



W.P.No.17089 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>01.11.2022</i>
<i>Pronounced on</i>	<i>02.01.2023</i>

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17089 of 2014

and M.P.No.1 of 2014 & W.M.P.No.8610 of 2016

D. Sathiyaseelan

... Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 7.

2.The Additional Commissioner of Police,
Traffic, Vepery, Chennai – 7.

3.The Deputy Commissioner of Police,
Traffic, Chennai – 2.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the second respondent in Rc.No.783/30860/Tr.PR/2013--TZO.No.79/2014 dated 31.01.2014 and that of the 1st respondent's proceedings in Rc.No.Estt.IV(1)/100/37796/2014--CPO No.1163/2014 dated 13.05.2014, quash the same and consequently direct the respondents to treat the different spell of period as duty for all purposes and to extend all benefits of both monetary and service benefits thereto.

For Petitioner : Mr.L. Chandrakumar



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For Respondents : M/s.Rajarajeswari,
Government Advocate

ORDER

For his involvement in a criminal case, the petitioner herein while serving as a Police Constable, was placed under suspension from service through an order dated 24.05.1995. When the suspension order came to be challenged, interim orders were passed by the Tamil Nadu Administrative Tribunal, pursuant to which the petitioner was reinstated back into service on 01.06.2000. In the meantime, the departmental proceedings ended with a punishment of dismissal from service on 25.10.2005. When the punishment was challenged before this Court in WP.No.314 of 2006, the order of punishment was set aside and the matter was remitted back to the Disciplinary Authority by this Court through its order dated 20.04.2009. In the meantime, the criminal case against the petitioner ended with a judgment of acquittal. On remand, the Disciplinary Authority had once again awarded the punishment of dismissal from service on 11.06.2009 which came to be confirmed in appeal on 13.07.2009. This order was once again challenged by the petitioner in WP.No.14937 of 2009 by order dated 24.03.2010 and once



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again the matter was remitted back to the Appellate Authority for rehearing the same and passing fresh orders. In this background, an order dated 20.08.2010 came to be passed whereby, the original punishment of dismissal from service was modified into a reduction of pay in three stages, for three years, with cumulative effect. Accordingly, the petitioner was permitted to join duty on 27.08.2010 and thereafter, he superannuated from service on 31.05.2006.

2. When the petitioner had sought for regularisation of the period of his suspension and the period when he was out of the employment, the second respondent herein had regulated these periods, in the following manner, through an order dated 31.01.2014, while restoring the petitioner's pay:

His suspension period from 24.05.1995 to 31.5.2000 and out of employment period from 25.10.2005 to 26.08.2010 were settled in TZO No.12/2014 (Rc.No.675/25505/Tr.PR/2013) dated 16.12.2013 as detailed below:-

- i) 24.05.1995 to 31.5.2000 - 1835 days Leave without pay (P)*
- ii) 25.10.2005 to 31.03.2006 - 158 days Earned Leave (P)*
- iii) 01.04.2006 to 26.08.2010 - 1589 days Leave without pay (P)*

3. Subsequently, this order came to be ratified by the first



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respondent herein on 13.05.2014. Challenging these orders, the present Writ Petition has been filed.

4. While, the learned counsel for the petitioner placed reliance on FR 54-B(1) Ruling (9) and submitted that when the petitioner has been acquitted from the criminal charges and has also been imposed with a modified punishment, his services during the suspension period and the period when he was out of employment, requires to be treated as “duty period” for all purposes, the learned Government Advocate submitted that the petitioner was not fully exonerated from the charges and therefore, the impugned orders need not be interfered with.

5. As per the Fundamental Rule 54-B(1) Ruling (9), where a Government servant is placed under suspension in view of the fact that a criminal complaint has been registered against him or is dismissed from service on the ground of conduct which has led to his conviction for a criminal charge and when he is subsequently reinstated in service on his acquittal by the Court, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of



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suspension, shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been otherwise entitled to.

6. The petitioner was placed under suspension on 24.05.1995 for his involvement in a criminal case and was later reinstated back into service on 01.06.2000. Thereafter, when he was dismissed from service on 25.10.2005 and his punishment of dismissal came to be modified into pay reduction for three stages for three years, he was permitted to join duty on 27.08.2010. During this period between 24.05.1995 to 26.08.2010, he was out of employment. By applying FR 54-B(1) Ruling (9), the suspension period between 24.05.1995 to 31.05.2000 and the period when he was out of employment between 25.10.2005 to 26.08.2010, requires to be regarded as having been prevented from discharging his duties and consequently this period of his absence including the period of suspension has to be treated as “duty period” for all purposes. However, the respondents have chosen to treat the aforesaid period of absence as Leave Without Pay and Earned Leave, which is quite contrary to FR 54-B(1).



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7. This apart, for the proven charges of misconduct, the petitioner was already awarded a punishment of pay reduction for three stages for three years. When the Fundamental Rule mandates the period of suspension as well as the period when he was out of employment, to be treated as “duty period”, the proceedings of the respondents treating such periods as Leave Without Pay and Earned Leave, may amount to another punishment, which would lead to a double jeopardy. In service jurisprudence, such a double jeopardy is impermissible, since a Government employee cannot be punished twice for the same set of proven charges. On this ground also, the impugned proceedings of the respondents cannot be sustained.

8. For all the foregoing reasons, the impugned orders dated 31.01.2014 and 13.05.2014 on the file of the second and first respondents respectively, are quashed. Consequently, there shall be a direction to the respondents to treat the petitioner's suspension period between 24.05.1995 to 31.05.2000 and the period when he was out of employment from 25.10.2005 to 26.08.2010 as “duty period” for all purposes and thereby, extend all the monetary and service benefits that may have accrued in his



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favour, within a period of four (4) weeks from the date of receipt of a copy of this order.

9. With the aforesaid direction, this Writ Petition stands allowed.

No costs. Connected miscellaneous petitions are closed.

02.01.2023

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

Sni

To

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Traffic, Vepery, Chennai – 7.
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M.S.RAMESH,J.

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Pre-delivery Order in
W.P.No.17089 of 2014

02.01.2023