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W.P.No.23553 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.23553 of 2015

M.Jayakumar

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep by its Principal Secretary to the Government,
Department of Home (Prisons-II),
Fort St. George,
Chennai – 600 009.

2.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 600 066.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with the G.O.Ms.No.435 dated 16.06.2014 of the Home (Prison II) Department issued by the 1st respondent and quash the same in so far as the same did not consider and specify the pay and allowances payable to the petitioner for the period of his absence from duty consequent to the order of dismissal and consequently, direct the 1st respondent to pass appropriate orders to pay salary to the petitioner for the period from 06.08.2004 to 06.01.2007, that is, from the date of his dismissal from service to the date prior to the date



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of his joining duty along with the annual increments and attendant financial as well as service benefits fresh order for the payment of increment to petitioner.

For Petitioner : M/s.R.Gobika

For Respondents : Ms.R.L.Karthika
Government Advocate

ORDER

This writ petition has been filed challenging the order issued by the first respondent in G.O.Ms.No.435 Home (Prison II) Department, dated 16.06.2014, whereby, the appeal filed by the petitioner against the order of dismissal from service was allowed in the light of the order passed by this Court in W.P.No.5335 of 2009 dated 13.09.2013 duly modifying the punishment of dismissal from service to that of withholding of increment for five years without cumulative effect, as the first respondent while issuing the impugned Government order failed to specify regarding the pay and allowance to be paid to the petitioner for the period of his absence from duty including the period of suspension preceding his dismissal from service and also dealing with the period during which the petitioner was out of service because of the punishment of dismissal from service.



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2. In support of the contentions, the learned counsel for the petitioner had placed reliance on Rule 54(1) of the Fundamental Rules.

3. In response to the notice issued by this Court, the respondents filed counter affidavit contending that pursuant to the impugned Government order, the second respondent has already passed an order bearing reference No.9943/G1/2014, dated 26.12.2014 and 16.02.2015 by regularizing the suspension period and dismissal period as eligible leave and the arrears for the period from 06.08.2004 and 06.01.2007 was already drawn and paid in favour of the petitioner. Paragraph 8 of the counter affidavit reads as under:-

8. With regard to the averments made in paragraph 8 of the affidavit, it is submitted that in compliance to the orders of this Court, dated 13.09.2013 in W.P.No.5335 of 2009, filed by the petitioner, the First respondent have passed orders of "withholding of increment for five years without cumulative effect" vide G.O.(Ms).No.435, Home (Prison.II) Department, dated 16.06.2014. Accordingly, the Superintendent, Central Prison, Vellore has issued orders refixing the pay of of the individual, vide his order No.9943/G1/2014, dated 26.12.2014 and 16.02.2015 by regularizing the suspension period and dismissal period as eligible leave and the arrears for the period from 06.08.2004 to 06.01.2007 to the tune of Rs.1,49,425/- was drawn in separate two bills (No.74 and No.75/2015), dated 15.05.2015, by the second respondent and the same was paid to the petitioner. Therefore, the contention of the petitioner, put forth in this paragraph that no salary for



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the above said period i.e. from the date of dismissal of the petitioner and end to the period of reinstate of the petitioner was drawn and paid to him is totally false.

4. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

5. The writ petition appears to have been filed under mis-conception that the first respondent while passing an order of reinstatement is under obligation to pass an order dealing with the pay and allowance to be paid to the petitioner for the period of his absence from duty under Rule 54(1) of the Fundamental Rules.

6. In terms of Rule 54(1) it is the authority who is competent to reinstate shall consider the aspects relating to pay and allowance to be paid to the Government servant for the period of his absence from duty on allowing of an appeal by the Appellate Authority. It is not the Appellate Authority which is supposed to pass such an order. Rule 54(1) of the Fundamental Rules reads as under:-



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“54.(1) 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.”

7. In the light of the above, the contention of the learned counsel for the petitioner is totally misconceived. As already noted above, in Paragraph No.8 of the counter affidavit, the second respondent who is the competent Authority having reinstated the petitioner into service, passed an order No.9943/G1/2014, dated 26.12.2014 and 16.02.2015.

8. In the light of the above, this Court does not find any merits in the present Writ Petition. However, it is made clear in case the petitioner is aggrieved by the orders dated 26.12.2014 and 16.02.2015, whereby, the period of his absence was regularized by the second respondent, it is open for the petitioner to take appropriate steps in accordance with law.



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9. Subject to above observations, this Writ Petition stands dismissed. No

costs.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

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