



W.P.22157 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.22157 of 2019

A.G.Mohamed Inayathullah

... Petitioner

Vs.

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
District Police Office,
Nagapattinam District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent herein in his proceedings C.No.A1/12746/2019 dated 11.07.2019 and quash the same and consequently direct the respondent herein to treat the period of suspension from 17.09.1993 to 02.08.2006 as duty for all the purposes under rule 9 of the Fundamental rules 54 and upgrade the petitioner as Special Sub Inspector of police notionally with effect from 2011 within a time frame by this Court.



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For Petitioner : Mr.G.Bala

For Respondents : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 2nd respondent dated 11.07.2019 and consequently direct the respondents to treat the period of suspension from 17.09.1993 to 02.08.2006 as duty for all the purposes under Rule 9 of the Fundamental rules, 1954 and upgrade the petitioner as Special Sub Inspector of Police notionally with effect from 2011 within a time frame by this Court.

2.It is the case of the petitioner that the petitioner was joined as Police Constable Grade II on 01.03.1986 and he was promoted as Grade I Police Constable in the year 2001. Further, he was promoted as Head Constable in 2019. While he working as Grade II Police Constable he was placed under suspension on 13.02.1993 for involving as accused in Crime No.796/1991



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for the offences under Section 342, 323 of the Indian Penal Code in Mayiladuthurai Police Station and awarded a punishment for removal from service with effect from 07.04.1994 in P.R.No.57/1993 under Rule 3(b) dated 07.04.1997. Further, he was reinstated into service with effect from 02.08.2006 as per the orders of this Court in W.P.No.32500 of 2005 dated 20.06.2006 with a condition to conduct a fresh enquiry. Therefore, the period of removal from service from 07.04.1992 to 02.08.2006 shall deemed to have been spent on suspension under Rule 3(d) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The criminal case registered against the petitioner was dropped as no charge sheet was laid against him. Therefore, under the provision of Rule 9 of the Fundamental Rules, 1954, the period of out of employment from 13.02.1993 to 02.08.2006 shall be treated as a duty for all purposes. The petitioner is entitled for restoration of the original seniority.

3.The learned counsel appearing for the petitioner would submit that the petitioner was placed under suspension only for the involvement of a



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Criminal case and the said Criminal case was closed for non prosecution.

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As per rule 9 of the Fundamental Rules, the entire period of out of employment has to be treated as duty. Further, the Deputy Superintendent of Police, Mayiladuthurai, had conducted an oral enquiry and the crucial witnesses ie., the complainant had not attended the oral enquiry and he had already expired and the other three individual witnesses had categorically denied the allegations against the petitioner. The said witnesses were treated as hostile by the Enquiry Officer and they were cross examined by the Enquiry Officer. The petitioner had also cross examined PW6, who had registered an FIR against the petitioner. He categorically stated that he had not conducted the investigation in the said criminal case. Therefore, the Criminal case against the petitioner was closed under Section 468 of CrPC. Therefore, it is clear that neither in the departmental proceedings nor the criminal case the allegation the petitioner was not proved. Therefore, there was no evidence available to prove the charge against the petitioner. During the enquiry, the Enquiry Officer, had relied upon the alleged statements said to have been recorded behind the back of the petitioner during the RDO



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enquiry and held the charge against the petitioner as proved. The representation of the petitioner was not taken into account by the 2nd respondent, who had imposed the punishment of postponement of increment for the period of six months without cumulative effect. Hence, the impugned order is liable to be set aside.

4.The learned Additional Government Pleader appearing for the respondents would submit that the petitioner involved in a criminal case and awarded a punishment for removal from service from 07.04.1997 as per P.R.No.57 of 1993 dated 07.04.1997. Based on the orders of this Court, the petitioner was reinstated into service. Subsequently, On 02.08.2006 the petitioner was suspended from service and further the petitioner taken back for duty on 09.10.2006. The out of employment period spent by the petitioner from 17.09.1993 to 08.10.2006, i.e., 4858 days treated as leave without pay. Further, a fresh enquiry was conducted in P.R.No.57 of 1993 and awarded a punishment of postponement of increment for 6 months without cumulative effect by order of the 2nd respondent dated 01.06.2009.



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Further, the petitioner was upgraded as Head Constable on 09.04.2014, after the completion of 15 years of service on duty. Though the petitioner has passed 33 years of service he has performed duty 15 years only and he will be completing 25 years service only on 29.04.2024.

5. Further, the learned counsel would submit that the petitioner submitted a Petition dated 05.07.2019 requesting to upgrade a Special Sub Inspector of Police which was rejected by the 2nd respondent dated 11.07.2019. Further as per G.O.No.15, Home Department (Police V), dated 07.01.2010, the Government delegated the powers to the Superintendents of Police and the Commissioners of Police to upgrade Grade II police Constables and Grade I Police Constables on completion of ten years of service from the first month succeeding the date of completion of ten years and to upgrade Grade II police Constables as Head Constables on completion of 5 years of service in the rank of Grade I Police Constables from the 1st month of succeeding the date of completion of five years.



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6. Similarly, the Deputy Inspector General of Police and the Commissioner of Police were empowered to upgrade as Special Sub Inspector of Police those who have completing 25 years of service as Head Constable from the month of succeeding the date of completion of 25 years of service. This upgradations were directed to be given to be those who could not be promoted to the higher post for the want of vacancy. Therefore the said G.O. is not applicable to the petitioner.

7. On a perusal of the available records, it is seen that the criminal case registered against the petitioner was dropped as no charge sheet was laid against him. The allegations levelled against the petitioner was the involvement in a criminal case and the criminal case itself has been closed. Subsequently, an enquiry has been conducted and the punishment of removal from service was imposed. During the enquiry, the Enquiry Officer did not give opportunity to the petitioner to conduct the enquiry in a proper perspective manner and without following the principles of natural justice.



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Thereafter, the petitioner filed a Writ Petition to quash the removed from service by the Authorities and this Court remitted back the matter for conducting fresh enquiry. Thereafter, the petitioner was reinstated into service on 09.10.2006. As per G.O.No.15, Home Department (Police V), dated 07.01.2010, the Government delegated the powers to the Superintendents of Police and the Commissioners of Police to upgrade Grade II police Constables and Grade I Police Constables on completion of ten years of service from the first month succeeding the date of completion of ten years and to upgrade Grade II police Constables as Head Constables on completion of 5 years of service in the rank of Grade I Police Constables from the 1st month of succeeding the date of completion of five years. Similarly, the Deputy Inspector General of Police and the Commissioner of Police were empowered to upgrade as Special Sub Inspector of Police those who have completing 25 years of service as Head Constable from the month of succeeding the date of completion of 25 years of service. This upgradations were directed to be given to be those who could not be promoted to the higher post for the want of vacancy. Therefore the said



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G.O. is not applicable to the petitioner. Under the provision of Rule 9 of the Fundamental Rules, the period of out of employment from 13.02.1993 to 02.08.2006 shall be treated as a duty for all purposes. Rule 9 of the Fundamental Rules 1954, is as follows:

“Where the Government servant is

(a) placed under suspension in view of the fact that the 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 lead to his conviction on the 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 charges has not been proved against him or by giving benefit of doubt or any other technical ground, he must be regraded 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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8.As per the above said provision, the Government servant who has been acquitted by the Competent Court of Law is not only entitled for reinstatement but also entitled to all the consequential service and eligible monetary benefits, if he had continued in service without any break. The petitioner herein had completed fifteen years of service only. As per the Government Order, the petitioner is not entitled for any upgradation as Special Sub Inspector of Police.

Accordingly, this Writ Petition is disposed of. The period of suspension has to be taken into account for the purpose of calculating pension and other retirement benefits. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1.The Director General of Police,
Chennai.

2.The Superintendent of Police,
District Police Office,
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V.BHAVANI SUBBAROYAN, J,

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