



WP.No.36213/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.36213/2016 & WMP.No.31148/2016

M.Basheer

... Petitioner

Versus

1.The Principal Secretary to Government
Home [Pol.V] Department, Fort St George
Chennai 600 009.

2.The Director General of Police
Mylapore, Chennai 600 004.

3.The Joint Commissioner of Police-South Zone
St Thomas Mount, Chennai 600 016.

4.The Deputy Commissioner of Police
St Thomas Mount, Chennai 600 016.

5.The Deputy Commissioner of Police
Thyagarayanagar District, T.Nagar
Chennai 600 017.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in connection with the charge memo Tha.Ko.No.101/



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Tha.Pee(South)/05 u/r 3b dated 29.5.2005 issued by the 5th respondent herein and the order of punishment C.No.PR No.101/ PR.(S)(1)/ 2005; Z.O. No.646/2006 (South) dated 2.10.2006 issued by the 4th respondent herein and the order of rejection on appeal Rc.No.Appeal.11/ PR.II(S)/2006 dated 1.11.2006 passed by the 3rd respondent herein and the order of rejection on Mercy Petition Rc. No.23292/ AP.3(3)/2008 dated 19.5.2008 passed by the 2nd respondent and the order of rejection on petition G.O.(2D) No.403 dated 11.11.2014 passed by the 1st respondent herein and quash the same consequently direct the respondents to regularize the petitioner's period of suspension and revise the petitioner's pay along with batch mates.

For Petitioner : Dr.R.Sampathkumar
For Respondents : Mr.R.Neethi Perumal, GA

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to a charge memo dated 29.05.2005 issued by the 5th respondent / Deputy Commissioner of Police, T.Nagar at Chennai to the petitioner herein and the consequent order of punishment dated 02.10.2006 issued by the 4th respondent / Deputy Commissioner of Police, St.Thomas Mount,



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Chennai and the order rejecting the appeal given by the petitioner herein dated 01.11.2006 passed by the 3rd respondent / Joint Commissioner of Police, South Zone at St. Thomas Mount in Chennai and the final order rejecting the Mercy Petition given by the petitioner dated 19.05.2008 passed by the 2nd respondent / Director General of Police, Tamil Nadu and the order of rejection passed by the 1st respondent / Principal Secretary to Government, Home [Pol.V] Department, Chennai, dated 11.11.2014. The petitioner seeks regularisation of the period of suspension and to revise the pay of the petitioner along with his batch mates.

- (2) In the affidavit filed in support of the writ petition, it had been stated that at the time of filing of the writ petition, the petitioner was working as Special Sub Inspector of Police. During 2004, an FIR in Crime No.286/2004 was registered against him on the file of E4, Maduravoyal Police Station. Subsequent to investigation, a Final Report was filed before the jurisdictional Magistrate Court and taken cognizance as CC.No.3265/2004. It had been stated that he had been acquitted of all charges on 16.09.2005. But however, the respondents



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had proceeded against him departmentally and in this connection, a charge memo dated 29.05.2005 was served on him. Two charges which had been framed. The first was that he was involved in a criminal case in Cr.No.286/2004 on the file of E4 Maduravoyal Police Station and was remanded to custody and after coming out on bail, under the 2nd charge was that he received salary without doing any work in the Station from March 2004 to November 2004. During the enquiry proceedings, which is not impugned in the present writ petition, charges were held to be proved and originally, an order of compulsory retirement was passed. Thereafter, the petitioner filed an appeal and finally, the 2nd respondent/Director General of Police, had reduced the punishment as three stages reduction in the time scale of pay for three years affecting future emoluments. The appeals filed by the petitioner had been rejected. But the respondents had not hold this punishment against the petitioner so far as his service is concerned and they had actually promoted him to the post of Special Sub Inspector of Police by an order dated 23.06.2016.



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(3) Dr.Sampathkumar, learned counsel for the petitioner pointed out the final order dated 23.06.2016 passed on a review filed by the petitioner wherein it had been stated that the period of absence between 02.12.2006 and 08.10.2010 was considered as unearned leave, whereas, the period between 30.10.2007 till 08.07.2010 was treated as loss of pay. It was therefore, contended by the learned counsel for the petitioner that this period should be regularised.

(4) In this connection, the learned counsel placed reliance on a Division Bench judgment of the Bombay High Court in ***WP.No.36689/2005 [Union of India, through the Secretary, Ministry of Defence and Another Vs. Deepak Arjun Malwadkar [now deceased] through Legal Representative]***. That was a case wherein the deceased / respondent, faced charges on the ground that his wife had suffered burn injuries. An FIR was registered under Sections 307, 498-A and 506 read with 34 of IPC. He was also arrested. But however, after going through the criminal trial process, he was acquitted. The one point which the learned counsel sought to place reliance in the aforementioned judgment was that the deceased / respondent therein



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had been acquitted in the criminal case, and it was held that he would be entitled to get his suspension period regularised as the period on duty and back wages and continuity in service should also be granted. However, in the very same judgment, a reference was made to an earlier judgment of the Hon'ble Supreme Court reported in ***AIR 1984 SC 380 [Brahma Chandra Gupta Vs. Union of India]***, wherein, the Hon'ble Supreme Court had held that it was only a discretion on the part of the authorities to consider regularisation of the period for which a delinquent was placed under suspension. The Hon'ble Supreme Court stated that 3/4th of the salary could be paid during that particular period. The ratio in both the judgments is in so far as the leave period or period of suspension is concerned and the manner in which it should be considered as a discretion vested with the authorities. There cannot be a straight rule or law laid down as to how the period should be considered. It would all depend on the facts and circumstances of each case. In the instant case, the petitioner was a personnel of the Uniformed Services and he had himself been implicated in an offence and thereafter, though it had been stated that



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he had been acquitted of the charges during the criminal trial, still during the departmental enquiry, the charges stood proved. Neither the procedure adopted during criminal trial nor the punishment imposed, has been questioned before this Court.

- (5) The only issue is with respect to this period between 2007 and 2010 which had been treated by the respondents as leave on loss of pay. The learned counsel therefore made a plea that it should be regularised and necessary back wages should also be granted to the petitioner. But however that would be stretching a little too far and I would therefore, modify that particular discretion exercised by the respondents, as one of considering it as on duty. The said period is to be considered towards the number of years to be taken into consideration for calculation of pension and to that extent, the pensionary benefits may be revised by the respondents herein.
- (6) After this order has been dictated, Dr.R.Sampathkumar, again made a plea that some consideration should be given towards grant of some portion of the salary for that particular period.



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(7) Let salary at 25% of that particular period be granted to the petitioner towards calculation of pensionary benefits alone.

(8) The writ petition stands **disposed of**. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

AP

Internet : Yes

To

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C.V.KARTHIKEYAN, J.,

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