



W.P.No.34391 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34391 of 2018

and

WMP.No.39976 of 2018

S.Ravichandran

... Petitioner

Vs.

1.The State rep. by
The Director General of Police,
Mylapore,
Chennai-600 004.

2.The Commissioner of Police,
Vepery,
Chennai-600 007.

3.The Deputy Commissioner of Police,
Central Crime Branch,
Vepery, Chennai-600 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Endorsement dated 01.10.2018 bearing Rc.No.08/3619/PR IV (2)/2013, on the file of the second respondent Commissioner of Police and quash the same and further direct the second respondent Commissioner of Police to treat the out of



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employment period of the petitioner from 28.01.2011 to 18.02.2017 as duty and to disburse the back wages with all the emoluments to the petitioner.

For Petitioner : Mrs.Dhakshayani Reddy, Sr. Counsel
for Mr.S.Mohamed Uduman

For Respondents : Mr.D.Gopal, GA

ORDER

The period of petitioner's unemployment from the date of his dismissal to the date of the order passed by this Court, setting aside the punishment was treated as 'eligible leave including extra-ordinary leave to the extent' by an order dated 01.10.2018.

1.1. On charges of unauthorised absence, the petitioner was treated as 'desertor' and after conclusion of disciplinary proceedings, he was dismissed from services by the first respondent on 28.01.2011. His punishment was modified into one of compulsory retirement by the proceedings of the first respondent herein dated 24.09.2012. To the challenge made to the order of punishment, this Court had passed an order in W.P.6706 of 2013 dated 29.06.2017, setting aside the punishment of the first respondent dated 24.09.2012 and remanded the matter back to the third respondent for imposition of a minor



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punishment. In consequence to such orders, the third respondent therein had imposed the punishment of 'deferred black mark for six months' on 15.09.2017.

1.2. When the petitioner had sought for regulating his period of non employment between 28.01.2011 to 18.09.2017, the impugned endorsement order dated 01.10.2018 was passed by the second respondent herein, stating that his request cannot be considered as per FR 54 Sub Rule 4 & 5 of the Fundamental Rules of the Tamil Nadu Government and consequently, ordered that the period of non employment would be treated as 'eligible leave including extra-ordinary leave to the extent. Challenging this order, the present Writ Petition has been filed.

2. Heard Mrs.Dhakshayani Reddy, learned Senior counsel for the petitioner and Mr.D.Gopal, learned Government Advocate appearing for the respondents.

3. The learned Senior counsel for the petitioner submitted that when the original order of punishment of dismissal was set aside by this Court, the period of non employment requires to be treated as 'duty



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period' for all purposes and therefore, the impugned endorsement order, cannot be sustained.

4. Per contra, the learned Government Advocate placed reliance on the averments made in the counter affidavit and submitted that, the petitioner had deserted from the force on his own volition and was hence treated as a 'desertor'. Ultimately, he was awarded with a minor punishment of 'deferred black mark for six months'. In view of the punishment imposed, the respondents are justified in applying FR 54 Sub Rule 4 & 5 to regulate the period of non employment and hence, there is no infirmity in the said order.

5. While FR 54 relates to regulation of period of suspension on reinstatement on 'appeal', FR 54-A relates to regulation of pay of dismissed persons when the 'Court' sets aside the punishment. For the sake of convenience FR 54 Sub Rule 4 & 5 are extracted hereunder:

"Rule 54.-Regulation of period of suspension on re-instatement on appeal:

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance



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with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowance to which he would have been entitled, 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 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 orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period



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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. Explanation.—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of six months in the case of non-permanent Government servant; and

(b) leave of any kind in excess of five years in the case of a permanent Government servant or an approved probationer.”

6. As per the aforesaid Rules, except in cases where the Government servant is fully exonerated, in all other cases, when the order of dismissal is set aside by the Reviewing Authority, the period of suspension shall not be treated as the period spent on duty. The



aforesaid Rule would apply only in cases where the order of dismissal, removal or compulsory retirement has been set aside by the "Appellate or Reviewing Authority".

7. On the other hand, when the order of dismissal or removal or compulsory retirement is set aside by the Court of Law, the regulation of the period of suspension would be governed by FR 54-A Rule 3 which reads as hereunder:

"Rule 54-A.-Regulation of pay of dismissed person when Court set aside the punishment:

(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, removal or compulsory retirement as the case may be."



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8. As per FR 54-A (3), when a "Court of Law" sets aside the punishment of dismissal, removal or compulsory retirement from services, the period of suspension shall be treated as 'duty' for all purposes.

9. To sum up, while the regulation of period of suspension under Rule 54 would apply to the orders passed by the Appellate and Reviewing Authority, Rule 54-A would apply for the orders passed by a Court of law.

10. In the instant case, the third respondent herein had originally passed the order of dismissal on 28.01.2011, which was modified by the first respondent into one of compulsory retirement on 24.09.2012. Ultimately, this Court in its order dated 29.06.2017 passed in W.P.No.6706 of 2013, had set aside the order of dismissal, which was modified into one of compulsory retirement. In this background, the third respondent herein had passed an order, modifying the punishment of compulsory retirement into "deferred black mark for six months". Thus, the respondents ought to have applied FR 54-A (3) for regulating the suspension period and not FR 54 Sub Rule 4 & 5, since



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the punishment of Compulsory Retirement was set aside by this Court, on the merits of the case. Thus, the impugned order, refusing to treat the petitioner's non employment period between 28.01.2011 to 18.09.2017 as duty period, cannot be sustained.

11. Insofar as the objections raised by the learned Government Advocate that since the petitioner was awarded with the punishment of “deferred black mark for six months”, they would be entitled to regulate the period of suspension is concerned, the Hon'ble Full Bench of this Court in the case of ***The Deputy Inspector General of Police, Thanjavur Range, Thanjavur Vs. V. Rani*** reported in **2011 (3) LW 673**, had held that, there cannot be any embargo put on the right of a Government servant for any benefits during the check period of one year in the case of censure. Following the decision of the Hon'ble Full Bench, a learned Single Judge of this Court in the case of ***A.Basheer Ahamed Vs. The Superintendent of Police, Dindigul District, Dindigul*** reported in **2019 SCC OnLine Mad 22503**, had equated the punishment of censure to that of “black mark” and held that the denial of promotion on the ground that the punishment of “black mark” has been imposed, cannot be sustained. The relevant portion of the order reads as under:



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"14.The contention of the petitioner that the punishment of black mark is not contemplated, has no subsistence, in view of the specific provisions. The contention of the respondent that the punishment of black mark in the case of Head Constable and Constables is equivalent to the punishment of censure as in the case of Superior Officers is accepted. Earlier, the Government issued G.O.Ms.No.368, Personnel and Administrative Reforms (Personal-S) Department, dated 18.10.1993, giving instructions regarding panel for appointment by promotion by direct recruitment / by transfer. This Government Order was questioned before this Court and the Honourable Full Bench of this Court had an occasion to deal with the same and held that no embargo can be put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period, viz., one year, in the case of censure.

15.The position, as held by the Honourable Full Bench of this Court in the judgment above referred to, squarely applicable to the case of the petitioner. It is admitted that the petitioner has suffered a minor punishment of black mark and there is no currency, after the punishment of black mark was imposed. Hence, there can not be



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any postponement of upgradation. The petitioner was considered for upgradation and granted upgradation. It was only later, the upgradation was modified by giving effect to the upgradation with effect from 25.07.2001, instead of 25.07.2000. As per the judgment of Honourable Full Bench of this Court, the postponement of upgradation for one year, in view of the punishment of black mark, is illegal. ..."

12. The aforesaid ratio denying promotion to the Police Constables by quoting the punishment of 'black mark' as an embargo can be equated and applied to all other benefits which the members of a police force may be entitled to, which would also include regulation of the suspension period. Thus, by drawing an analogy from the decision of the Hon'ble Full Bench, as well as the learned Single Judge referred supra, the objections raised by the learned Government Advocate in this regard, cannot be sustained.

13. Accordingly, the impugned endorsement order passed by the second respondent herein dated 01.10.2018, is quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders by treating the non employment



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period of the petitioner from 28.01.2011 to 18.02.2017 as 'duty period' for all purposes and thereby disburse of the service and monetary benefits to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index :Yes
Order : Speaking
Neutral Citation: Yes

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- 2.The Commissioner of Police,
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M.S.RAMESH,J.

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