



W.P.(MD)No.1928 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1928 of 2019

R.Krishnamoorthi

... Petitioner

vs.

The Commissioner,
Madurai Municipal Corporation,
Anna Maligai, Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, call for the records relating to the impugned order passed by the respondent in his proceedings Ma.Ni.2/11505/2013, dated 15.04.2015 and consequential order passed by the respondent in his proceedings Ma.Ni. 31/027187/2017, dated 05.07.2018 and to quash the same as illegal and consequently, to direct the respondent to treat the suspension period from 16.04.2013 to 24.03.2014 as duly period for the purpose of monetary benefit.

(Prayer amended, vide Court order, dated 17.03.2023, in W.M.P. (MD)No.4145 of 2019 in W.P.(MD)No.1928 of 2019)



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W.P.(MD)No.1928 of 2019

For Petitioner : Mr.V.P.Rajan

For Respondent : Mr.T.S.Mohamed Mohideen

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order dated 15.04.2015 and consequential order dated 05.07.2018 passed by the respondent and consequently to direct the respondent to treat the suspension period from 16.04.2013 to 24.03.2014 as duly period for the purpose of monetary benefits.

2.The petitioner was appointed as Technical Field Officer based on the ITI qualification in the respondent Corporation on 16.01.1978. While he was working as Electrician Grade I, the respondent placed the petitioner under suspension, vide order, dated 16.04.2013, on the ground that an enquiry into grave charges is pending. Further, a criminal case in Crime No.317 of 2013 for the offences punishable under Sections 409,



W.P.(MD)No.1928 of 2019

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379 read with 120 (b) of IPC was registered against the petitioner and seven others based on the complaint preferred by one Kandhappa alleging that the petitioner and others stole the property belonging to the Corporation.

3. In the meanwhile, the charge memo, dated 21.12.2013, was issued. The respondent revoked the suspension, vide order, dated 24.03.2014, without prejudice to the disciplinary proceedings. The enquiry was conducted and the enquiry officer had held that the charges are proved and the petitioner was imposed a fine of Rs.5,000/- as punishment, vide, order, dated 24.12.2014. In the criminal case, after investigation, a charge sheet was filed in C.C.No.6 of 22015 on the file of V Judicial Magistrate, Madurai. In the criminal case, the petitioner was acquitted from the charges. Subsequent to that the petitioner had attained superannuation and retired from service on 27.02.2015. The petitioner requested the respondent to treat the suspension period from



W.P.(MD)No.1928 of 2019

WEB COPY

16.04.2013 to 24.03.2014 as duty period for the purpose of monetary benefits and the same was rejected, vide order, dated 15.04.2015. Subsequently, after acquittal from the criminal case, vide judgment, dated 24.04.2017, the petitioner submitted a representation, dated 03.10.2017, requesting to treat the suspension period as duty period based on the acquittal in the criminal proceedings. Through the impugned order, dated 05.07.2018, the respondent rejected the same.

4.The respondent relied on the Fundamental Rules 54 B-1, Clause 10 and 11, wherein it is stated as under:

“10. When a Government servant, who was suspended, is fully exonerated of the charges 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. (G.O. Ms. No. 167, P&A.R. (FR-D.O. II) Department, dt. 10.6.1993-w.e.f. 26.9.1991.]

11. When a Government servant is placed under suspension where an enquiry into grave charges against him is pending or contemplated and a criminal proceeding are also instituted simultaneously in respect of the same charges and



W.P.(MD)No.1928 of 2019

WEB COPY

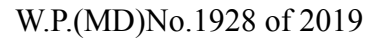
subsequently, he is reinstated into service, the period of suspension shall be-

(i) 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;

(ii) regulated under F.R. 54, only after the final order of the criminal court is delivered in which he is acquitted notwithstanding the fact that departmental enquiry has been finalised and a penalty has also been imposed upon him prior to the finalisation of criminal proceedings."

5.The contention of the respondent is that there is no specific order under Clause 11 to regularize the said period as duty period. Moreover, the petitioner was not exonerated in any appellate proceedings in the disciplinary proceedings. When the petitioner has suffered a punishment in the disciplinary proceedings, the suspension period need not be regularized as duty period.

6.The said contention of the respondent cannot be accepted, since under Clause 11, it specifically states that after the acquittal from the



7. Since the respondent has rejected the same, vide impugned orders, this Court is inclined to allow the writ petition and quash the impugned orders. The respondent is directed to regularize the period of suspension as duty period and consequently, the benefits shall be granted to the petitioner with 6% interest. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. With the above said observation, the writ petition is allowed. No costs.

17.03.2023
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WEB COPY



W.P.(MD)No.1928 of 2019

S.SRIMATHY, J

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W.P.(MD)No.1928 of 2019

17.03.2023
(2/2)