. C. Govindan [decision rendered in W.A.No.1026 of 2016 on 06.09.2016]. For easy understanding, the relevant portion of the said judgment is extracted below:

"4. We have perused the judgment produced on the side of the respondent / writ petitioner. In the said judgment, under similar circumstances, the First Bench of this Court has dismissed the writ appeal filed by the official respondents and confirmed the order passed by the learned single Judge in the writ



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petition, treating the period of suspension as 'spent on duty' and directing the respondents therein to settle the consequential benefits within the stipulated time. For better appreciation, the relevant paragraphs of the said judgment are extracted hereunder:

"8. This Court, after careful consideration of the rival submissions and upon perusal of the materials placed before it, especially sub-rule 9(b) of FR 54-B, is of the considered opinion that there is no merit in this writ appeal.

9. It is relevant to extract sub-rule 9(b) of FR 54-B as under:

'9:-Where a Government servant is:-

(a).....

(b) dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension or dismissed or removed or compulsorily retired from service.'

10. As per the above said Rule, if the Government servant is subsequently reinstated in service on his acquittal either on merits or by giving benefit of doubt, he must be



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regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension, shall be treated as duty for all purposes and he shall be paid full pay and allowances, which he would have been entitled to, but for the fact that he was not placed under suspension or dismissed from service. The said Rule is squarely applicable to the present facts of the case and in fact, in respect of one Ramadoss, who was arrayed as A-26 and who was also one of the appellants in CA.No.444/1999, which was allowed by this Court along with the other two criminal appeals in CA.Nos.386 and 393/1999, his period of suspension has been treated as 'spent on duty' and the consequential benefits were also directed to be paid to him.

11. Since the learned single Judge has taken into consideration the factual and legal position and has rightly arrived at the conclusion to allow the writ petition, this Court is of the view that there is no error or infirmity in the impugned order.

12. In the result, this writ appeal is dismissed at the admission stage itself. The appellants/official respondents are directed to comply with the order passed in W.P.No.17360/2010, within a period of one month from the date of receipt of copy of this judgment. However, there shall be no order as to costs. Consequently, connected MP is also dismissed."

5. We are of the view that the aforesaid judgment is squarely applicable to the case of the respondent/writ petitioner and by applying the same, the respondent/writ petitioner is entitled for the benefit of continuity of service and consequential monetary benefits including backwages. At this stage, it is submitted that the petitioner has been paid subsistence allowance during the suspension period.

6. In such view of the matter, the writ appeal is dismissed at the stage of admission itself. The appellants/official respondents are directed to settle all the benefits to the respondent/writ petitioner, if not already done so, within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous



Petition is closed."

Thus, it is clear from the aforesaid decision that as per Ruling 9 of Fundamental Rule 54, in a situation, where a Government servant has been acquitted either Honourably or otherwise, even in the case, where disciplinary action has been taken and a punishment was awarded for such Government servant on the basis of criminal conviction, which has subsequently ended in acquittal by the decision of the Higher Courts, then, certainly the period, where the Government servant was out of duty, because of suspension or removal or dismissal from service, such period till reinstatement taken place, shall be treated as duty period for all purposes including monetary benefits.

11. Applying the aforesaid judgment to the facts of the present case, this Court is of the opinion that there is no justification on the part of the respondent authorities to grant monetary benefits for the dismissal period notionally, though the petitioner was acquitted from the criminal proceedings, in the criminal Appeal filed by him.

12. Accordingly, the communication dated 27.11.2015 issued by the first respondent / Government is set aside and the matter is remanded back to the respondent authorities for passing fresh orders, with regard to the claim of the petitioner, in the light of Ruling 9 of the FR 54 and also the aforesaid Division Bench decision. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

13. The writ petition stands disposed of, in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The State of Tamil Nadu rep. by its Secretary,  
Environment & Forest Department,  
Fort St. George, Chennai - 600 009.
2. The Principal Chief Conservator of Forests,  
Panagal Building, Saidapet, Chennai - 600 0015.
3. The District Forest Officer,  
Harur Post and Taluk, Dharmapuri - 636 903.



4. The Accountant General,  
O/o.The Principal Accountant General [A & E],  
Anna Salai, Teynampet, Chennai - 18.

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SR-II (CO)  
RVM(19/07/2021)