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W.P.No.12937 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.12937 of 2021 and
W.M.P.No.13739 of 2021

S.Baskaran

... Petitioner

Vs.

1.The Board of Tamil Nadu Co-operative Milk
Producers Federation Limited,
Aavin Illam,
3A, Pasumpon Muthuramanlingam Salai,
Nandanam, Chennai 600 035.

2.The Personnel Committee,
Tamil Nadu Co-operative Milk
Producers Federation Limited,
Nandanam, Chennai 600 035.

3.The Managing Director,
Tamil Nadu Co-operative Milk
Producers Federation Limited,
Nandanam, Chennai 600 035.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings in reference No.15350/Pers/IR3/2016 dated 23.01.2018 on the file of the 2nd respondent and appeal proceedings reference No.3286/Pers/IR.3/2016 dated 26.04.2021 on the file of the 3rd respondent and quash that portion of order treating the period of



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suspension from 13.11.2016 to 11.06.2017 as leave days and direct the respondents 1 to 3 to treat the suspension period as on duty days and thereby directing the respondents to accept the surrender of gained leave and disperse eligible payment which is accrued to the petitioner for the same.

For Petitioner : Mr.T.K.S.Bharathy Shri

For Respondents : Mr.T.Chezhiyan, AGP

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings in reference No.15350/Pers/IR3/2016 dated 23.01.2018 on the file of the 2nd respondent and appeal proceedings reference No.3286/Pers/IR.3/2016 dated 26.04.2021 on the file of the 3rd respondent and quash that portion of order treating the period of suspension from 13.11.2016 to 11.06.2017 as leave days and direct the respondents 1 to 3 to treat the suspension period as on duty days and thereby direct the respondents to accept the surrender of gained leave and disperse eligible payment which is accrued to the petitioner for the same.



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2. Heard Mr.T.K.S.Bharathy Shri, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents.

3. The limited prayer of the petitioner for filing this Writ Petition is to treat his period of suspension between the period from 13.11.2016 to 11.06.2017 as duty period. The petitioner who was working as an employee of Tamil Nadu Co-operative Milk Producers Federation Limited, has been given with certain charges for which he was subjected to disciplinary proceedings. At the conclusion of the disciplinary proceedings he was warned and let off. However the period of suspension has been treated as leave for which he is eligible. The petitioner has filed an appeal challenging the above order and that was also dismissed.

4. The learned counsel for the petitioner submitted that the petitioner was not found guilty for any of the substantial charges. Even for the partial proof of charges he was given with only warning and no punishment and hence the period for which he was under suspension should be treated as duty. The attention of this Court was drawn to the



rule regarding treatment of period of suspension. Rule 6 of Tamil Nadu Co-operative Milk Producers' Federation Employees (Conduct, Discipline & Appeal) Rules was extracted hereunder:

"6. Treatment of the period of suspension:

(i) When the suspension of an employee is held to be unjustified or not wholly justified, or when an employee who has been dismissed removed or suspended is reinstated, by the disciplinary, appellate or reviewing authority have the case may be whose decision shall be final, such authority may grant to him for the period of absence from duty --

(a) If he is honorably acquitted the full pay and allowance to which he would have been entitled if he had not been dismissed, removed or suspended unless the subsistence allowance granted.

(b) In any other case, such proportion of pay and allowance as the disciplinary, appellate or reviewing authority may specify.

(ii) In a case falling under Clause (a) of Sub Rule (i), the period of absence from duty will be treated as period spent on duty and in a case falling under clause (b) the period of absence will not be



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treated as a period spent on duty unless the disciplinary, appellate or reviewing authority as the case may be whose decision shall be final, so directs."

By reading the above rule, the learned counsel for the petitioner submitted that the petitioner has not been dismissed or removed from service and was not given with any major punishment even minor punishment and hence the appropriate authority ought to have considered the period of suspension as duty and not as leave.

5. So far as the above rule is concerned, it speaks about treating the period of absence due to suspension at the time when the employee was dismissed, removed or suspended or is reinstated. The above rule speaks about the stages at which the employee's suspension period should be regularised. In case, a person is honourably acquitted, his period of suspension would entitle him to get the entire pay and allowance as though he had not been dismissed or removed from service. In any other case, such proportion of pay and allowance as the disciplinary, appellate, reviewing authority may specify.



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6. But even in case of the persons who have got honourable acquittal, the period of absence from duty has to be treated as period spent on duty. However in any other case, the period of absence will not be treated as period spent on duty, unless the appropriate authority decides so. So the case of the petitioner would fall under Rule 6 (i)(b) and not 6(i)(a).

7. In case a person who is charged with a criminal offence is dismissed or removed from service before the judgment is delivered by the Criminal Court, he will be losing the pay and allowance minus subsistence allowance for all those period for which he was kept under suspension. If the case ends in acquittal and in which the employee concerned has been acquitted honourably, then he will be entitled to get pay and allowance by considering the period of absence as duty period. In other cases, it is in the discretion of the appropriate authority to treat the period under suspension as duty or otherwise. It is because even if the appointing authority chooses to treat the period of suspension as leave, the employee will be entitled to pay and allowance and there will not be



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any loss in terms of monetary benefit. So the above rule cannot be construed in such a way that the appropriate / disciplinary / appellate / reviewing authority does not have any power at all to treat the period of suspension as otherwise other than on duty, in case the employee is given with any other punishment other than dismissal or removal or even let off with warning.

8. In view of the above stated reasons, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
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