



WEB COPY



W.P.No.31638 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.09.2023**

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.31638 of 2019

And

W.M.P.No. 4404 of 2020

K.Arunachalam

... Petitioner

-Vs-

1. The Additional Director
Survey and Land Records Department
Chepauk, Chennai – 600 005.

2. The Assistant Director of Survey and Land Records
Thiruvallur.

3. The State of Tamil Nadu rep.
by its Principal Secretary
Revenue Department
Fort St. George, Chennai -9.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus calling for the records
relating to the second respondent's order made in Na.Ka.A7.295/10 dated



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15.05.2018 to quash the same and to consequently direct the respondents to regulate the services between the date of suspension and that of date of superannuation of the petitioner as Duty for all purposes as per Rule 54-B of Fundamental Rules and the Rulings thereunder and to extend all benefits both service and monetary including revision of appropriate pension and other pensionary benefits thereto.

For Petitioner	:	Mr. L.Chandrakumar
For Respondents	:	Mr. T.K.Saravanan Government Advocate

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus calling for the records of the second respondent / the Assistant Director of Survey and Land Records, Thiruvallur, dated 15.05.2018 and to quash the same and to direct the respondents to regulate the services between the date of suspension and the date of superannuation of the petitioner as duty for all purposes as per Rule 54(b) of Fundamental Rules and the Rulings thereunder and also to extend the service and monetary benefits.



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2. The petitioner was working as Sub Inspector of Survey at Ambattur. He was placed under suspension on the allegation that he demanded bribe amount. A criminal complaint was also lodged and other investigation, the learned Special Judge / Chief Judicial Magistrate, Tiruvallur, had taken cognizance of the final report as Special Case No. 18 of 2010. By a Judgment dated 24.05.2017, the petitioner was acquitted of all charges.

3. Simultaneously, disciplinary proceedings had also been initiated against the petitioner herein. But the issue before this Court is the issue relating to the period during which the petitioner was placed under suspension. He continued to be in suspension till the date of acquittal in the criminal Court. Thereafter, disciplinary proceedings proceeded and since the charges had been held proved, a punishment of recovery of Rs.3,000/- from the pension of the petitioner for a period of three years was imposed by proceedings dated 05.04.2018.



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4. In this Writ Petition, the issue is about the period of suspension which commenced on 13.01.2010 and continued till his date of retirement on attaining the age of superannuation on 31.07.2014 and whether the same can be considered as one on duty and of payment of all monetary and other benefits for the said period.

5. In the impugned order, however, the respondents proceeded to treated the period between 13.01.2010 and 09.09.2010 for a total period of 240 days as leave on Earned Leave. The respondents also treated the period from 10.09.2010 to 08.03.2011 for a period of 180 days as a period of leave on half pay. The respondents thereafter took the remaining period from 09.03.2011 till 31.07.2014 for a period of 1241 days as leave on loss of total pay. This order of the respondents is tested in the present Writ Petition.

6. A counter affidavit had been filed on behalf of the respondents wherein such classification of the leave period had been justified on the



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ground that clarification had been issued in Fundamental Rules 54 in G.O.Ms.No. 261, Personnel and Administrative Reforms (FR-II) Department dated 04.08.1992. It had been stated in the counter affidavit as follows:-

"

<i>Points</i>	<i>Clarification</i>
Where a Government Servant is acquitted by Court for a criminal offence but subsequently imposed a penalty in the departmental action taken under Rule 17(b) of the Tamil Nadu Civil Services (CCA) Rules for the same charges not with standing the fact that he was acquitted earlier by the Court.	If he/she is reinstated in view of the specific order or direction of the Court the period of suspension has to be treated as duty, even though subsequently a penalty is imposed on him/her for the same charges in this departmental action and in other cases the period of suspension may be regulated under Fundamental Rule 54.

"

7. It had thereafter been stated that as per FR -54 and the clarification issued in G.O.Ms.No. 261 dated 04.08.1992, the period of suspension had been regularised as stated in the impugned order. It had also been stated that in accordance with the same, necessary pay and allowance for the said period had been disbursed to the petitioner herein after adjusting the subsistence allowance already paid. Even though not



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specifically stated in the counter affidavit, during the course of arguments on the side of the respondents, reliance was also placed G.O.Ms.No. 157, Personnel and Administrative Reforms (FR.III) Department dated 24.06.1994 and very specifically to the following:-

“3. According to Rule 17(1) of the above Rules, a permanent Government Servant in Basic Service who has not completed five years of regular service, earns leave at the rate of one-twenty second of the period spent on duty subject to a maximum of 60 days and one who has completed five years of regular service earns leave at the rate of one-eleventh of the period spent on duty subject to a maximum of 240 days. If a Government Servant in Tamilnadu Basic Service is an approved probationer, he shall earn leave as in sub-rule (1) of rule (17) and if he has not completed his probation, he shall earn leave at the rate of one-twenty-second of the period spent on duty subject to a maximum of thirty days. (Rule 20(ii) of TNLR).”



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8. It had been contended that the petitioner had been subsequently imposed with punishment of cut of Rs.3,000/- per month from the pension and it has therefore been stated that the petitioner should suffer for the period under which he was under suspension and that the respondents are justified in treating the period as aforementioned as earned leave, earned leave on private affairs with half pay and leave on loss of pay.

9. Heard arguments.

10. The learned counsel for the petitioner had placed reliance on FR 54(b) and more particularly to clauses 9 & 10 which are as follows:-

“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 trial; or



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(b) dismissed or removed from service or compulsorily retired on the ground of conduct which has 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, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, 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 services.

10. When a Government servant, who was suspended, is fully exonerated of the charges



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on appeal, the period of suspension shall be treated as duty; and he shall be entitled to pay and allowances for the entire period of suspension, provided the period of suspension ended before the date of his superannuation.”

11. The learned counsel did not complicate the issue but gave a plain reading of the said provision and stated that in accordance with Rule 54(b) if a Government Servant had been dismissed or removed from service which had led to conviction and later had been acquitted, then the period of his absence including the period of suspension shall be treated as duty for all purposes and that he should be paid full pay and allowance which he would be entitled if he had not been under suspension.

12. The issue therefore comes down to considering as to how the period of suspension would have to treated had the petitioner not been suspended. It would be only logical to hold that he would have been permitted to discharge his duties and for that he would have been paid normal salary. Though he was placed under suspension from 13.01.2010 till



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the date of his retirement on attaining the age of superannuation, since he had been acquitted of all charges, and since the Fundamental Rules provided that the said period of suspension should be treated as one of duty for all purposes, it would only follow that the petitioner is entitled to all benefits which would have accrued to him, had he worked. The reliance on the respondent to adjust the period under three separate heads, earned leave for 240 days and earned leave on half day on private affairs and as substantial period as leave with loss of pay cannot be justified.

13. In the impugned order, however, there is no reference either to G.O.Ms.No. 157 or to FR – 54 (b) which had been extracted above. It would only be appropriate that the respondents apply their mind to this particular aspect. In view of that particular reasonings, the impugned order is set aside.

14. A direction is given to the second respondent /Assistant Director of Survey and Land Records, Thiruvallur, to re-examine the case of



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the petitioner particularly because in the criminal case while passing the order of acquittal, the learned trial Judge had stated, *“in the above said circumstances and discussions supra, this Court has come to the conclusion that the prosecution has miserably failed to prove its case and the charges levelled against both A1 and A2 beyond all reasonable doubts.”*

15. The extract above would show that the charges have not been proved at all and as a matter of fact, very strong words have been used *“miserably failed to prove its case”*. The entire exercise by the second respondent should be completed within a period of 12 weeks from the date of receipt of a copy of this order and if the second respondent is of the opinion that since the petitioner had retired and that he would not have the necessary powers to pass necessary orders, he may forward the papers to the third respondent for appropriate directions but still the time period of 12 weeks shall be retained. The Writ Petition stands disposed of. No order as to costs.



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C.V.KARTHIKEYAN,J.

vsg

16. In view of this particular direction given in the Writ Petition,

W.M.P.No. 4404 of 2020 is dismissed.

vsg

21.09.2023

Index: Yes/No

Neutral Citation: Yes/No

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