



W.P.No.42108 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.08.2024

ORDER PRONOUNCED ON : 12.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.42108 of 2016
and WMP.No.1198 of 2018

N.Kumaradoss

... Petitioner

/Vs./

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary
to Government, PWD Department,
Fort St.George,
Chennai.
- 2.The State of Tamil Nadu,
Represented by Engineer in Chief, WRO and
Chief Engineer (General),
Public Works Department,
Chepauk,
Chennai – 600 005.
- 3.The Chief Engineer,
PWD, Design Research and Construction Support,
Chepauk, Chennai.
- 4.The Deputy Director,
PWD WRO, Central Scheme Division,
Chepauk, Chennai – 600 005.



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5.The Deputy Director / Executive Engineer,
PWD Hydraulics Division,
Institute of Hydraulics and Hydrology,
Poondi – 602 023.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the connected and relevant records relating to the proceedings No.E1/221/2009-2 dated 12.10.2009 and Letter No.C2(1) /12028/2010/ Na.Pa.(10) years dated 25.05.2015 passed by the 2nd respondent and quash the same and direct the 2nd respondent to pay full salary and allowances to the petitioner from 02.09.1996 to 31.03.2004 under Rule 54-B of Fundamental Rules of the Tamil Nadu Government along with interest at 18 percentage per annum till the date of payment. (Prayer amended as per order dated 31.01.2024 in WMP.No.2219 of 2024 in W.P.No.42108 of 2016 by DNRJ).

For Petitioner : Mr.A.K.Sriram, Senior Counsel
for Mr.A.Kowsik Raghu Rajan

For R1 to R3, R5 : Mr.R.Kumaravel,
Additional Government Pleader

For R4 : No appearance

* * * * *

ORDER

This writ petition is filed to call for the connected and relevant records



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relating to the proceedings No.E1/221/2009-2 dated 12.10.2009 and Letter No.C2(1) /12028/2010/ Na.Pa.(10) years dated 25.05.2015 passed by the 2nd respondent and quash the same and direct the 2nd respondent to pay full salary and allowances to the petitioner from 02.09.1996 to 31.03.2004 under Rule 54-B of Fundamental Rules of the Tamil Nadu Government along with interest at 18 percentage per annum till the date of payment.

2.The facts in a nut shell are as follows:

The petitioner was appointed as Assistant Engineer, in PWD under the Tamil Nadu Government Engineering Service and joined duty under regular capacity on 30.11.1970. The petitioner was posted at Soil Mechanism and Research Division, Chepauk, Madras and he served at various other places under the control of PWD. The petitioner went on continuous leave from 06.11.1982 onwards citing his ill health and family circumstances as reasons. Whiles, on 16.10.1991 a Charge sheet was issued to the petitioner for unauthorised absence from 06.11.1982 onwards. The petitioner was placed under suspension, an enquiry was conducted and after due enquiry the removal order dated 02.09.1996 was passed by the 1st respondent, removing the petitioner from service. Challenging the said order the petitioner filed appeal in O.A.No.1484 of 1998 before the Tamil Nadu



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Administrative Tribunal at Chennai. The Hon'ble Tribunal set aside the removal order and remitted the case to the concerned authorities for fresh action vide the order dated 14.02.2002. On 02.09.2003, the 1st respondent passed an order placing the petitioner on deemed suspension from 02.09.1996 until further orders and directed the payment of subsistence allowance from 02.09.1996. The 4th respondent granted subsistence allowance of Rs.3,250/- i.e. 50% of the petitioner's basic pay with effect from 02.09.1996. In pursuance of the Tribunal's order dated 14.02.2002 a fresh charge memo was issued on 16.09.2003 by the 2nd respondent for the misconduct of unauthorised absence from duty on 06.11.1982 onwards. Pending enquiry the 2nd respondent on 29.03.2004 passed an order refusing permission to the petitioner from retiring from service on attaining the age of superannuation on 31.03.2004. The petitioner was retained in service till the disciplinary proceedings were concluded and final orders were passed. The petitioner stated that the 3rd respondent vide his proceedings dated 11.08.2007, revoked the suspension and permitted the petitioner to retire from service on attaining the age of superannuation, without prejudice to the disciplinary proceedings. Thereafter enquiry was conducted and on 04.09.2008, the 1st respondent passed an order of punishment of withholding pension of Rs.500/- per month, for a period of two years. The Superintending Engineer regularized the pay



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and annual increments due to the petitioner beyond 01.10.1982 with the last pay at Rs.8,550/- with effect from 01.04.1996 and sanctioned pensionary benefits to the petitioner. The petitioner thereafter on 17.06.2004, sent a representation to the 4th respondent requesting him to increase the subsistence allowance at the rate of 75% with effect from 02.03.1997. As there was no reply, the petitioner sent several other representations for similar relief to the 1st and 2nd respondents. Thereafter, the 2nd respondent passed the impugned order dated 25.05.2015 rejecting the petitioner's claim for increasing the subsistence allowance from 50% to 75% from 02.03.1997 to 31.03.2004. Aggrieved by the impugned order, the petitioner filed the above writ petition. During the pendency of the writ petition the prayer in the writ petition was permitted to be amended vide order dated 31.10.2024 in WMP.No.2219 of 2024. By the amended prayer the petitioner sought direction to the 2nd respondent to pay him full salary & allowance from 02.09.1996 to 31.03.2004 under the Fundamental Rule 54-B of the Fundamental Rules with 18% interest.

3. The 2nd respondent originally filed a detailed counter to the unamended prayer in the writ petition denying the claim of the petitioner for enhanced subsistence allowance. The 2nd respondent thereafter filed additional counter to the



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amended prayer seeking full salary and allowance under Rule 54-B of the Fundamental Rules of the Tamil Nadu Government for the period from 02.09.1996 to 31.03.2004. In the additional counter the 2nd respondent stated that the petitioner was placed under deemed suspension with effect from 02.09.1996 based on the order of the Tamil Nadu Administrative Tribunal dated 14.02.2002. The 2nd respondent stated that as per Rule 54-A(2) of the Fundamental Rules, the petitioner's pay and allowances were to be restricted to 3 years (i.e) from 15.02.1999 to 14.02.2002, but the petitioner was paid subsistence allowance for the period from 02.09.1996 to 14.02.2002 and beyond. Therefore the subsistence allowance paid to the petitioner between 02.09.1996 to 14.02.1999 was in excess being beyond the statutory period. It was further stated that as the charges against the petitioner were not dropped, his suspension was justified and therefore the period of suspension underwent by him could not be regularised as duty. The 2nd respondent stated that vide order dated 17.02.2009, the Director, Institute of Hydraulics and Hydrology, Poondi, rightly regularised the suspension period as eligible leave and therefore the claim of the petitioner was unsustainable. The 2nd respondent therefore prayed to dismiss the writ petition as merit less.

4. Learned counsel for the petitioner submitted that as the 1st respondent held



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that the charges against the petitioner were partially proved, the petitioner was entitled to reinstatement in service by the 1st respondent and hence under Rule 54-B of the Fundamental Rules of the Tamil Nadu Government, he was entitled to full pay and allowances.

5. Learned counsel for the respondents on the other hand submitted that period of suspension could be regularised as duty period under 54-B of the Fundamental Rule, only when the disciplinary authority was satisfied that the suspension was wholly unjustified. Learned counsel further submitted that suspension could be considered as fully unjustified only when the charges against the Government servants were held not proved/dropped after the departmental enquiry. Learned counsel therefore submitted that Sub rule 3 and 4 of the Fundamental Rules 54-B-1 was not applicable to the petitioners case and it was only the Sub rule 5 and 7 of the Fundamental Rule 54-B-1 that was applicable. Learned counsel further relied on Ruling 5 (i) of 54-B-1 of the Fundamental Rules and submitted that as no specific order was passed treating the suspension undergone by the petitioner as duty period, the period of suspension undergone by him could not be regularised as duty period, but was regularised as earned leave.



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Learned counsel therefore submitted that the writ petition sans merit and the same deserved to be dismissed.

6. The petitioner claims full pay and allowances for the period from 02.09.1996 to 31.03.2004, under Fundamental Rule 54-B on the premise that the suspension was wholly unjustified. According to the petitioner, as the 1st respondent held that the charges framed against the petitioner were partially proved, the petitioner was entitled for reinstatement with full pay and allowances under rule 54-B by treating the period of suspension as duty period. Learned counsel relies on Rule 3 and 4 of Fundamental Rule 54-B in support of his submission. The respondents case on the other hand is that the petitioners case is covered by Sub rules 5 & 7 of Rule 54-B-1 of the Fundamental Rules and as such the suspension period could not be treated as duty period. The respondents state that as the charges against the petitioner were held to be partially proved and punishment was also imposed, the contention that suspension was unjustified cannot be accepted.

7. The facts are not disputed. The petitioner was issued with a charge memo for the misconduct of unauthorised absence from 06.11.1982 onwards. The



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petitioner was initially dismissed from service which the petitioner challenged before the Tamil Nadu Administrative Tribunal in O.A.No.1484 of 1998. The Tamil Nadu Administrative Tribunal set aside the dismissal order and remanded the matter to the concerned authority for fresh action vide order dated 14.02.2002. The 1st respondent on 02.09.2003, passed an order placing the petitioner on deemed suspension from service from 02.09.1996 until further orders and directed the payment of subsistence allowance from 02.09.1996. The 4th respondent granted 50% of the petitioner's basic pay as subsistence allowance to the petitioner with effect from 02.09.1996. Thereafter a fresh charge memo was issued to the petitioner on 16.09.2003, enquiry was conducted. During the pendency of the enquiry proceedings by order dated 29.03.2004, the 2nd respondent refused permission to the petitioner to retire from service but retained him in service till the conclusion of the disciplinary proceedings and final orders thereon. The petitioner was nevertheless paid subsistence allowance at the rate of 50% from 02.09.1996. While so, on 11.08.2007 the 3rd respondent revoked the suspension order against the petitioner and permitted him to retire from service on attaining the age of superannuation on 31.03.2004, without prejudice to the pending disciplinary proceedings. Thereafter enquiry concluded and the 1st respondent passed the final order dated 04.09.2008, imposing punishment of withholding pension at the rate of



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Rs.500/- per month for a period of two years. The period of suspension was regulated as earned leave and extra ordinary leave without pay and allowance considering the same as non-duty period.

8. According to the petitioner, on 17.06.2004, he sent a representation to the 4th respondent requesting him to increase the subsistence allowance at the rate of 75% with effect from 02.03.1997. The said contention is denied by the respondents and the respondents specifically stated that it was only the representation dated 22.10.2010, that was received by the 2nd respondent and available in the file. It was only on the basis of the subsequent representation dated 03.05.2015 that the impugned order dated 25.05.2015 came to be passed. The petitioner originally challenged the impugned order dated 25.05.2015 and sought direction to the 2nd respondent to pay enhanced subsistence allowance at 75% for the period 02.03.1997 to 31.03.2004 with 18% interest, subsequently he amended the prayer claiming full pay and allowance for the period 02.09.1996 to 31.03.2004 under Fundamental Rule 54-B of Fundamental Rules of the Tamil Nadu Government.

9. Both the learned counsels rely on Rule 54-B-1 of the Fundamental Rules



in support of their rival contentions. Whereas the learned counsel for the petitioner relies on Sub rules 3 & 4 of Rule 54-B-1 of Fundamental Rules, the respondents rely on Sub rules 5 & 7 of Rule 54-B. I have considered the rival submissions.

10. It would be relevant to extract Rule 54-B-1 of the Fundamental Rules.

Rule 54-B-1 of Fundamental Rules 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.

(2) Notwithstanding anything contained in rule 53, where a Government servant under Suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have



been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

**[GO. Ms. No. 282. P&AR (FR-Spl.) Department, dated 12-6-90)*

(w3f 19th August 1989)

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.



(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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.

(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such



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authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Explanation.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extraordinary leave in excess of six months in the case of a non-permanent Government servant; and

(b) leave of any kind in excess of five years in the case of a permanent Government servant or an approved probationer....”

11. A bare reading of Rule 54-B-1 (1) and (2) clearly shows that the said rules are not applicable to the petitioners case, as there is no dismissal, removal or compulsory retirement. Rule 54-B-1 (3) states that, where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to the said rule states that when the authority is of the opinion that the termination or proceedings initiated against the Government servant were delayed due to the reasons directly attributable to the Government servant, it may, after giving opportunity to make his representation within 60 days



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from the date on which the communication was served on him and after considering the same, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount of such pay and allowances as it may be determined. Sub rule (4) of Rule 54-B of the Fundamental Rules states that in a case falling under sub-rule (3), the period of suspension shall be treated as duty period for all purposes. Sub rule (5) of 54-B-1 of the Fundamental Rules covers cases other than those falling under sub-rules (2) and (3), and further provides that subject to the provisions of sub-rules (8) and (9), the Government servant shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant on the proposed quantum and after considering the representation, if any, submitted by him in that connection, within such period which, in no case shall exceed 60 days from that date on which the notice was served, as specified in the notice. Sub-rule (7) of the Fundamental Rule 54-B-1, states that in a cases falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose. The proviso to the sub-rules provide that the Government servant if so deserves, the authority may order that the period of



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suspension shall be converted into leave of any kind due as admissible to the Government servant. In the case on hand, the petitioner has not been completely exonerated of the charges levelled against him. The petitioner has been imposed with the penalty of cut in pension of Rs.500/- per month for a period of two years for the charges held to have been partially proved. Therefore the contention of the petitioner that entire period of suspension shall be treated as duty period cannot be accepted. The very fact that the charges against the petitioner were held to be partially proved and the petitioner was imposed penalty of cut in pension of Rs.500/- per month for a period of two years, establishes that the suspension was justified. Once it is found that the suspension was justified, then as rightly contended by the respondents sub-rules (3) and (4) of Fundamental Rules 54-B-1 do no apply and the suspension period does not qualify for regularisation as duty period.

12. The Tamil Nadu Administrative Tribunal in O.A.No.1484 of 1998 set aside the removal of the petitioner without going into the merits of the case. The removal order was set aside on technical ground that the pre-amended rule 18(3) of the Fundamental Rule was not valid. As the Tribunal remanded the matter for fresh consideration, the Government placed the petitioner under deemed suspension vide



G.O. dated 02.09.2003, with effect from 02.09.1996 and further disciplinary action was initiated by issuing fresh charge memo dated 16.09.2003. Hence, even the intervening period between the date of removal and date of judgment could not be regularised as duty period. It is therefore seen that it is only sub rules (5) and (7) of Fundamental Rule 54-B-1 that are applicable to the petitioners case. At this juncture, it would be pertinent to refer to Ruling (5)(i) relating to Fundamental Rule 54-B. The said ruling reads as follows:

“(5)(i) The decision of the competent authority under Fundamental Rules 54, 54-A or 54-B, is in respect of two separate and independent matters, namely:-

- (a) pay and allowances for the period of absence; and*
- (b) whether or not the period of absence should be treated as duty.*

It is not necessary that the decision on sub-clause (a) above should depend upon the decision on sub-clause (b) above. The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose or only to pay the proportionate pay and allowances. There is no discretion to pay full pay and allowances when the period is treated as “non-duty”.

If no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as “non-duty”. In such an event, the past service



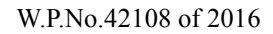
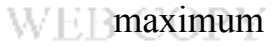
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(i.e.) service rendered before dismissal, removal, compulsory retirement or suspension will not be forfeited.”

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From the aforesaid ruling, it is clear that, if no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as “non-duty”. In the present case, as no order was passed directing to treat the period of suspension as duty period, the suspension period from 02.09.1996 to 21.11.1996 was regularised as Earned leave and further period from 22.11.1996 to 31.03.2004 was regularized as Extraordinary leave without pay and allowances, considering the same as non-duty period.

13. It is pertinent to note here that petitioner did not challenge the order dated 17.10.2009, whereunder out of the suspension period of 2768 days, 81 days were regularised as Earned leave and 2687 days were regularised as Extraordinary leave without pay and allowances. The petitioner was paid half the salary as subsistence allowance for the entire period of 2768 days. It is seen that the petitioner remained absent unauthorisedly from 06.11.1982 to 30.04.1985 and thereafter from 01.05.1985 to 28.03.1993. It was only on 29.03.1993, the petitioner rejoined duty. Therefore, it is seen that for almost 10 years, the petitioner had



14. Accordingly writ petition is dismissed. No costs. Consequently, connected WMP is closed.

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Speaking Order/Non-speaking order

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To

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary
to Government, PWD Department,
Fort St.George,
Chennai.
- 2.The State of Tamil Nadu,
Represented by Engineer in Chief, WRO and
Chief Engineer (General),
Public Works Department,
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- 3.The Chief Engineer,
PWD, Design Research and Construction Support,
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Institute of Hydraulics and Hydrology,
Poondi – 602 023.



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N.MALA, J.

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**PRE-DELIVERY ORDER IN
W.P.No.42108 of 2016**

12.11.2024

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