



W.P.(MD)No.14130 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.(MD)No.14130 of 2020
and
W.M.P(MD) No.11784 of 2020

P.William

Vs.

... Petitioner

1) The Additional Chief Secretary to Government,
Home Department,
Secretariat, St. George Fort,
Chennai.

2) The Director General of Police,
Chennai – 600 004.

3) The Superintendent of Police,
Railway Police,
Trichy District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order No.249/2019 dated 21.05.2019 on the file of the 3rd respondent and quash the same and consequently direct the respondents to treat the suspension period between 30.08.1996 to 31.01.2012 as duty period and to grant all consequential service and



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monetary benefits along with interest to the petitioner with revision of pension payable to the petitioner.

For Petitioner : Mr.M.Gnanagurunathan
For Respondents : Mr.C.Satheesh
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order passed by the third respondent dated 21.05.2019 and to quash the same and consequently direct the respondents to treat the suspension period between 30.08.1996 to 31.01.2012 as duty period and to grant all consequential service and monetary benefits along with interest to the petitioner with revision of pension payable to the petitioner.

2. The case of the petitioner is that he was appointed as Grade - II Police Constable on 10.01.1979 and promoted as Grade - I Police Constable on 15.01.1995. While he was working in Trichy Railway Police Station, he was placed under suspension on 29.08.1996 in connection with Vigilance and Anticorruption Crime No.3 of 1996 under



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Rule 7 of the Prevention of Corruption Act, 1988. The above said case was registered against him on the allegation that he demanded and accepted illegal gratification of Rs.7,000/- from one Baskaran for favouring him in Trichy Railway Police Station. For the above said allegation, a disciplinary action was initiated against him in T.D.P.Case No.1 of 1998. There were four charges levelled against him as Charge 1A, 1B, 1C and 1D. Thereafter, an enquiry was conducted and the enquiry report was submitted on 07.12.2022, by holding that charge 1(A) alone proved against him and the other charges not proved.

3. After receipt of enquiry report from the third respondent, no final order has been passed. Hence, the petitioner has filed a writ petition before this Court in W.P.No.1843 of 2007 and this Court, by order dated 24.08.2011, directed the respondents to finalise the disciplinary proceedings. In the mean while, the petitioner has reached the age of superannuation on 31.01.2012. The third respondent, by proceedings dated 30.01.2012, had retained the petitioner in service. Thereafter, the Government by G.O.(D).No.874, dated 22.10.2012, permitted him to



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retire from service on the date of superannuation ie., on 31.01.2012. The first respondent issued a letter dated 13.08.2012, stating that the Government is deviating from the findings of the third respondent in respect of charge 1(B) and sought for explanation. He has submitted his explanation on 30.08.2012. After considering the explanation, the Government decided to enforce punishment of cut in pension 2/3rd and sought for his explanation for the proposed punishment by holding that the charge 1(B) also proved. The petitioner has submitted his explanation on 11.08.2017. Thereafter, the first respondent has passed an Order in G.O.(D).No.1537, dated 18.12.2017, by enforcing the punishment of cut in pension at the rate of Rs.1445/-. Challenging the same, the petitioner has filed a writ petition in W.P.(MD).No.5708 of 2020 and the same is pending. Subsequently, this Court, vide order dated 16.12.2022, dismissed the writ petition. However, the third respondent, vide impugned order dated 21.05.2019, treated 135 days as earned leave, 180 days ½ pay and 5318 days as leave without pay. Challenging the same, the present writ petition has been filed.



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4. The learned counsel appearing for the petitioner would submit that though the impugned order did not reveal with regard to the leave on loss of pay, however, the respondents on their own treated 135 days as earned leave, 180 days $\frac{1}{2}$ pay and 5318 days as leave without pay. When there is no such order of treating the suspension period as non-eligible for pension was passed in G.O.(D).No.1537, Home Department, dated 18.12.2017, treating the suspension period as non-qualifying service for pension is not sustainable one. In support of his contention, the learned counsel for the petitioner has relied on the decision of this Court in W.P.Nos.5670 and 27179 of 2012 and further, the said decision was confirmed by the Division Bench of this Court in W.A.Nos.516 and 517 of 2015 and the Apex Court in S.L.P.No.32911 of 2019. Hence, he prayed for allowing this writ petition.

5. The third respondent has filed a counter stating that the petitioner has reached the age of superannuation on 31.01.2012. As per the proceedings of the Superintendent of Police, Railways, Chennai, dated 30.01.2012, he shall not be permitted to retire and he shall be



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retained in service until the enquiry against him was concluded. The Government by G.O.(D).No.874, dated 22.10.2012, permitted the petitioner to retire from service on the date of superannuation ie., on 31.01.2012. The Government deviated from the findings of the third respondent in respect of charge 1(B) and also sought for explanation from the petitioner and his explanation was submitted on 30.08.2012. After considering his explanation, the Government decided to enforce punishment of cut in pension 2/3rd and sought for his explanation for the proposed punishment and held that the charge 1(B) was also proved. The petitioner has submitted his explanation on 11.08.2017. Thereafter, the first respondent quashed the G.O.(D).No.1537 dated 18.12.2017, by enforcing the punishment of cut in pension at the rate of Rs.1445/-. The third respondent has treated 135 days as earned leave, 180 days (½ pay) and 5318 days as leave without pay in tune with the said Government Order. The service benefits accrued to the petitioner between 30.08.1996 to 31.01.2012 has been taken away as per the legal norms and there is no Government Rule to treat the suspension period as qualifying service. There is no legal basis as claimed by the petitioner to treat the suspension



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period equivalent to qualifying service for pensionary benefits.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

7. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service in the year 1979 and while he was working in Trichy Railway Police Station, he was placed under suspension in the year 1996, on the allegation that he demanded and accepted illegal gratification of Rs.7,000/- from one Baskaran. For the above said allegation, a disciplinary action was initiated against him in T.D.P.Case No.1 of 1998. He was retired from service on 31.01.2012. Pursuant to the order passed by this Court, the disciplinary proceedings came to be concluded by cut in pension at the rate of Rs.1445/-, vide G.O.(D).No. 1537, dated 18.12.2017. Challenging the same, the petitioner has filed a writ petition in W.P.(MD).No.5708 of 2020 and the said writ petition was dismissed on 16.12.2022. Thereafter, the petitioner's service was regularised. However, the grievance of the petitioner is that whether the



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third respondent have power to declare that the petitioner is not entitled for pensionable service for 5318 days, in the absence of subsequent order in the punishment order.

8. As per Rule 54(a) of the Fundamental Rules, when a Government servant, who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order.

9. In the impugned order, dated 21.05.2019, 135 days declared as earned leave, 180 days declared as $\frac{1}{2}$ pay and 5318 days as leave without pay. However, whether the third respondent have power to declare that the petitioner is not entitled for pensionable service for 5318 days. In the absence of subsequent order in the punishment order, the third respondent have no power to declare that the petitioner is not entitled for pensionable service for 5318 days. The said order is without jurisdiction.



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Further, when the same issue came for consideration before the Division Bench of this Court, in W.A.Nos.516 and 517 of 2015, dated 12.04.2018, the Division Bench of this Court has held as follows:

“6. However, subsequent to the order imposing the punishment for the proved delinquencies, the authorities thought it fit to pass a further order on 16.04.2012 and which is communicated to the respondent on 30.04.2012 treating the period of suspension as leave on loss of pay without Medical Certificate. It is this order that is challenged by the respondent in WP No.27179 of 2012. With reference to the same, the learned Single Judge has concluded that the Original Order imposing punishment being silent as to the manner in which the suspension period is to be treated and the Department having allowed the respondent to retire on attaining the age of superannuation on 30.04.2006, the employer-employee relationship had come to an end and therefore, there cannot be an order on 16.04.2012 treating the period of suspension as leave on loss of pay without Medical Certificate.

7. On the above conclusions, the learned Single Judge had found that the further order that is challenged in WP No.27179 of 2012, denying the service benefits by treating the entire period under suspension as leave on loss of pay without Medical Certificate, is without jurisdiction or authority. We do not see any illegality or irregularity in the said conclusion of the learned Single Judge. We wish to add that the second Order, viz. order dated 16.04.2012, in any by which, the respondents have treated the entire period of suspension as leave on loss of pay without Medical Certificate is actually in excess of the punishment awarded to him in the disciplinary proceedings. In the disciplinary proceedings, while imposing the punishment, by an order dated



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23.06.2009, the authorities had only thought it fit to impose a punishment of a cut in pension of a sum of Rs.500/- per month that too only for a period of three months. The total monetary loss for the respondent because of the punishment is only Rs.1,500/-, but by treating the period of suspension as leave on loss of pay, the appellants have effectively denied the respondent the benefit of service of nearly six years. This, in our considered opinion, is in excess of the powers conferred on the authorities with regard to treatment of the period of suspension.”

10. For the reasons stated above, the impugned order in the writ petition is liable to be set aside. Accordingly, the impugned order passed by the third respondent, dated 21.05.2019, is set aside and the matter is remitted back to the authority to pass fresh order, in terms of Rule 54 of the Fundamental Rules and treat the entire service of the petitioner as pensionable service and grant monetary benefits.

11. In the result, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.02.2023

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To

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M.DHANDAPANI,J.

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