IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	20.02.2024
Pronounced on	:	26.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.10407 of 2007
and
M.P.No.1 of 2007

S.Thilagam ...Petitioner

Vs.

1.The State of Tamil nadu,
represented by the Secretary to Govt.
Commercial Taxes & Registration (H2) Dept.
Secretariat, Chennai – 9.

2.The Inspector General of Registration,
Chennai – 28. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondents 2 and 1 in connection with the orders passed by them in Proc. No. 20313/K1/2003 dated 26.7.03 and the order passed in G.O.(D) No.173, Commercial Taxes and Registration (H2) Dept., dated 13.4.06 respectively and quash the same and direct the respondents to pay all the retirement benefits including the pension arrears and commutation of pension by taking note of the entire period from 8.3.68 to 30.9.06 with 18% interest per annum.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.R.Neelakandan, AAG VIII
asst by Mr.R.P.Murugan Raja,
Government Advocate

ORDER

This Writ Petition is filed calling for the records on the file of the respondents 2 and 1 in connection with the orders passed by them in Proc. No. 20313/K1/2003 dated 26.7.03 and the order passed in G.O.(D) No.173, Commercial Taxes and Registration (H2) Dept., dated 13.4.06 respectively and quash the same and direct the respondents to pay all the retirement benefits including the pension arrears and commutation of pension by taking note of the entire period from 8.3.68 to 30.9.06 with 18% interest per annum.

2.The learned counsel for the petitioner submitted that, petitioner's husband was compulsorily retired from service by an order dated 03.12.1992 of the Inspector General of Registration. This order was confirmed on appeal by the Government by its order dated 24.08.1995. Petitioner's husband filed application before the Tamil Nadu Administrative Tribunal in O.A.No.5878 of 1996. The Tamil Nadu Administrative Tribunal allowed the application with an observation that, punishment awarded is excessive and remanded the matter back to the 3rd respondent for imposing lesser punishment. On the basis of the order passed by the Tamil Nadu Administrative Tribunal, the Inspector General of Registration has passed an order in his proceedings No.6000/A1/2000-1 dated 31.05.2001 reinstating petitioner's husband in service. He passed another order in Proceedings No.6000/A1/2000-2 dated 31.05.2001 holding that the charges were proved and ordered a major punishment of "stoppage of increment for three years without cumulative effect". Petitioner's husband has not chosen to challenge the punishment due to financial strain and the grave hardship suffered by him and his family because of the punishment of compulsory retirement from service. Meanwhile, petitioner's husband attained superannuation on 30.09.2005 and even before that he had submitted petitions for the treatment of punishment from 03.12.1992 to 03.07.2001 and the suspension period from 11.10.1988 to 02.12.1992 as duty period. It was rejected by the Inspector General of Registration. Petitioner's husband preferred an appeal on 31.03.2004 to the Government. The appeal was not considered and therefore her husband filed Writ Petition before this Court in W.P.No.25354 of 2005 and got an order on 31.01.2006 for consideration of representation in accordance with law. The period from 03.12.1992 to 03.07.2001 spent on compulsory retirement from service has to be necessarily treated as duty period, as the said punishment was set aside by the

Administrative Tribunal by an order dated 02.01.2001 holding that the said punishment is unwarranted. The Government issued show cause notice to the petitioner's husband on 04.04.2006 asking him to show cause as to why the period of suspension i.e., from 11.10.1988 to 02.12.1992 should not be treated as period on leave on loss of pay and the period from 03.12.1992 to 03.07.2001 should not be treated as period on leave on loss of pay. Petitioner's husband submitted his explanation on 02.04.2006 and within two days of submitting the explanations, he died on 09.04.20006. In the said circumstances, present Writ Petition is filed.

2.1.The learned counsel for the petitioner further submitted that, petitioner's husband was suspended from service on 11.10.1988 to 02.12.1992 and was placed under compulsory retirement from 03.12.1992 to 03.07.2001. After setting aside his compulsory retirement by an order in proceedings No.6000/A1/2000-1 dated 31.05.2001 and imposing punishment of withholding the increment for three years without cumulative effect, petitioner's husband was permitted to join duty on the same day i.e., on 31.05.2001. Petitioner's husband submitted a representation for regularization of suspension period and compulsory retirement period as duty period and that representation was rejected by the Inspector General of Registration Department in Proceedings

No.20313/K1/2003 dated 26.07.2003.

2.2.Against the said order, petitioner's husband preferred an appeal before the Government. Considering the regularization of suspension period and period of compulsory retirement from service, Government of Tamil Nadu in G.O.(D).No.173, Commercial Tax and Registration (H2) Department, dated 13.04.2006, after considering the rival submissions, passed the following order:

> 5. ....மேலும், குற்றச்சாட்டு நிருபணமானதாக முடிவு செய்து அன்னாருக்கு தண்டனை வழங்கப்பட்டதன் விளைவாக அவர் தற்காலிகப் பணி நீக்கம் மற்றும் கட்டாய ஓய்விலிருந்த காலங்களை, விதிகளின்படி பணிக்காலமாக கருத இயலாது. அதனை உகந்த விடுப்பாகவே முறைப்படுத்த இயலும். இது மேற்கண்ட தண்டனையின் விணைவே தவிர, இதனை பிறிதொரு தண்டனையாக கருத இயலாது.
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> **6.** மேற்கூறிய சூழலில் திரு.அ.தியாகராஜன், முன்னாள் உதவியாளரின் தற்காலிகப் பணி நீக்க காலம் மற்றும் ஓய்வு தண்டனை காரணமாக பணியில் இல்லாத காலம் ஆகியவற்றை மேலே பத்தி **3**ல் கண்டுள்ளவாறு முறைப்படுத்துவதென்ற உத்தேச முடிவினை உறுதி செய்வதன் அரசு முடிவு செய்து அவ்வாறே முறைப்படுத்தி ஆணையிடுகிறது.

2.3.However, Government has not passed specific order as to monetary benefit entitled to the petitioner's husband during the suspension period and period of compulsory retirement. As per Rule 54(b) of Fundamental Rules, petitioner's husband is entitled for pay and allowances during the suspension period and period of compulsory retirement. He relied on the order of this Court in the case of ***S.Dakshinamoorthy Vs. The Deputy Inspector General of Police & ors*** in **W.P.No.1740 of 2014.**

3. In response to the submissions of the learned counsel for the respondents, Mr.R.Neelakandan, learned Additional Advocate General submitted that, Administrative Tribunal had not absolved the husband of the petitioner from charges. It only considered the nature of the offence committed and recommended for lesser punishment. In pursuance of the order, Inspector General of Registration had come to the conclusion of awarding some lesser punishment to the individual and ordered "stoppage of increment for three years without cumulative effect". As per rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, stoppage of increment is deemed to be a minor penalty.

3.1. He further submitted that, as per provisions laid down in Rule "54-A(1) and (2) of Fundamental Rules, the period of absence from duty cannot be treated as duty but can be treated as leave, since the individual was not filly exonerated from charges. Thus, the prayer for the regularization of suspension period as duty is devoid of merits and hence it deserves to be rejected. Since the husband of the petitioner was not fully exonerated, his request for treating the period of suspension and compulsory retirement as duty could not be conceded. Thus, he prays for dismissal of the petition.

4.Considered the rival submissions and perused the records.

5.From the facts narrated by the learned counsel appearing for the parties, it is not in dispute that the petitioner's husband Thiyagarajan was compulsorily retired from service, on proved charge of accepting a sum of Rs.20/- as bribe for issuing certified copy of some documents. He filed O.A.No.5878 of 1996 before the Tamil Nadu Administrative Tribunal. The Administrative Tribunal on considering the materials placed before, found that, punishment awarded to the petitioner's husband as excessive and remitted the matter back to the punishing authority for imposing lesser punishment. Accordingly, lesser punishment of withholding of increment for three years without cumulative effect was imposed on 31.05.2001. Therefore, petitioner's husband sent representation for regularizing his suspension period and compulsory retirement period as duty period and it was rejected by the Inspector General of

Registration and that was also confirmed by the Government. However, in G.O.No.173, Commercial Taxes and Registration (H2) Department, dated 13.04.2006, it is said that though the suspension period and compulsory retirement period can be considered as eligible leave period, but it cannot be considered as duty period.

5.1.Rule 54A (1) & (2) of Fundamental Rights reads as follows:

> *54. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.*
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> *(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of subrule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled to 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:

5.2. This rule makes it clear that if the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court

5.3. It is also relevant to look into sections 54(b)(1) of Fundamental Rules and it reads as follows:

*54-B- 1. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation *or compulsory retirement while under suspension, the authority competent to order reinstatement shall consider and make a specific order— (a) regarding the pay* *and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation *or compulsory retirement, as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty.*

5.4. Though the Government Order stated that, petitioner's husband's suspension period and compulsory retirement period cannot be considered as duty period but only be treated as entitled leave period, there is no specific mention about the payment of pay and allowances to be paid to the petitioner's husband. We do not know what is the leave entitled to the petitioner's husband. He may be entitled for leave, which will cover the suspension period and period of compulsory retirement. Taking into account the leave entitled for the petitioner, a specific order should have been passed, with regard to payment of pay and allowances payable to the petitioner's husband. That has not been done in the Government Order.

5.5. That apart, in the case before hand, the order imposing compulsory retirement was set aside by proceedings dated 31.05.2001 and that was modified with a punishment of withholding increment of three years without cumulative effect. Petitioner's husband joined duty on the same date i.e., on

31.05.2001. In the said circumstances, punishment of compulsory retirement i.e., from 03.12.1992 to 03.07.2001 had no legal force or effect, Therefore, petitioner's claim that period of compulsory retirement i.e., from 03.12.1992 to 03.07.2001 has to be treated as duty period is justifiable and legal.

5.6.In the case of ***S.Dakshinamoorthy Vs. The Deputy Inspector General of Police & ors*** in **W.P.No.1740 of 2014** in similar circumstances, where after slapping the punishment of stoppage of increment for a period of one year without cumulative effect, it was sought to treat the suspension period as eligible leave including extrodinary leave, to the extent necessary. When it was challenged, it was held as follows,

> *"6. There is no dispute that the second respondent initiated proceedings against the petitioner invoking Rule 3(b) of TNPSS (D& A) Rules. It is also a matter of record that only minor punishment was imposed on the petitioner. It was only in the said circumstances, the petitioner pleaded that the suspension period from 07.08.2005 to 21.11.2005 should be treated as Duty Period. However, the second respondent considered the said period as Eligible Leave and rejected his request to pay monetary benefits treating it as Duty Period.*

7. This Court considered an identical issue in W.P.No.5142 of 2007 dated 20.04.2012 [R.Sekar v. Principal Commissioner and Commissioner of Commercial Taxes] and having found that discretion was not exercised in accordance with well settled principles, quashed the impugned order therein and directed the respondents to treat the period of suspension as spent on duty with all consequential benefits.

8. F.R.54(B) gives a discretion to the authority to regularise the period of suspension. When a discretion is given to the authority to consider the matter, necessarily all background facts should be taken into account. In the subject case, the second respondent failed to consider the fact that only minor punishment was imposed on the petitioner, notwithstanding the initiation of proceedings under Rule 3(b) of TNPSS (D & A) Rules. The impugned order refusing to treat the suspension period as spent on duty would involve civil consequences to the petitioner. It would also amount to double jeopardy inasmuch as the petitioner has already been punished for the misconduct in question. I am therefore of the view that the petitioner is entitled to succeed."

5.7.Learned counsel for the respondents relied on the order of this Court in the case of ***J.Sureshkumar Vs. The Superintendent of Police*** in **W.P.No.1449 of 2015** for the preposition that the claiming the intervening period of absence as duty with full salary is not a right conferred nor an automatic one. But, the authorities have to apply their mind based on the facts and circumstances of each case and take a decision. It is observed as follows,

> *"13. Thus, a holistic reading of the provisions under Fundamental Rule 54 would reveal that claiming the intervening period of absence as duty with full salary is not a right conferred nor an automatic one. But, the authorities have to apply their mind based on the facts and circumstances of each case and take a decision for grant of full pay and allowances, by regulating the period of absence as duty with full salary.*
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> *14. In the present case, the petitioner was imposed with the punishment of compulsory retirement, which was set aside by the High Court, and the matter was remitted back to the authorities. The authorities continued their disciplinary proceedings by issuing notice to the petitioner and finally imposed the punishment of stoppage of next increment for 3 years with cumulative effect and the authorities regulated the period of absence from 26.12.2005 to 03.07.2011 as eligible leave including extraordinary leave to the extent necessary.*

15. This being the order passed, the authorities have applied their mind and had taken a final decision regulating the period of absence as eligible leave including extraordinary leave. Such a decision taken cannot be construed as infirm and thus, this Court is not inclined to interfere with the impugned order."

5.8.In yet another order in ***Srinivasan Vs. The Group Commandant, CISF `D`BLOCK RAJAJI BHAVAN BESANT NAGAR, CHENNAI-90 & ors*** in **W.P.No.12602 of 2004**, this Court passed the following order,

"4. Now, coming to the order of punishment, reduction of pay to the minimum in the time scale of pay for a period of five years with cumulative effect as imposed by the Appellate Authority viz., the secondrespondent upon the petitioner will suffice to meet the ends of justice. Therefore, the further punishment upon the petitioner by the second respondent regarding "Dies Non" as stated by him in paragraph 8 of his order dated 24.04.2002 if allowed to be implemented, it will amount to double jeopardy, in other words, we do not want the petitioner to be punished twice for one and same act o charges framed against him.

5. Therefore, the order of the second respondent treating the period from the date of removal from service and the period viz., the date on which the petitioner was reinstated in service as "Dies Non" dated 24.04.2002 as affirmed by the *third respondent by order dated 05.05.2003 is set aside. The Writ Petition is allowed to this extent only. No costs."*

5.9.The orders passed in W.P.No.1740 of 2014 and W.P.No.12602 of 2004, made it clear that punishment of stoppage of increment with treating the period of abscene as leave period would amount to double jeopardy. In other words imposing multiple punishments amounts to double jeopardy.

5.10.From, the facts and circumstances of the case, this Court is inclined to follow the orders in W.P.No.1740 of 2014 and W.P.No.12602 of 2004.

6.Therefore, this Court is of the considered view that, the order treating the period of suspension from 11.10.1988 to 02.12.1992 as a period on leave on loss of pay and the period from 03.12.1992 to 03.07.2001 as a period of leave on loss of pay, when there was already a punishment of stoppage of increment for three years with cumulative effects was imposed, would amount to double jeopardy and it is liable to the set aside. Accordingly, the orders passed by the respondents 2 and 1 Proc. No. 20313/K1/2003 dated 26.7.03 and the order passed in G.O.(D) No.173, Commercial Taxes and Registration (H2) Dept., dated 13.4.06 respectively are set aside.

7.In the result, this Writ Petition is allowed, with a direction to the respondents to pay the petitioner all the retirement benefits due to her deceased husband including the pensionary benefits with an interest at 6% per annum from the date of due till the date of payment. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.03.2024

Index:Yes/No
Speaking/Non speaking order
gd

To
1.The Secretary to Govt.
Commercial Taxes & Registration (H2) Dept.
Secretariat, Chennai – 9.

2.The Inspector General of Registration,
Chennai – 28.

G.CHANDRASEKHARAN.J.,

gd

Pre-Delivery Order in
W.P.No.10407 of 2007

26.03.2024