



W.P.No.14571 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14571 of 2018
and
W.M.P.No.40313 of 2018

M.Selvaraj

...Petitioner

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

2.The Superintendent of Police,
Namakkal District, Namakkal.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order passed by him in DO No.444/2017 in PR No.67/G1/2012 dated 07.8.17 and quash the same and direct the respondents to regulate the period of suspension from 21.7.12 to 21.4.14 as duty for all purposes and further direct the respondents to draw and disburse the amount due by settling the period of suspension as duty within a reasonable time.



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For Petitioner : Mr.K.VenkatRamani
Senior counsel
For Mr.M.Muthappan

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The order, rejecting the claim of the writ petitioner to regularize the period of suspension as duty with full salary issued by the 2nd respondent in proceedings dated 07.08.2017 is under challenge in the present writ petition.

2. The petitioner states that he was working as Special Sub-Inspector of Police and a Criminal Case was registered against him in Crime No.521 of 2012 under Sections 294 (B), 494 and 506 Part-I IPC. The departmental disciplinary proceedings were also initiated and he was placed under suspension from 21.07.2012 onwards.

3. The learned Senior counsel appearing on behalf of the petitioner states that the Criminal Case ended with an order of acquittal. The departmental disciplinary proceedings was disposed of with a black mark, which was issued against the writ petitioner. The petitioner submitted an application to regulate the period of suspension as duty with full salary,



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since he was acquitted from criminal case and not imposed with any penalty in the departmental disciplinary proceedings. However, the Superintendent of Police, Namakkal District settled the suspension period from 21.07.2012 to 21.04.2014 as leave eligible including EOL to the extent necessary under the Fundamental Rules.

4. The learned Senior counsel appearing on behalf of the writ petitioner made a submission that the Government issued G.O.Ms.No.261, P & AR Department dated 04.08.1991 regarding clarification for Fundamental Rule (FR) 54 and as per the said clarification, the petitioner is entitled for full salary by regulating the period of suspension as duty. The clarification unambiguously stipulates that *“If she / he is reinstated in view of the order or direction of the Court, the period of suspension has to be treated as duty though subsequently a penalty imposed on him for the same charges for departmental action and in other cases, the period of suspension may be regulated under Fundamental Rule 54”*.

5. Therefore, the period of suspension is to be treated as duty with full salary for all benefits. In view of the fact that the claim in this regard was



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rejected, the petitioner has chosen to file the present writ petition.

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6. The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the authorities are empowered to consider the case based on the facts and circumstances. In the present case, the case of the writ petitioner was considered and the period of suspension was regulated as leave eligible under Fundamental Rule 54.

7. In the case of the petitioner, he was released from suspension by the Superintendent of Police, Namakkal District on 21.04.2014, prior to the disposal of the case. However, the clarification has been issued for the Government servant, who are reinstated into service on his acquittal by the Court. However, the suspension was revoked in order dated 19.04.2014 and the petitioner was not reinstated by the specific order of the Court as per the Fundamental Rule. Therefore, the petitioner is not eligible for claiming leave salary for the suspension period.

8. The petitioner was suspended initially for the Criminal Case and subsequently, a charge memo was issued. Black mark punishment cannot be



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kept aside without any effect and the consequence of the black mark can be shown in any form depending upon the charges involved. The petitioner had taken prolonged time in cross examination of the witnesses in the criminal case and dragged on the criminal proceedings from 2012 to 2017. Fundamental Rule 54 speaks about regularization of suspension period. Further, Fundamental Rule 54 (4) says, when a question arise with regard to regularization of suspension period and the same has to be taken into account for increment, pension, leave salary etc., has to be decided only by the competent authority. By invoking the provision Fundamental Rule 54 (4) and considering the nature of the facts, the proceedings was passed on 07.08.2017 in accordance with law and the procedure.

9. It is further contended that the Criminal Case against petition in CC No.134/2013 on the file of Judicial Magistrate, Rasipuram was ended in acquittal on 05.05.2017 on the ground of benefit of doubt since the prosecution has not proved the case beyond reasonable doubt. The petitioner was charged under Section 495, 494 & 506 (1) IPC. The prosecution has examined 16 witnesses and marked 8 exhibits. PW1 and PW2 have deposed very clearly, cogently and corroboratively with case of prosecution case but



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during cross examination they made some contradictory evidence which leads to acquittal. The petitioner has not clearly and categorically denied the second marriage when the wife was alive.

10. The charge against the petitioner under Rule 3 (b) of Tamil Nadu Police Sub-ordinate Service Rules as follows:-

Charge-I The petitioner has married a lady as second wife when the first wife was alive.

Charge-II The petitioner has threatened his first wife and hence criminal case against him in Cr.No.521/2012 under Sections 294 (b), 494, 506 (i) IPC.

As far as second charge is concerned, it is a criminal case and the case was tried by Judicial Magistrate, Rasipuram and acquitted the case on the ground of benefit of doubt. As far as first charge is concerned, the petitioner has got married one Indhirani on 07.05.1990, when the first marriage with Shanthi was in existence. The petitioner has not denied it and no proper explanation was submitted and considering his length of service and about to be retired, punishment of “Black Mark” was awarded. Fundamental Rule 54 (4) empowered the authorized officer whether the suspended period has



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to be taken into consideration or not taken into consideration as continued service, shall be decided by the competent authority. The petitioner has not submitted any proper reply about his second marriage. The petitioner was given with all retirement benefits except surrender leave salary. The punishment of “Black mark” was awarded as per law and procedure. The petitioner has never denied the allegation of second marriage and sufficient opportunity was given to the petitioner to defend the charge during enquiry.

11. FR 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 on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order”. FR 54 Sub-Clause (4) indicates that the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowance 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, as the case may be, as the “competent authority may determine, after giving notice to the



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Government servant” of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period, which, in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice”.

12. Therefore, it is the discretion of the authorities to consider all the facts and circumstances relating to the proceedings. The authorities may determine, whether the period of suspension can be treated as duty with full salary or regulate the period as leave eligible or otherwise. When a discretion has been conferred on the competent authority to decide the issues, the authority competent has to apply his mind with reference to the facts and circumstances and accordingly, take a decision by regulating the period of suspension. It is not automatic that on acquittal, an employee gets salary for the period in which he was placed under suspension. Regulating the period of suspension as duty with full salary is not automatic in other words. It is to be decided by the competent authorities based on the facts and circumstances and taking note of the grounds raised by the petitioner.

13. In the present case, the petitioner submitted a representation to regularize the period of suspension as duty with full salary. The authorities



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have considered the fact that the petitioner has suffered black mark punishment, which cannot be brushed aside. The other mitigating facts were also taken into consideration. The Criminal Case ended with an order of acquittal based on extending the benefit of doubt and taking note of all the facts and circumstances, the authorities formed an opinion that the period of suspension is to be regulated as leave eligible including the EOL to the extent necessary. Thus, the respondents in the present case acted in consonance with FR 54 and considering the facts and circumstances involved in the case.

14. Therefore, this Court do not find any infirmity in respect of the order impugned passed by the 2nd respondent. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.10.2022

Index : Yes
Speaking order: Yes
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To

1. The Director General of Police,

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Dr.Radhakrishnan Salai,
Mylapore, Chennai – 4.

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2.The Superintendent of Police,
Namakkal District, Namakkal.



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S.M.SUBRAMANIAM, J.

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