



WEB COPY



Order dated 17.10.2022 in
W.P.No.18423 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.18423 of 2021
and
W.M.P.No.19637 of 2021

K.Kumar

.. Petitioner

Vs.

1. The Director General of Police, Tamil Nadu,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.

2. The Deputy Inspector General of Police,
Armed Police,
Kilpauk,
Chennai-600 010.

3. The Commandant,
TN Special Police Battalion,
Regimental Centre,
Avadi, Chennai-600 054.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus to call for the
records and quash relating to order dated 28.04.2019 passed by the first

Page No.1/8



Order dated 17.10.2022 in
W.P.No.18423 of 2021

respondent in Rc.No.44481/AP.3(1)/2019 insofar as imposition of penalty of postponement of increment for a period of one year without cumulative effect and to consequently direct the respondents to exonerate the petitioner of all the charges and to treat the period of out of employment from 20.03.2011 to 02.01.2018 as period spent on duty for all purposes including arrears of pay and allowances, seniority, increments and other service benefits.

For petitioner : Ms.K.Nithyashree

For respondents : Mr.L.S.M.Hasan Fizal, Addl.G.P.

ORDER

The petitioner has challenged the order dated 28.04.2019 under which he has been imposed with penalty of postponement of increment for a period of one year without cumulative effect. The impugned order came to be passed by the first respondent pursuant to the direction given by this Court in W.P.No.30199 of 2012 on 23.08.2017 directing the first respondent therein to impose lesser penalty, as earlier the petitioner was removed from service by the disciplinary authority.



Order dated 17.10.2022 in
W.P.No.18423 of 2021

WEB COPY

2. Learned counsel for the petitioner now submitted on instructions that the petitioner has challenged the penalty imposed under the impugned order in this Writ Petition. The petitioner's main grievance is that the period of his absence due to suspension and removal from service, has been treated as period of leave. According to the petitioner, the period of absence cannot be treated as period of leave as per Fundamental Rules of the State of Tamil Nadu in F.R.54-A(3) and as per the following authorities:

(i) Writ Appeal No.2529 of 2018, dated 19.11.2018 (The Director General of Police and others Vs. P.Raju).

(ii) Writ Petition No.14407 of 2012, dated 17.02.2021 (K.S.Ramakrishnan Vs. The Director General of Police, Chennai and others).

(iii) 2017 SCC Online Madras 16504 (N.Panneerselvam Vs. Commissioner of Police) and

(iv) Writ Petition No.13767 of 1999, dated 07.04.2006 (K.C.Vasudevan Vs. The Director General of Police, CISF and 2 others) (Division Bench of Madras High Court).



Order dated 17.10.2022 in
W.P.No.18423 of 2021

WEB COPY

3. Further, according to the learned counsel for the petitioner, as per the aforesaid decisions, more particularly, F.R.54-A(3), the period of petitioner's absence in service due to suspension/removal from service, was to be treated as period of duty. However, according to the petitioner, the impugned order under which lesser punishment had been imposed on the petitioner with regard to continuation of the petitioner's service for the period of his absence is concerned, it is silent.

4. Learned counsel for the petitioner, on instructions, further submitted that the petitioner is willing to give a fresh representation to the respondents requesting them to treat the period of the petitioner's absence during the period of disciplinary proceedings as the period of duty, provided the respondents are directed to consider the same on merits and in accordance with law, in the light of the authorities referred to supra.

5. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that if the petitioner was entitled for

Page No.4/8



Order dated 17.10.2022 in
W.P.No.18423 of 2021

WEB COPY

continuity of service, the same would have been observed in the order dated 23.08.2017 in W.P.No.30199 of 2012. Since the same was not observed, he would submit that the petitioner is not entitled for continuity of service, as submitted by the learned counsel for the petitioner.

6. However, this Court is of the considered view that no prejudice would be caused to the respondents if such a direction is issued to the respondents by this Court.

7. For the foregoing reasons, this Writ Petition is disposed of, with a direction to the petitioner to submit a fresh representation to the respondents requesting to treat the period of his absence from 20.03.2011 to 28.04.2019 as the period of duty as per F.R.54-A(3), within a period of one week from the date of receipt of a copy of this order. On receipt of the said representation, the third respondent shall pass final orders on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order, after giving due consideration to the following authorities:

Page No.5/8



Order dated 17.10.2022 in
W.P.No.18423 of 2021

WEB COPY

(i) Writ Appeal No.2529 of 2018, dated 19.11.2018 (The Director General of Police and others Vs. P.Raju).

(ii) Writ Petition No.14407 of 2012, dated 17.02.2021 (K.S.Ramakrishnan Vs. The Director General of Police, Chennai and others).

(iii) 2017 SCC Online Madras 16504 (N.Panneerselvam Vs. Commissioner of Police) and

(iv) Writ Petition No.13767 of 1999, dated 07.04.2006 (K.C.Vasudevan Vs. The Director General of Police, CISF and 2 others) (Division Bench of Madras High Court).

8. It is made clear that the petitioner is not entitled to back-wages.

9. There shall be no order as to costs. Consequently, W.M.P. is closed.

17.10.2022

Index: Yes/no
Speaking Order: Yes/no
cs

Page No.6/8



Order dated 17.10.2022 in
W.P.No.18423 of 2021

WEB COPY To

1. The Director General of Police, Tamil Nadu,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.
2. The Deputy Inspector General of Police,
Armed Police,
Kilpauk,
Chennai-600 010.
3. The Commandant,
TN Special Police Battalion,
Regimental Centre,
Avadi, Chennai-600 054.



WEB COPY



Order dated 17.10.2022 in
W.P.No.18423 of 2021

ABDUL QUDDHOSE, J

CS

W.P.No.18423 of 2021

17.10.2022

Page No.8/8