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W.P.No.1261 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.1261 of 2020
and W.M.P.No.1526 of 2020

S.Sekar

...

Petitioner

/vs/

1. The Principal Secretary to Government,
Social Welfare and Nutritious Meal Programme,
[SW8 (2)] Department, Fort St. George,
Chennai – 600 009.

2. The Commissioner of Social Defence,
No.300, Purasaiwalkam High Road,
Chennai – 600 017.

3. The Superintendent,
Government Children Home for Boys,
Royapuram, Chennai – 600 013.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in No.11006/A2/2014 dated 13.07.2017 passed by the second respondent and Government Letter No.14149/Sa.Na.8(2)/2018-3 dated 21.05.2019 passed by the first



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respondent and quash the same and consequently direct the respondents to treat the period of 717 days of suspension as duty.

For Petitioner ... Mr.S.Illamvaludhi
For Respondents ... Mr.T.Chezhiyan
Additional Govt. Pleader

ORDER

This petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in No.11006/A2/2014 dated 13.07.2017 passed by the second respondent and Government Letter No.14149/Sa.Na.8(2)/2018-3 dated 21.05.2019 passed by the first respondent and quash the same and consequently direct the respondents to treat the period of 717 days of suspension as duty.

2. The petitioner was placed under suspension on account of his arrest on 16.10.2014 in connection with the case in Cr.No.1122 of 2014. After investigation, charge sheet was filed before the XVI Metropolitan Magistrate, Chennai. However the petitioner was acquitted on 06.07.2018 by the learned XVI Metropolitan Magistrate. The third respondent issued a charge memo on 20.04.2015 and five charges have been framed against the



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petitioner and out of which charge No.2 and 5 are not proved and the rest of the charges are proved. The second respondent vide order dated 13.07.2017 had imposed punishment of censure. The period under which the petitioner was under suspension is from 17.10.2014 to 02.10.2016.

3. The learned counsel for the petitioner submitted that the petitioner was acquitted in the criminal case as he was also not found guilty; however the second respondent has imposed the punishment of Censure; hence, the period of suspension ought not to have been treated as leave or leave on loss of pay; instead the said period should have been dealt as duty and the impugned order of the second respondent should be set aside.

4. It is true that the criminal proceedings initiated against the petitioner had ended in acquittal. However, out of five charges framed against him during the disciplinary proceedings, three charges were proved and for which he was imposed with a punishment of 'censure'. In the present writ petition the petitioner did not challenge the punishment. His grievance is only with regard to regularization of suspension as leave through impugned order of the second respondent dated 13.07.2017.



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5. As per Fundamental Rule, 54-B if the Government Servant has attained retirement on superannuation or given with compulsory retirement during suspension, the competent authority who ordered reinstatement should make a specific order in respect of the period for which he was kept under suspension. It is submitted that if the competent authority who reinstates the Government Servant feels that the suspension was wholly unjustified, the Government servant is entitled to full pay and allowance for which he would be entitled had he not suspended.

6. In the present case, the petitioner has been found guilty for some of the charges framed against him during the disciplinary proceedings. Even though the petitioner was kept under suspension for 717 days, he did not initiate any action seeking for reinstatement. Neither the second respondent had chosen to revoke the order of suspension, taking into account of the long pending criminal proceedings.

6. FR 54 cannot be construed in a manner that the appropriate authority should always treat the period of suspension as duty and thereby allow pay and allowance to be paid to the Government servant during the



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said period if the Government servant did not attain superannuation or not given with compulsory retirement during suspension. It is within the discretion of the competent authority to consider various circumstances and take a decision about the regularization of the period of suspension by treating the same either as duty or as leave on loss of pay. Since the second respondent is the competent authority who can use his discretion by taking into consideration of the various circumstances on a case to case basis, it is appropriate for the petitioner to make a representation to the second respondent to reconsider the regularization of the period of suspension by treating it as duty.

7. Since the order dated 13.07.2017 does not state any reason as to why the period of suspension should be treated as leave and leave on loss of pay, I feel that the impugned order can be set aside just to enable the petitioner to give a fresh representation.

8. Accordingly, the Writ Petition is disposed by setting aside the impugned order in No.11006/A2/2014 dated 13.07.2017 passed by the second respondent and the Government Letter vide



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No.14149/Sa.Na.8(2)/2018-3 dated 21.05.2019 and the petitioner shall give a fresh representation to the second respondent and on receipt of the same, the second respondent shall consider and pass appropriate orders after appreciating the various circumstances, within a period of six weeks from the date of receipt of representation of the petitioner. No costs. Connected miscellaneous petition is closed.

30.10.2023

Index: Yes / No
Speaking order / Non-speaking order
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To:

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R.N.MANJULA ,J.

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