



WEB COPY



W.P.No.20016 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20016 of 2021

and

W.M.P.No.21277 of 2021

D.Sankar

... Petitioner

Vs.

The Government of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai – 600 009.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Order in G. O. (D). No. 56 Public Works (E2) Department dated 08.03.2021 passed by the Respondent, to quash the same and to issue consequential directions to the Respondent to regularize the period of suspension of the petitioner from 28.04.2018 to 30.06.2018 as duty period for all purpose and to disburse within a limited time frame the entire retirement and pensionary benefits due and payable to the petitioner, including DCRG, Revised Pay after notional fixation, Commutation of Pension, Pension arrears, encashment of surrender leave and unearned leave on private affairs, etc., with interest as per Rules



W.P.No.20016 of 2021

and to pass such further or other orders as this Hon'ble Court may deem fit.

WEB COPY

For Petitioner : M/s.Priya Ravi

For Respondent : Mr.S.P.Karthick,
Government Advocate

ORDER

The petitioner while working as Assistant Executive Engineer was placed under suspension through proceedings dated 25.04.2018 pending disciplinary proceedings. Subsequently, the disciplinary proceedings that were initiated against the petitioner ended in passing an order imposing the punishment of withholding of his pension @ Rs.1,000/- per month for a period of two years through G.O (D) No.28, Public Works (E2) Department dated 14.02.2020. Thereafter, the period of suspension viz., 28.04.2024 to 30.06.2018 was considered for regularization through G.O(D) No.56, Public Works (E2) Department dated 08.03.2021 and the said period of 64 days of suspension was regularized as 'Earned Leave' eligible to him in terms of Rule Rule 54-B(1)(7) of the Fundamental Rules. It is aggrieved by the said order dated 08.03.2021, the petitioner approached this Court by filing the present



W.P.No.20016 of 2021

Writ Petition seeking a relief to treat the period of suspension from 28.04.2024 to 30.06.2018 as 'On Duty'.

2. The petitioner was kept under suspension pending finalization of the disciplinary proceedings that were initiated against the petitioner. The said disciplinary proceedings admittedly ended in imposing a punishment of withholding his pension @ Rs.1,000/- per month for a period of two years. It is thereafter, the issue of regularization of the period of suspension was taken up for consideration and the same was regularized as 'Earned Leave' under Rule 54-B(1)(7) of the Fundamental Rules. The Rule 54-B(1)(7) of the Fundamental Rules reads as under:-

(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 authority may order that the



WEB COPY



W.P.No.20016 of 2021

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.

3. In terms of the above Rule, the period of suspension shall not be treated as the period spent 'On Duty', unless the competent authority specifically directs so. However, in the instant case, there is no such direction issued by the competent authority to treat the period of suspension as 'On



W.P.No.20016 of 2021

Duty'. On the other hand, the impugned order came to be passed on considering the objections raised by petitioner to treat the period of suspension as 'Earned Leave' for which the petitioner is entitled.

4. In terms of proviso to Sub-Rule 7 of the Fundamental Rule 54-B(1), *"if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant"*. If that be the case, it is not understandable as to how the period of suspension of 64 days is regulated only as 'Earned Leave', only.

5. Though learned counsel for the petitioner contended that the disciplinary proceedings were initiated under Rule 17-B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the punishment that was imposed was only a minor punishment and therefore, the period of suspension is liable to be treated as 'On Duty'. This Court is not inclined to agree with such contention in view of the fact that the said disciplinary proceedings have culminated into imposition of punishment on the petitioner



W.P.No.20016 of 2021

and the said punishment has also become final, the question of treating the period of suspension as 'On Duty' does not arise, especially in the absence of any orders passed by the competent authority. Hence, the issue is only with regard to the regularization of the period of suspension and as to how the period is to be regularized.

6. In terms of the proviso noted above, the period is to be regularized, as desired by the Government Servants by converting the same as leave of any kind due and admissible to the Government Servants. In that view of the matter, regularizing the period of suspension as 'Earned Leave' alone cannot be said to be in accordance with the above provision. Hence, the impugned order regularizing the period of suspension as 'Earned Leave' alone cannot be sustained and accordingly, the impugned order is liable to be set aside to that extent.

7. However, taking into consideration the fact that the petitioner has already retired from service as early as on 30.06.2018, this Court is not inclined to remit the matter back to the respondent for fresh consideration,



W.P.No.20016 of 2021

instead is of the considered view that it would be appropriate to modify the impugned order. Accordingly, the impugned order is modified and the period of suspension from 28.04.2024 (FN) to 30.06.2018 (AN) (64 days) undergone by the petitioner be regulated as the leave of any kind due and admissible to the petitioner as on the date of his superannuation i.e., 30.06.2018. Accordingly, the Writ Petition is disposed of. The respondents are directed to pass appropriate consequential orders pursuant to this order as expeditiously as possible at any rate within a period of four weeks from the date of receipt of a copy of this order and communicate the same to the petitioner. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

10.06.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Principal Secretary to Government of Tamil Nadu,
Public Works Department, Secretariat, Chennai – 600 009.



WEB COPY



W.P.No.20016 of 2021

MUMMINENI SUDHEER KUMAR, J.

skr

W.P.No.20016 of 2021

10.06.2024