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W.P.No.30886 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.30886 of 2022

A.Stanely

... Petitioner

Vs.

1.The Commissioner of Police,
Avadi Commissionerate,
Avadi, Chennai – 54.

2.The Joint Commissioner of Police,
West Zone, Greater Chennai Police,
Ambattur, Chennai – 58.

... 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 in connection with the impugned order passed by the 2nd respondent in Rc.No.L.1/(2)/445/10609(A)/2016 in WZO.No.397/2016, dated 15.06.2016, and the impugned rejection order passed the 1st respondent in Rc.No.PR.I/286/12475/APC/2022, dated 29.10.2022, and quash the same and to further direct the respondents herein to treat the out of employment period from 23.01.1999 to 16.11.2014 as duty for all purposes except back wages as per the Fundamental Rule 54-A(3).



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For Petitioner : Mr.K.Venkatramani
Senior Counsel
for Mr.S.Sivakumar

For R1 and R2 : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent, dated 15.06.2016, and the rejection order passed the 1st respondent, dated 29.10.2022 and to direct the respondents herein to treat the out of employment period from 23.01.1999 to 16.11.2014 as duty for all purposes except back wages as per the Fundamental Rule 54-A(3).

2.It is the case of the petitioner that he joined the service as Grade-II Police Constable on 25.10.1984 and was promoted as Grade-I Police Constable and Head Constable in the year 2021. In the year 1999, he was implicated in a criminal case for the offences under Sections 341, 326, 427 IPC r/w. Section 4(1)(J) of TNPPD Act and subsequently, departmental proceedings were initiated against the petitioner and ultimately, he was removed from service in the departmental proceedings, challenging which the petitioner filed a writ petition in W.P.No.29189 of 2008 before this Court. This Court, by its order dated 28.11.2013 in



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W.P.No.29189 of 2008, set aside the punishment of removal from service

and directed the respondents to reinstate the petitioner into service, treating

the absence period as leave available to his credit. Though this Court held

that the petitioner is not entitled to get any monetary benefits, it is the

contention of the petitioner that he is entitled for the service benefits like

continuity of service, seniority, etc. It is the further contention of the

petitioner that the interregnum period has to be regularised as per

Rule 54-A(3) of Fundamental Rules, however, the respondents, relying

upon the wrong provisions, treated the out of employment period as non-

duty period. Aggrieved by the same, the petitioner has filed the present

writ petition for a direction to the respondents to treat the out of

employment period as duty period with continuity of service, though the

petitioner is not entitled to claim any backwages.

3.A counter affidavit has been filed to the effect that, while

allowing the writ petition filed by the petitioner in W.P.No.29189 of 2008,

this Court has directed the respondents to treat the period of absence from

23.02.1999 as leave available to the credit of the petitioner. Hence, the

claim of the petitioner to treat the period of absence as duty period, is

legally unsustainable. It is stated that the out of employment period from



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23.02.1999 to 16.11.2014 has been settled with eligible leave as follows :

- i. 23.02.1999 to 13.04.1999 – 50 days as E.L. (PA)
- ii. 14.04.1999 to 12.07.1999 – 90 days as UEL (PA)
- iii. 13.07.1999 to 16.11.2014 – 5607 days as LWP (PA)

Relying on the counter affidavit, it is the contention of the learned Additional Government Pleader that, since the period of absence has already been settled as per the directions of this Court, the prayer in the present writ petition cannot be sustained in the eye of law.

4.Learned Senior Counsel appearing for the petitioner mainly relied upon Rule 54-A(3) of Fundamental Rules, which makes it clear that, even if the backwages are not payable, the period of absence shall be treated as duty for all purposes. If it is treated as duty, the petitioner is entitled to continuity of service, though he is not entitled to backwages as ordered by this Court. Hence, the learned counsel contended that the impugned order has been passed without proper application of Fundamental Rules.



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5. *Per contra*, Mr.V.Jeevagiridharan, learned Additional

Government Pleader, appearing for the respondents, submitted that Rule 54-A(1) of Fundamental Rules is applicable to the case on hand and as per the said Rule, the respondents have taken note of the directions given by this Court while setting aside the order of punishment and the out of employment period has been settled as indicated in the counter affidavit (extracted *supra*). Therefore, the learned Additional Government Pleader submitted that the petitioner is not entitled to continuity of service.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the entire materials available on record.

7. The fact that the punishment of removal from service has been set aside by this Court, is not in dispute. While setting aside the punishment, this Court has directed the respondents to reinstate the petitioner with a direction that the period of absence should be treated as eligible leave and made it clear that the petitioner is not entitled to any backwages or monetary benefits. Now, the question is with regard to the regularisation of the period of absence.



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8.Rule 54-A of the Fundamental Rules, reads as follows :

“54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of subrule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled to had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period which, in no case



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shall exceed sixty days from the date on which the notice has been served as may be specified in the notice:

Provided that any payment under this sub-rule to a Government servant shall be restricted to a period of three years immediately preceding the date on which the judgment of the court was passed, or the date of retirement on superannuation of such Government servant, as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal,



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removal or compulsory retirement as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.”

9.Rule 54-A(3) makes it clear that the period of absence including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, shall be treated as duty for all purposes. Rule 54-A(1) makes it clear that, when an order of removal from service is set aside the Court of Law and the Government servant is reinstated in service without holding any further inquiry, the period of absence from duty shall be regularised in accordance with the provisions of Sub-Rule (2) or (3) subject to the directions, if any, of the Court. Rule 54-



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A(2)(ii) makes it clear that the intervening period of absence between the date of dismissal and the date of judgment of the Court, including the period of suspension, shall be regularised in accordance with the provisions contained in Sub-Rule (5) of Rule 54. Rule 54(5) reads as follows :

“54. ... (5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated for any specified purpose :

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.”

10. On a combined reading of the above Rules, this Court is of the view that, once the punishment of removal from service is set aside by the Court of Law, Rule 54-A(3) has to be invoked. Therefore, in the given case on hand, the exact Rule to be applied is Rule 54-A(3) of the



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Fundamental Rules. Whereas, the respondents have been carried away by

the directions of this Court. While setting aside the punishment, this Court

has, in fact, made it clear that the petitioner is not entitled to any backwages or any other benefits and only in that context, a direction is given to treat the period of absence as leave. Since there is a specific Rule available in the Statute, viz., Fundamental Rule 54-A(3), providing that the period of absence has to be treated as continuity of service, particularly when the backwages is withheld and decided not to be paid to the Government servant by the Court of Law, the impugned order is unsustainable in the eye of law.

11. Accordingly, the impugned orders are quashed and the respondents are directed to treat the period of absence as duty only for the purpose of continuity of service and it is once again made clear that the petitioner is not entitled to any backwages. This writ petition is allowed. No costs.

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Speaking order / Nonspeaking order

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N. SATHISH KUMAR, J.
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