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W.P.No.1449 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1449 of 2015

J.Sureshkumar

...Petitioner

-Vs-

The Superintendent of Police,
District Police Office,
Vellore District,
Vellore - 632 009.

...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 pertaining to the order passed by the respondent herein in D.O.No.353/2012 C.No.PR.100/H1(2)/2006 u/r 3(b) dated 13.03.2012 and quash the same and consequently direct the respondent herein to treat the period of out of employment from 26.12.2005 to 03.07.2011 as duty for all purposes in accordance with Fundamental Rule 54(A).

For Petitioner : Mr.S.Ilamvaludhi
for Mr.Ravi Shanmugam

For Respondent : Mr.M.Bindran
Addl. Government Pleader



W.P.No.1449 of 2015

ORDER

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The order of penalty dated 13.03.2012, imposing the punishment of 'postponement of next increment for a period of 3 years and the period of postponement shall operate to postpone his future increments', is under challenge in the present writ petition.

2. The petitioner joined as Grade-II Police Constable on 09.06.1993. He was promoted to the post of Grade-I Police Constable and thereafter as Head Constable. A charge memo in P.R.100/2006, dated 28.04.2006 was issued to the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955. The charge against the petitioner was that he had absented for duty from 26.12.2005 without leave or permission for more than 21 days and thereby deserted the force. The petitioner was imposed with a punishment of compulsory retirement from service.

3. Challenging the said punishment, the writ petitioner filed W.P.No.28271 of 2008. The said writ petition was allowed and the matter



W.P.No.1449 of 2015

was remitted back to the competent authority for taking a decision afresh on the enquiry report, after considering the reply submitted by the petitioner to the show cause notice. Consequently, a show cause notice was issued to the petitioner and the petitioner submitted his objections on the charges and findings in the enquiry report. Thereafter, the petitioner was reinstated in service on 04.07.2011 and posted to Control Room, Vellore. Thereafter, the respondent passed the impugned order dated 13.03.2012, imposing the punishment of postponement of next increment for a period of 3 years with cumulative effect. The period of out of employment from 26.12.2005 to 03.07.2011 was ordered to be treated as eligible leave including extraordinary leave to the extent necessary.

4. The learned counsel for the petitioner mainly contended that the order impugned, regulating the period of absence as eligible leave, is in violation of Fundamental Rules 54(1) and 54(3). Once the Government Servant who has been dismissed, removed or compulsorily retired, has been reinstated as a result of appeal or review, he is entitled for salary for the period of absence. Relying on the said Fundamental Rules, the learned



W.P.No.1449 of 2015

counsel reiterated that the period of absence from the date of punishment of compulsory retirement to the date of reinstatement is to be regulated as duty with full salary.

5. The learned Additional Government Pleader appearing on behalf of the respondent objected the said contention by stating that the writ petitioner was not fully exonerated from the allegations. He was reinstated in service pursuant to the order of the High Court. Accordingly, a fresh show cause notice was issued and the petitioner submitted his explanation. The authorities considered the materials available on record and imposed the punishment of postponement of next increment for 3 years with cumulative effect. In view of the fact that the petitioner was not fully exonerated from the charges, the intervening period of absence was treated as eligible leave. That apart, the petitioner was granted with lesser punishment based on the benefit of doubt and he was not completely exonerated from the charges. Thus, there is no infirmity in respect of the impugned order.



W.P.No.1449 of 2015

6. Let us look into the spirit of Fundamental Rule 54. Rule 54(1)

contemplates that "when a Government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement or superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order".

7. Therefore, the Fundamental Rule provides scope for further consideration even after reinstatement of an employee in the event of setting aside the order of dismissal, removal or compulsory retirement. Thus, regulating the period of absence as duty with full salary is not automatic and the authorities competent are bound to apply their mind and accordingly consider and make a specific order. Thus, a discretion is contemplated under the Fundamental Rules for the purpose of application of mind with reference to the facts and circumstances of each case. There is no automatic grant of full salary by regulating the period of absence as duty, unless there is a specific order to that effect.



W.P.No.1449 of 2015

8. Fundamental Rule 54(1) further states that, (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty. Therefore, Fundamental Rule 54(1) is to be read in the context of Fundamental Rule 54(1)(a) and 54(1)(b).

9. Reading as a whole, it is clear that in the event of setting aside the order of dismissal, removal or compulsory retirement, the competent authority on reinstatement shall make a specific order, regarding the pay and allowances to be paid to the Government servant for the period of absence and whether or not the said period shall be treated as period spent on duty. Thus, the discretion conferred on the rule is apparent and explicit. Therefore, the claim of an employee to treat the period as duty with full salary is not a right conferred under the Fundamental Rule and the authority competent is empowered to exercise their power by considering the facts and circumstances of each case.



W.P.No.1449 of 2015

10. No doubt, the discretion is to be exercised judiciously by the competent authorities. In the event of non-application of mind or erroneous exercise of discretionary power, it would provide scope for exercise of power of judicial review for the High Court under Article 226 of the Constitution of India, but not otherwise. Therefore, the High Court has to scrutinize the process through which the decision is taken by the competent authority with reference to the facts and circumstances, but not the decision taken. Thus, regulating the period of absence as duty with full salary is not automatic and the authorities competent have to pass an order to that effect, based on the facts and circumstances of the case.

11. Fundamental Rule 54(2) contemplates that "where the authority competent to order reinstatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement.



W.P.No.1449 of 2015

12. Even sub-clause (2) of Fundamental Rule 54 contemplates that the authority competent to order reinstatement is of the "opinion". Thus, the word 'opinion' is employed for the purpose of considering the facts and circumstances of each case. The word opinion cannot be construed as a mandatory direction. The authority is bound to form an opinion for the purpose of grant of full pay and allowances for the period of absence while passing orders.

13. Thus, a holistic reading of the provisions under Fundamental Rule 54 would reveal that claiming the intervening period of absence as duty with full salary is not a right conferred nor an automatic one. But, the authorities have to apply their mind based on the facts and circumstances of each case and take a decision for grant of full pay and allowances, by regulating the period of absence as duty with full salary.

14. In the present case, the petitioner was imposed with the punishment of compulsory retirement, which was set aside by the High Court, and the matter was remitted back to the authorities. The authorities



W.P.No.1449 of 2015

continued their disciplinary proceedings by issuing notice to the petitioner and finally imposed the punishment of stoppage of next increment for 3 years with cumulative effect and the authorities regulated the period of absence from 26.12.2005 to 03.07.2011 as eligible leave including extraordinary leave to the extent necessary.

15. This being the order passed, the authorities have applied their mind and had taken a final decision regulating the period of absence as eligible leave including extraordinary leave. Such a decision taken cannot be construed as infirm and thus, this Court is not inclined to interfere with the impugned order.

16. Accordingly, the Writ Petition stands dismissed. No costs.

08.07.2022

Index:Yes
Internet:Yes
Speaking order
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To

The Superintendent of Police,
District Police Office,
Vellore District,
Vellore - 632 009.



W.P.No.1449 of 2015

S.M.SUBRAMANIAM, J.

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W.P.No.1449 of 2015

08.07.2022