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Order dated 17.10.2022 in
W.P.No.18428 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.18428 of 2021
and
W.M.P.No.19641 of 2021

S.Anandhakumar

.. Petitioner

Vs.

1. The Director General of Police, Tamil Nadu,
Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.
2. The Commissioner of Police
Coimbatore City,
62, Old Post Office Rd, Near Railway Station,
Opp. City Police Commissioner Office,
Gopalapuram, Coimbatore,
Tamil Nadu-641 018.
3. The Deputy Commissioner of Police,
Armed Reserve, Coimbatore,
62, Old Post Office Rd, Near Railway Station,
Opp. City Police Commissioner Office,
Gopalapuram, Coimbatore,
Tamil Nadu-641 018.

.. Respondents



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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 relating to order dated 08.02.2021, vide No.Rc.No.198122/AP.I(1)/2017 passed by the first respondent and order dated 04.03.2021, vide No.F3/MP.64/2017, passed by the second respondent and quash the same insofar as imposition of penalty of postponement of increments for a period of two years without cumulative effect and direct to treat the period of out of employment as eligible leave including EOL and consequently direct the respondents to exonerate the petitioner of all the charges and treat the period of out of employment 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

This Writ Petition is filed challenging the order dated 08.02.2021 passed by the first respondent, modifying the penalty imposed on the petitioner treating the period of absence of the petitioner as the period spent on eligible leave including EOL.

2. At the outset, the learned counsel for the petitioner submitted on instructions that the petitioner is not insisting on for quashing of the penalty



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imposed by the first respondent under the impugned order. However, the learned counsel submitted that the petitioner is aggrieved by the findings of the first respondent that the period of absence of the petitioner should be treated as eligible leave and EOL. According to the petitioner, the absence of the petitioner has to be treated as period of duty. The petitioner has been acquitted of the criminal charges and based on the same, the penalty imposed on the petitioner has been reduced under the impugned order and the punishment has been modified from dismissal of service to postponement of increments for a period of two years. In support of her contention that the period of absence should be treated as period of duty, learned counsel for the petitioner relied on Ruling 9 of F.R.54 and also relied upon the following decisions:

(i) 1999 (3) SCC 679 (Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and another).

(ii) 2004 (1) SCC 121 (Union of India and others Vs. Jaipal Singh).

(iii) Review Application (MD).No.139/2015, dated 24.09.2019 (G.Balasundaram Vs. The Secretary, Commercial Taxes and Registration Department, Chennai and others) (MANU/TN/6432/2019) (Division Bench

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of Madras High Court).

(iv) Writ Appeal No.1443 of 02017, dated 16.11.2017 (The Director of Handlooms and Textiles (Functional Registrar Tamil Nadu Co-operative Societies Act) and 2 others Vs. C.Ragupathy and 10 others).

3. Admittedly, the aforesaid authorities relied on by the learned counsel for the petitioner as well as Ruling 9 of F.R.54, have not been considered by the first respondent in the impugned order. Therefore, this Court is of the considered view that the matter will have to be remanded back to the first respondent for fresh consideration with regard to the request made by the petitioner seeking to treat the period of his absence as the period of duty, on merits and in accordance with law, after giving due consideration to the above said decisions/authorities and Ruling 9 of F.R.54. No prejudice would be caused to the respondents if such direction is issued by this Court.

4. However, in so far as the penalty imposed on the petitioner under

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the impugned order is concerned, the same is unaltered and is confirmed by this Court.

5. For the foregoing reasons, this Writ Petition is disposed of, by quashing the impugned orders dated 08.02.2021 and 04.03.2021 passed by the respective respondents insofar as the finding that the petitioner's absence from duty on account of the disciplinary proceedings, is ordered to be treated as eligible leave including EOL to the extent necessary as per F.R.54 and the matter is remanded back to the respondents for fresh consideration with regard to the said finding alone. The first respondent is directed to pass final orders to treat the petitioner's request for his absence as period of duty, on merits and in accordance with law, after giving due consideration to Ruling 9 of F.R.54 and the decisions referred to below, within a period of 12 weeks from the date of receipt of a copy of this order :

(i) 1999 (3) SCC 679 (Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd. and another).

(ii) 2004 (1) SCC 121 (Union of India and others Vs. Jaipal Singh).

(iii) Review Application (MD).No.139/2015, dated 24.09.2019

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(G.Balasundaram Vs. The Secretary, Commercial Taxes and Registration Department, Chennai and others) (MANU/TN/6432/2019) (Division Bench of Madras High Court).

(iv) Writ Appeal No.1443 of 02017, dated 16.11.2017 (The Director of Handlooms and Textiles (Functional Registrar Tamil Nadu Co-operative Societies Act) and 2 others Vs. C.Ragupathy and 10 others).

6. Insofar as the punishment imposed on the petitioner under the impugned orders is concerned, the same is unaltered by this Court.

7. It is made clear that the petitioner is not entitled for any back-wages.

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

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