



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.2449 of 2017
and
W.M.P.No.2450 of 2017

R.Sivaraj

...Petitioner

-Vs-

1.The Deputy Secretary to Government,
Public (Establishment-2) Department,
Fort St. George, Chennai - 09.

2.The Under Secretary to Government,
Public (Establishment-2) Department,
Fort St. George, Chennai - 09.

...Respondents

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 in connection with the impugned order passed by the 1st respondent in G.O.(1D) No.250 dated 27.06.2016 and to quash the same and further direct the respondents to regularize the suspension period as duty for all purpose and grant all consequential service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents: Mr.C.Selvaraj,
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. By citing the pendency of a criminal case in Crime No.128 of 2012 registered against the petitioner herein, he was placed under suspension on 20.02.2013 by the second respondent herein. Subsequently, on 03.02.2015, the criminal proceedings came to be quashed by this Court in a petition filed under Section 482 of the Criminal Procedure Code in CrI.O.P.No.445 of 2015. In



connection with the disciplinary proceedings initiated against the petitioner in this regard, he was imposed with a punishment of stoppage of increment for a period of two years without cumulative effect on 17.07.2015. The petitioner had accepted the punishment and when he made a request for regulating the period of suspension underwent by him between 18.02.2013 and 03.07.2014 as duty period, the first respondent herein had passed the impugned order dated 27.06.2016, by stating that the suspension period would be treated as "period not spent on duty" as per Fundamental Rule 54(5). Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner would submit that for the charges framed against the petitioner in connection with the same delinquency, he cannot be imposed with two punishments, which would amount to double jeopardy. He also placed reliance on Fundamental Rule 54-B-9 and stated that since the criminal proceedings have been quashed, the suspension period should be regularized.

4. Per contra, the learned Additional Government Pleader places reliances on the averments in the impugned order and submitted that the Government was well within the powers to treat the period of suspension as non-duty period and hence, there is no infirmity in the impugned order.

5. Fundamental Rule 54-B-9 reads as follows:-
"54-B

9. Where a Government servant is, -

(a) Placed under suspension in view of the fact that a complaint against him of a 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, 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 purposed 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."

6. The aforesaid rule provides that when the criminal case against a Government servant ends in acquittal or otherwise in favour of the Government servant, the suspension period requires to be treated as duty, for all purposes. The provision quoted by the respondents in FR 54-(5) may not be relevant for the purpose of rejecting the petitioner's request.

7. Furthermore, as rightly pointed out by the learned counsel for the petitioner that when the petitioner has already been imposed with a punishment for the same delinquency, treating the suspension period as non-duty period would amount to double jeopardy, which is impermissible in service jurisprudence. In view of FR 54-B-9 and in the light of the observations made by this Court, the impugned order cannot be sustained.

8. It is not in dispute that the criminal proceedings initiated against the petitioner has been quashed by this Court in Crl.O.P.No.445 of 2015 dated 03.02.2015. In consequence of passing such an order, the respondents shall disburse the service and monetary benefits accrued for the period of suspension to the petitioner.

9. In the light of the above observations, the impugned order dated 27.06.2016 passed by the first respondent herein, is hereby quashed. Consequently, there shall be a direction to the second respondent to pass appropriate orders by treating the petitioner's suspension period from 18.02.2013 to 01.07.2014 as duty period for all purposes, together with all service and monetary benefits. Such an order shall be passed atleast within a period of two (2) weeks from the date of receipt of a copy of this order.

10. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



hvk
To

1.The Deputy Secretary to Government,
Public (Establishment-2) Department,
Fort St. George
Chennai - 09.

2.The Under Secretary to Government,
Public (Establishment-2) Department,
Fort St. George,
Chennai - 09.

+1cc to Mr.S.Sivakumar, Advocate Sr.4604
+1cc to the Government pleader Sr.5683
+1cc to the Government pleader Sr.5699

[31/05/2022]

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and
W.M.P.No.2450 of 2017

pmk[co]
srg 04/02/2022