



W.P.(MD).No.20029 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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K.Thiruvalluvan

... Petitioner

Vs.

1.The Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Chennai.

2.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram District.

3.The Superintendent of Police,
Sivagangai District,
Sivagangai.

4.The Deputy Superintendent of Police,
Additional Deputy Superintendent of Police-I/C,
District Crime Record Bureau,
Office of the Superintendent of Police,
Sivagangai District, Sivagangai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned order in D.O.No.472/2018, dated 16.03.2018



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on the file of the third respondent and consequential order of the fourth respondent made in Na.Ka.No.J2/ViSu/10505/2018, dated 02.04.2018 and quash the same as both are illegal and arbitrary and consequently direct the respondents herein to pay the salary to the petitioner for the period of dismissal from service (i.e) from 17.08.2015 to 19.03.2016 (216 days) by treating the same as duty period.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the order of the fourth respondent herein, dated 02.04.2018, wherein the period of dismissal of the writ petitioner was adjusted towards the earned leave and unearned leave.

2. The writ petitioner herein, was appointed as a Constable in the Tamil Nadu Police Uniform Service on 23.12.1985 and he was promoted as Special Sub-Inspector in the year 2011 and he voluntarily retired from service on 31.05.2018.



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3. While he was in service, a police complaint was lodged as against him on 12.06.2014 in Crime No.32 of 2014 before the Inspector of Police, District Crime Branch, Sivagangai District and the same was taken on file in C.C.No.25 of 2015 on the file of the Judicial Magistrate II, Sivagangai. In view of the registration of a criminal case, the petitioner was suspended from service on 30.01.2015 and departmental proceedings were initiated. An enquiry report was submitted on 08.07.2015. Based upon the enquiry report, the third respondent imposed a punishment of 'dismissal from service' on 13.08.2015.

4. Challenging the said dismissal order, the writ petitioner had filed an appeal before the second respondent herein. In the meantime, the writ petitioner was acquitted by the criminal Court by an order, dated 01.06.2016. A perusal of the said judgment indicates that the writ petitioner has been Honourably acquitted by the criminal Court. Relying upon the said Honourable acquittal, the second respondent herein by his order, dated 30.08.2016, modified the punishment from dismissal to 'postponement of next increment for three years without cumulative effect'. However, the second respondent has not mentioned about the manner in which the period of suspension and the period of dismissal has to be regularised.



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5. Based upon the order of the Appellate Authority, the petitioner had approached the third respondent herein for regularisation of the period of suspension and period during which he had suffered the order of dismissal. By an order, dated 24.01.2018, the fourth respondent herein has passed an order regularising the period of suspension between 31.01.2015 and 16.08.2015 treating it as a duty period. The petitioner has no grievance over the said order. However, the fourth respondent has passed another order on 02.04.2018, adjusting the period of dismissal to the leave that was available to the credit of the writ petitioner, the period between 17.08.2015 and 19.08.2016 was treated as earned leave and the period between 20.03.2016 and 11.09.2016 was treated as unearned leave. Challenging the said order, the present writ petition has been filed.

6. According to the learned Counsel appearing for the writ petitioner, the petitioner has been found guilty even by the Appellate Authority but he has been imposed with a lesser punishment. Therefore, the case of the writ petitioner falls under F.R 54(4) without issuing notice, the period of dismissal cannot be adjusted towards the leave that was available to the credit of the writ petitioner. He further contended that when the order of dismissal has been



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modified by the Appellate Authority to a lesser punishment, the entire period of dismissal should have been treated as a duty period and all the monetary benefits should have been conferred upon him. Hence, he prayed for setting aside the order passed by the fourth respondent herein.

7. Per contra, the learned Additional Government Pleader appearing for the respondents had contended that the Appellate Authority has not specifically mentioned with regard to the manner of regularisation of the period of suspension or the period during which the writ petitioner had suffered the order of dismissal. In such an event, it is open to the fourth respondent herein to take a call upon the manner of regularising the said service period. He further relied upon F.R 54(5) to contend that the said period cannot be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated for any specified purpose. Hence, he prayed for sustaining the order passed by the fourth respondent herein.

8. I have carefully considered the submissions made on either side and perused the materials available on record.

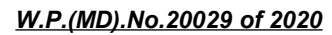


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9. It is not in dispute that the order of dismissal passed by the third respondent herein has been modified by the second respondent to that of postponement of increment for three years without cumulative effect. However, the order of the Appellate Authority has not specified about the manner of regularisation of the period of suspension and the period of dismissal.

10. In all cases, where the Appellate Authority decides that the punishment imposed upon the delinquent officer is excessive and proceeds to impose a lesser punishment, the same should be considered to the effect that such a lesser punishment should have been awarded by the disciplinary authority himself. Therefore, it is deemed that the disciplinary authority himself has passed an order of lesser punishment, namely, postponement of increment for three years without cumulative effect. In such an event, the period during which the petitioner was kept out of service due to the order of dismissal, should always be treated as a duty period. However, the difficulty that has arisen in the present case is that the Appellate Authority has not mentioned about the manner of regularising the said period.



12. It could be seen from the documents annexed to the typed set of papers that the third respondent has passed an order on 16.03.2018 treating the period between 17.08.2015 and 11.09.2016 to adjust the eligible leave of the petitioner as per F.R 54(5). F.R 54(5) could be invoked only for the cases which fall within F.R 54(4). A perusal of F.R 54(4) clearly indicates that no order could be passed without issuing a notice to the delinquent officer. Therefore, I find that the order impugned in the writ petition, namely, the order, dated 16.03.2018 passed by the third respondent herein and the consequential order passed by the fourth respondent herein on 02.04.2018 are in violation of principles of natural justice and hence, both the orders are liable to be set aside.

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orders within a period of eight (8) weeks from the date of receipt of a copy of this order.

14. This writ petition stands allowed to the extent as stated above. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Director General of Police,
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- 2.The Deputy Inspector General of Police,
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R.VIJAYAKUMAR, J.

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