



W.P.No.41151 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.41151 of 2016

M.Ramkumar

...Petitioner

-Vs-

1.The Secretary to Government,
Handlooms, Handicrafts, Textiles
and Khadi (G1) Department,
Fort St. George, Chennai - 600 009.

2.The Director of Sericulture,
Folks Compound,
Anaimedu, Salem - 636 001.

...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 proceedings of the Director of Sericulture, Salem, the second respondent, made in proceedings No.12374/E2/2010 dated 01.03.2017, quash the same and consequently direct the respondents herein to regularise the period of suspension from 03.10.1997 till date of reinstatement on 05.12.2001 as duty for all purposes including all the consequential promotions on par with his immediate junior which have been withheld due to



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suspension and direct the respondents herein to disburse all the pay and allowances accrued on the above heads, and thereby revise the retiral and pensionary benefits of the petitioner and pay all the arrears. ***(Prayer amended as per order dated 28.02.2018 in WMP.No.32987 of 2017 in WP.No.41151 of 2016)***

For Petitioner : Mr.K.Rajkumar

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

Heard Mr.K.Rajkumar, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for the respondents.

2. The petitioner herein was placed under suspension in contemplation of an enquiry into grave charges for the period between 03.10.1997 and 04.12.2001, when the suspension was revoked. Thereafter, nine charges were levelled against the petitioner, through a charge memo dated 28.05.1998, for certain irregularities, while he was functioning as an Inspector of Sericulture. The enquiry conducted therein ended in an order of punishment dated 10.12.2008, imposing the punishment of stoppage of increment for a period



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of one year, with cumulative effect. When the petitioner sought for regularization of his suspension period between 03.10.1997 and 04.12.2001 as duty period, the respondents, through the impugned order dated 01.03.2017, had regulated the period between 03.10.1997 and 30.10.2001 as not spent on duty as per Fundamental Rule (FR) 54-B-1(1), (5) & (7); between 31.10.2001 and 27.11.2001 as compulsory wait as per Ruling 3 of FR 9(6)(b); and between 28.11.2001 and 04.12.2001 as joining period as per FR 106. This order is put under challenge in the present writ petition.

3. The learned counsel for the petitioner placed reliance on two decisions of this Court and submitted that since the criminal case against the petitioner for the same delinquency had ended in acquittal, he is entitled for regularization of his suspension period as duty for all purposes.

4. The learned Government Advocate appearing for the respondents, on the other hand, submitted that as per FR 54-B-1, the Government has powers to regulate the period of suspension in any manner as it may feel fit and therefore, the impugned order cannot be found fault with.



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5. FR 54-B-1(1) of the Fundamental Rules of the Tamil Nadu

Government provides that when a Government servant, who has been suspended and reinstated, the authority competent to order reinstatement, can pass orders touching upon the pay and allowances to be paid to the Government servant during the period of suspension, as well as whether or not the said period shall be treated as period spent on duty. Thus, when the departmental proceedings ends in an order of punishment, the competent authority would be well within their powers to pass orders either by treating the period of suspension as spent on duty or even otherwise. The powers under FR 54-B-1(1) also empowers the respondents to treat the entire period of suspension or a portion of that as "not on duty".

6. The learned counsel for the petitioner would submit that in view of the petitioner's acquittal from the criminal case, he is entitled for regularization of the suspension period as duty for all purposes. The decision relied upon by the learned counsel for the petitioner in the case of ***R.Sengodan Vs. The Superintendent of Police*** passed in ***W.P.No.48009 of 2006, dated 21.09.2010***, as well as in the case of ***S.Ravichandran Vs. The Principal Secretary to Government, Home (Police-IV) Department and***



others passed in **W.P.No.1456 of 2015, dated 07.12.2021**, relates to a Government servant being kept on suspension for his involvement in a criminal case and who has subsequently been acquitted from the criminal charges. The Rule relating to such suspension is FR 54-B(9), which has got nothing to do with the petitioner's case in hand. The petitioner was neither placed under suspension for his involvement in the criminal case nor the nine charges relates to his involvement in the criminal case. While that being so, the decisions relied upon by the learned counsel may not be applicable.

7. The learned counsel for the petitioner also submitted that a prior opportunity should be given to the petitioner before regulation of his suspension, for which purpose, he relied upon the proviso to FR 54-B-1(3), which reads as follows:-

"(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended :

Provided that where such authority is of the



opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine."

8. The aforesaid Rule relates to the powers of the Government to regulate the suspension period, when the competent authority is of the opinion that the suspension period was wholly 'unjustified'. It is in this background, the proviso reads that an opportunity to make his representation should be given. On the other hand, there is no such proviso to Rule 54-B-1(1). Thus, FR 54-B-1(3) has no reference to play for orders passed under Rule 54-B-1(1) and therefore, the stand taken by the learned counsel for the petitioner in this regard also cannot be sustained.



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9. In view of the powers exercised by the respondents under FR 54-B-

1(1), I do not find any infirmity in the present impugned order. Accordingly,
the Writ Petition stands dismissed. No costs.

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Index:Yes
Internet:Yes
Speaking order
hvk

To

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- 2.The Director of Sericulture,
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M.S.RAMESH,J.

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