



W.P.(MD) No.11607 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.11607 of 2020
and W.M.P.(MD).No.10112 of 2020

S.Manamoorthy

... Petitioner

Vs.

- 1.The Accountant General (A&E),
Account General Office,
Chennai.
- 2.The Additional Director General of Police /
Inspector General of Prison Department,
Chennai.
- 3.The Deputy Inspector General of Prison,
Vellore Range,
Vellore.
- 4.The Deputy Inspector General of Prison,
Madurai.
- 5.The Superintendent Central Prison,
Vellore.
- 6.The Treasurer / Assistant Treasurer Officer,
Chengam Sub Treasurer,
Vellore.



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7.The Superintendent,
Central Prison,
Madurai.

8.The Treasurer / Assistant Treasure Officer,
Melur Sub Jail Treasurer, Melur,
Madurai.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for records pertaining to the impugned orders passed in No.2418/௧௧௭௨/2019, dated 31.12.2019, by the 5th respondent and quash the same and further direct the respondents 2 to 5 and 7 to regularize the suspension period 05.12.2018 to 01.02.2019 (59 days) as duty period and repay a sum of Rs.1,12,339/- recovered without notice and without serving any order from petitioner's gratuity with interest of 18%.

For Petitioner : Mr.T.S.Mohamed Mohideen

For Respondents : Mr.P.Gunasekaran for R1
Standing Counsel
Mr.R.Ragavendran for R2 to R8
Government Advocate

ORDER

In connection with the charge memo, dated 27.12.2018, the petitioner was also placed under suspension on 04.12.2018 and the suspension order was subsequently revoked on 31.01.2019. The petitioner herein had thereafter



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2. On an appeal filed by the petitioner, the fourth respondent herein had cancelled the original order of punishment, dated 26.04.2019. In this background, when the petitioner herein had sought for regularization of his suspension period between 05.12.2018 to 01.02.2019 as duty period, the same has been rejected by the fifth respondent through the impugned order, dated 31.12.2019, by treating the period between 05.12.2018 to 01.02.2019 as eligible leave.

3. The learned Additional Government Pleader placed reliance on F.R. 54-B-1 of the Fundamental Rules of Tamil Nadu Government and submitted that unless and until the employee is fully exonerated from the charges, he cannot claim the period of suspension as duty period. It is his further submission that the order of fourth respondent herein cancelling the punishment, was in consideration of his ensuing retirement on 30.04.2019 and



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therefore, the cancellation cannot be deemed as fully exonerated. When the fourth respondent herein had passed the order on 30.04.2019 cancelling the earlier punishment imposed by the fifth respondent herein, there was no observation made that the period of suspension cannot be treated as duty period. Furthermore, though the fourth respondent has taken note of the fact that the petitioner was due to retire on 30.04.2019, the cancellation of the punishment requires to be explicit, in case, when the fourth respondent intended to exonerate the petitioner, without the benefits of the suspension period. In the absence of any such explicit observations in the order of the cancellation of punishment, it cannot be said that the cancellation order will not amount to full exoneration of the charges.

4. Rule 10 of the F.R. 54(b) (1) of the Fundamental Rules of Tamil Nadu Government states that when a Government Servant, who was suspended, is fully exonerated of the charges, the period of suspension shall be treated as duty period and he shall be entitled to all the pay and allowances for the entire period of suspension, provided the period of his suspension ended before the date of his superannuation.



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5. The petitioner herein was due to retire on 30.04.2019. As such, by applying Rule 10 of F.R.54-B-1, the period of suspension between 05.12.2018 to 01.02.2019 requires to be treated as duty period for all purposes, since the petitioner herein was exonerated of charges in view of the cancellation of the punishment by the Appellate Authority. As such, the rejection of the petitioner's request in this regard, cannot be sustained.

6. Accordingly, the impugned order passed by the 5th respondent, in No. 2418/கிசீஉ/2019, dated 31.12.2019, is hereby quashed. Consequently, there shall be a direction to the fifth respondent herein to pass orders, regularizing the petitioner's period of suspension between 05.12.2018 to 01.02.2019, as “duty period” for all purposes and thereby, disburse all the pay and allowances for the aforesaid period of suspension, which order shall be passed within a period of six weeks from the date of receipt of a copy of this order.



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Index : Yes / No
Speaking Order/ Non Speaking Order
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To

- 1.The Accountant General (A&E),
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- 2.The Additional Director General of Police /
Inspector General of Prison Department,
Chennai.
- 3.The Deputy Inspector General of Prison,
Vellore Range,
Vellore.
- 4.The Deputy Inspector General of Prison,
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- 5.The Superintendent Central Prison,
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- 6.The Treasurer / Assistant Treasurer Officer,
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M.S.RAMESH,J.

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