



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.21485 of 2016

and

W.M.P.No.18359 of 2016

K. Manoharan

.. Petitioner

Vs.

1.The Secretary to Government
Housing and Urban Development Department
Secretariat,
Chennai – 600 009.

2.The Assistant Secretary (Admn)
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

3.The Administrative Office
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

4.The Executive Engineer
Salem Housing Unit,
Salem – 5.

5.The Accountant General (TN)
Office of the Accountant General
Teynampet, Chennai – 600 018.

.. Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Memo dated 30.05.2014 in No.PNT.2/6990/2014, of the 2nd respondent, quash the same to the extent of invoking Rule 9 of the Tamil Nadu Pension Rule 1978 as well as the impugned order dated 03.05.2016 in Letter No.DC2/65988/2004 passed by the 3rd respondent and consequently direct the respondents to regularize the period of suspension and dismissal thereby paying the arrears to the said period subsequently to pay the entire terminal benefits with interest to the petitioner.

For Petitioner	.. Mr. D. Sahithya for Mr. M. Elango
For R1	.. Mr. T. K. Saravanan, Govt. Advocate
For R2 & R3	.. Mr. D. Veerasekaran, Standing Counsel
For R4	.. No appearance
For R5	.. Mr. V. Murali

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with a Memo dated 30.05.2014 bearing No.PNT.2/6990/2014 passed by the 2nd respondent, the Assistant Secretary (Admn.) Tamil Nadu Housing Board at Chenna and also another order dated



03.05.2016 in Letter No.DC2/65988/2004 passed by the 3rd respondent, Administrative Officer, Tamil Nadu Housing Board at Chennai and direct the respondents to regularize the period of suspension and dismissal and pay the arrears for the said period.

2.The petitioner, Mr. K. Manoharan had been appointed as Junior Assistant in the Tamil Nadu Housing Board Unit, Erode, on 22.05.1979. On 28.05.1999, he was placed under suspension with effect from 11.1.1999. The said suspension was under the Regulation 36(b) of the Tamil Nadu Housing Board Service Regulation. He was arrested by the Central Crime Branch Police and a First Information Report had been registered in Crime No.1159 of 1998 under Sections 420, 511, 468 and 471 IPC. During the period of suspension, subsistence allowance and dearness allowance as admissible under the Fundamental Rules 52(1) was directed to be paid to the petitioner. Thereafter, the trial proceeded in S.C.No.5460 of 2002 before the III Metropolitan Magistrate and he was acquitted of all criminal charges by judgment dated 08.03.2004. He then filed an application for reinstatement. A charge memo was issued to him for misconduct and misbehaviour. The enquiry officer also enquired into the charges and he was



dismissed from the service. Against the order of dismissal, he filed an appeal and the punishment was modified as one of stoppage of increment without cumulative effect for a period of two years. There was no appeal filed by the Investigating Agency against the order of acquittal in the criminal case. The petitioner then was reinstated by the order of the Managing Director dated 03.05.2007 and he joined duty at Salem Housing Unit as Junior Assistant. There was an audit done and it was found that the period of suspension and the dismissal period to a total of 8 year and 99 days had not been regularized by the respondents.

3.It is trite in law to point out that when a First Information Report is registered against a particular individual, raising allegations of commission of offences attracting either the Indian Penal Code or any other offence under a Special Act, it is only a report, which will have to be investigated further by the Investigating Agency. Thereafter, on completion of investigation, if it is found to the satisfaction of the Investigating Agency that the individual had committed an offence, a final report will have to be filed before the Jurisdictional Court. Trial will have to take place and thereafter, only when the person is convicted of the offence, he can be



termed as convicted offender. Till such time, the presumption of innocence runs in the criminal jurisprudence.

4.In the instant case, the petitioner was acquitted by judgment dated 08.03.2004 in Spl.C.C.No.5460 of 2002. Upon the order of acquittal after trial, the individual stands exonerated of all charges. The period for which he had been suspended and the period for which he had been dismissed, which dismissal order had been interfered with and punishment of withdrawal of increment for two years with cumulative effect alone had been imposed, then the entire time period of service, though he did not attend the office should be regularized by the respondents. This is basic service law.

5.The order of acquittal by the criminal Court should be recognized by the authorities who are in Management and in the Administration of the unit, where the individual is working.

6.In this case, the petitioner is working in Tamil Nadu Housing Board. During the period of suspension / dismissal for the first block of the



suspension period, he was paid subsistence allowance and for the second block of the dismissal period, no emoluments had been paid. This is the objection raised by the audit that the period of suspension and the period of dismissal should be regularized and had not been regularized.

7.This will have a direct effect on the pension, which is paid to him, since the number of years which he had put in effective service would be reduced by the period under which he was under suspension and dismissed. Since he had acquitted, he should not suffer that particular disadvantage. That period of suspension and dismissal should be counted notionally as being in regular service. The respondents must calculate the pensionary benefits for that period should also be taken into account. When calculating the pensionary benefits, the entire period of service should be taken into consideration. That had not been done.

8.In the impugned orders, which are questioned by the petitioner herein, it is only stated that his appeal had been rejected. Hence, the impugned orders are both set aside. A direction is given to the respondents to rework the pensionary benefits of the petitioner herein by taking into



consideration both the period of suspension and the period of dismissal as notional period without salary but under service and thereafter, extend that period of eight years and 99 days towards the total years of service he had put in and calculate the retirement benefits. To that extent, the Writ Petition stands disposed of, since this Court had issued further directions to rework the pensionary benefits. The entire exercise must be completed within a period of 16 weeks from the date of receipt of a copy of this order and if any clarification are required, the petitioner may be put on notice and he may also be heard and thereafter, final orders can be passed by the respondents.

9. With the above observations, this Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

05.07.2023

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking order: Yes/No
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C.V.KARTHIKEYAN,J.

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