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W.P.No.21119 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.21119 of 2023

R.Sasikumar

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home Department, Fort St. George,
Chennai – 600 009.

2.The Additional Director General of Police,
Law & Order,
Chennai – 600 004.

3.Deputy Inspector General of Police,
Vellore Range, Vellore.

4.The Superintendent of Police,
District Police Office,
Vellore District.

5.The Vigilance Commission,
Secretariat,
Fort St. George,
Chennai – 600 009.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders passed by the 4th respondent herein in his proceedings C.No.B1/PR.No.13/2019 dated 26.05.2023 and quash the



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same and consequently direct the respondents herein to treat the period of suspension from 23.06.2008 to 30.05.2017 as duty for all purposes under Ruling 9 of Fundamental Rules 54, together with all consequential service and monetary benefits, within a time frame.

For Petitioner : Mr.G.Bala
for M/s.G.Bala and Daisy

For R1 to R5 : Mr.M.Alagu Goutham
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order passed by the 4th respondent in proceedings bearing C.No.B1/PR.No.13/2019, dated 26.05.2023, and to direct the respondents to treat the period of suspension from 23.06.2008 to 30.05.2017 as duty for all purposes under Ruling 9 of Fundamental Rules 54, together with all consequential service and monetary benefits, within a time frame.

2.The case of the petitioner is that he was placed under suspension by an order of suspension dated 23.06.2008 for involvement in a criminal case and thereafter, he was acquitted in the said criminal case, and hence, he is entitled for treatment of the period of suspension, i.e.,



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from 23.06.2008 to 30.05.2017, as duty period for all purposes, as per

Ruling 9 of Fundamental Rule 54. The petitioner has submitted various representations to the respondents in this regard. The grievance of the petitioner is that the 4th respondent, without application of mind, has passed an order dated 26.05.2023, stating that the request of the petitioner for settlement of suspension period from 23.06.2008 to 30.05.2017 as duty period will be considered only after receiving the concurrence from the Vigilance Commission, Secretariat, Chennai.

3.Mr.M.Alagu Goutham, learned Government Advocate, who takes notice for the respondents 1 to 5, contended that, before issuing orders dropping further action pursuant to the charges under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, necessary concurrence has to be obtained from the Vigilance Commission, Secretariat, Chennai, and only after receipt of such concurrence from the Vigilance Commission, the period of suspension can be treated as duty period.

4.Heard the learned counsel on either side and perused the entire materials available on record.



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5.The petitioner was placed under suspension by order of suspension dated 23.06.2008 for involvement in a criminal case. However, the criminal case ended in acquittal, which is not in dispute. Rule 54(9) of the Fundamental Rules reads as follows :

“54. ...(9) Where a Government servant is,

a) placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or under trial; or

b) dismissed or removed from service or compulsorily retired on the ground of conduct which led to his conviction on a criminal charge and the Government servant is subsequently reinstated in service on his acquittal by the Court, either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension or dismissed or removed or compulsorily retired from service.”



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A perusal of the above Rule makes it clear that, at the moment a Government Servant is reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to. In such view of the matter, the authorities cannot go beyond the Rules and the period of suspension is liable to be treated as duty period.

6.Though the learned Government Advocate referred to Rule 54(11) of Fundamental Rules, Sub-Clause (i) to Rule 54(11) makes it clear that the period of suspension shall be treated as duty if there is a specific order or direction of a Court of competent jurisdiction to this effect notwithstanding the fact that a penalty has been imposed in the departmental inquiry. In the case on hand, it is relevant to note that the petitioner has been re-instated into service pursuant to the order of this Court in W.P.No.8755 of 2017, dated 12.04.2017. In such view of the



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matter, there is no impediment in treating the period of suspension as duty

period as per Rule 54(9) of Fundamental Rules.

7. Accordingly, the impugned order of the 4th respondent, dated 26.05.2023, is quashed and the respondents are directed to treat the period of suspension from 23.06.2008 to 30.05.2017 as duty period as per Rule 54(9) of Fundamental Rules, within a period of two months from the date of receipt of a copy of this order.

8. As a result, this writ petition is allowed. No costs.

18.07.2023

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Internet : Yes

Index : Yes / No

Neutral citation : Yes / No

To

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Home Department, Fort St. George,
Chennai – 600 009.

2. The Additional Director General of Police,
Law & Order,
Chennai – 600 004.



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N. SATHISH KUMAR, J.
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