



WP No.3159 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

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A.K.Karunakaran

... Petitioner

vs

1.Union of India,
Represented by the General Manager,
Southern Railway,
Head Quarters Office,
Park Town,
Chennai- 600 003.

2.The Chief Personnel Officer,
Southern Railway,
Head Quarters Office,
Park Town,
Chennai-600 003.

3.Dy.FAQ & CAO/T/MAS &
Disciplinary Authority,
Southern Railway,
Head Quarters Office,
Park Town,
Chennai- 600 003.



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4.SPO/Rules,
Southern Railway,
Head Quarters Office,
Park Town,
Chennai- 600 003.

5.Statistics & Analysis Officer/MAS,
Statistical Branch,
10th Floor, MMC,
Southern Railway,
Head Quarters Office,
Park Town,
Chennai- 600 003.

6.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in OA No.310/1613/2018 on the file of the 6th respondent passed by the learned Central Administrative Tribunal by an order dated 07.12.2018 and quash the same as illegal, incompetent and ultravires and consequently directing the respondents 1 to 5 to treat the period of deemed suspension from 01.03.2011 to 14.03.2011 and the period from 15.03.2011 to 06.06.2011 as duty period for all purposes and to pay the consequential monetary benefits.

For the Petitioners :Mr.R.Jayaprakash

For the Respondents :Mr.P.T.Ramkumar
Standing Counsel for respondents 1 to 5
Sixth respondent- Tribunal



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ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

The petitioner has filed the writ petition challenging the order passed by the Tribunal in OA No.310/1613/2018 dated 07.12.2018

2. Brief facts of the case:

2.1. The petitioner was working as a Senior Clerk in the respondent Railways. While he was in service, he was implicated in a criminal case under Sections 354, 377, 506(ii) of IPC and Section 4 of the Prevention of Ragging of Woman Act in CC No.4761/2012 II on the file of the 2nd Metropolitan Magistrate, Egmore, Chennai. He was kept under judicial custody from 01.03.2011 to 14.03.2011 for necessary investigation. While the petitioner was under judicial custody, the third respondent has passed an order dated 03.03.2011, placing him under deemed suspension from 01.03.2011, until further orders. Subsequently, he was released on bail on 14.03.2011. Thereafter, the fifth respondent has passed an order dated



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31.05.2011, stating as follows *'With reference to the above, you were under deemed suspension from 01.03.2011 as you were under judicial custody.*

You were also released from custody on bail on 14.03.2011 but till date you have neither reported to duty nor requested to revoke the suspension order.

We hereby inform you that, your suspension order has been revoked by the competent authority w.e.f. 14.03.2011. You are hereby instructed to report duty immediately and your absence period will be treated as unauthorised absence. The petitioner reported duty on 03.06.2011.

2.2. Subsequently, by judgement dated 04.04.2013, the 2nd Metropolitan Magistrate, Egmore, Chennai, acquitted the petitioner and the said judgement has become final. Thereafter, the petitioner gave a representation dated 02.05.2013 to the third respondent, requesting him to treat the suspension period from 01.03.2011 to 05.06.2011 as duty period. In response to the said representation, the fifth respondent passed an order dated 05.09.2013, stating as follows: *as the employee was suspended and restored back to duty not on account of Administrative reasons but on account of personal reasons, the period of deemed suspension from*



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01.03.2011 to 14.03.2011 and the absent period from 15.03.2011 to 06.06.2011 may be treated as leave due in terms of Rule 1343(5) of R II.

2.3. Aggrieved by the said order dated 05.09.2013 of the fifth respondent, the petitioner had filed an appeal, dated 25.10.2013 before the third respondent and a reminder dated 09.05.2014. Since there was no order, the petitioner had filed an original application in OA No.726 of 2015 before the Central Administrative Tribunal. The Tribunal, by order dated 02.06.2015, had disposed of the said OA, by directing the respondent Railway to consider the said appeal filed by the petitioner and pass orders within eight weeks' time. The petitioner was also given liberty by the Tribunal to place on record the additional material papers such as judgement of the criminal court dated 04.04.2013. Pursuant to the said order of the Tribunal, the said appeal was disposed of by the fourth respondent by his letter dated 21.07.2015. The said order was verbatim reproduction of the earlier order of the second respondent dated 05.09.2013.

2.4. Challenging the orders dated 05.09.2013 and 21.07.2015, the petitioner had filed an original application in OA No.1189 of 2015. The



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Tribunal, by order dated 07.07.2017, had directed the respondent Railways to pass a reasoned order on the appeal dated 09.05.2014. The respondent Railways disposed of the appeal dated 09.05.2014, stating as follows: *In as much as you were suspended for your own commission and omissions, it would not be possible for the government to pay the exchequers' money without any rule.* Aggrieved by the said order, the petitioner has filed the instant original application in OA No.1613 of 2018. The Tribunal, by order dated 07.12.2018 had dismissed the said OA. Hence, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner submits that the Tribunal has considered the decision of the Hon'ble Supreme Court in the case of ***Racchodu Chaturji Thakore vs The Supdt. Engineer*** and dismissed the said OA. But, according to the learned counsel, the said decision of the Hon'ble Supreme Court does not apply to the facts of the present case. Therefore, the suspension period has to be treated as duty period and seeks for setting aside the order of the Tribunal.



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4. Mr.Ramkumar learned Standing Counsel appearing for the respondents 1 to 5, vehemently argued that the petitioner was placed under suspension for involvement in a criminal case in CC No.4761/2012 II, on the file of the 2nd Metropolitan Magistrate, Egmore, Chennai and therefore the said period cannot be treated as duty period.

5. Heard the parties and perused the materials available on record.

6. We have carefully perused the order dated 31.05.2011 revoking the suspension. The respondent Railways has revoked the order of suspension with immediate effect from 14.03.2011 namely from the date of release on bail. Even though we are not going to test the genuineness of the order of revocation passed by the respondent Railways dated 31.05.2011, when the respondent Railways has passed the revocation order with immediate effect from 14.03.2011, the petitioner is also entitled for the suspension period to be treated as duty period.

7. The petitioner is relying upon sub rule (2) of Rule 1343 (F.R.54) of



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the Railway Fundamental Rules to treat the suspension period as duty period The same is extracted hereunder:

(2) Where the authority competent to order re-instatement is of opinion that the railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated the railway servant shall, subject to the provisions of sub-rule(6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

8. The said Rule relates to the employees, who have been dismissed or removed or compulsorily retired or employees who were placed under suspension and subsequently, fully exonerated from the charges, and reinstated in service are entitled for full pay and allowances for which they would have been entitled if they had not been dismissed, removed or



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compulsorily retired or placed under suspension.

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9. Coming to the facts of the present case, no departmental proceedings were initiated by the respondent railways nor the petitioner was convicted by the criminal court and the said criminal case has ended in acquittal. Hence, in the view of the aforesaid Rule, the petitioner is entitled for entire pay as well as allowances during the suspension period. Therefore, the decision of the Hon'ble Supreme Court relied by the Tribunal cited supra, will not apply to the facts of the case on hand. However, as rightly pointed out by the learned Standing Counsel for the respondent Railways, the petitioner was arrested and he was in judicial custody from 01.03.2011 to 14.03.2011. During the said period, the petitioner is not entitled for any pay or allowances. We accept the said contention of the respondent Railways that during the said period 01.03.2011 to 14.03.2011, the petitioner is not entitled for any pay or allowances as per the aforesaid Rule.

10. Considering the aforesaid fact that the decision of the Hon'ble Supreme Court cited supra relied upon by the Tribunal is not applicable to



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the facts of the case on hand, we have no hesitation to interfere with the order of the Tribunal and consequently, the said order of the Tribunal is liable to be set aside. In fine, the writ petition is allowed. The order passed by the Tribunal in OA No.1613 of 2018 dated 07.12.2018, is set aside and a direction is given to the respondent Railways to pay full pay and allowances for the period of suspension to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order except for the period 01.03.2011 to 13.03.2011. There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
29.11.2023

Index : Yes/No
Neutral Citation : Yes/No
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and
P. DHANABAL, J.

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