IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.11.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMANIAM**

and

THE HONOURABLE MR.**JUSTICE M.JOTHIRAMAN**

W.P.No.27477 of 2022
and W.M.P.No.26699 of 2022

1.Employees Provident Fund Organization
Rep. By its Chairman
Central Board of Trustees
No.14, BhikajiCama Place,
New Delhi – 110 066.

2.The Central Provident Fund Commissioner
No.14, BhikajiCama Place,
New Delhi – 110 066.

3.The Regional Provident Fund Commissioner – II (HRM-III)
No14, BhikajiCama Place,
New Delhi – 110 006. ...Petitioners

-vs-

1.V.Vasudevan

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai – 600 104. ...Respondents

PRAYER: Writ petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari, calling for the records relating to Impugned Order dated 08.06.2022 passed by Second Respondent pertaining to OA/310/01083/2015 and quash the same.

For Petitioners : Mr.P.K.Panneer Selvam

For Respondent : Mr.V.Vasudevan - R1
Party – in – person
R2 – Tribunal

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ORDER

(The Order of the Court made by Justice **M. JOTHIRAMAN**)

Under assail is Order dated 08.06.2022 passed in OA.No.1083 of 2015 on the file of the Central Administrative Tribunal, Chennai Bench. The unsuccessful respondents in OA, have preferred the present writ petition before this Court.

2. The first respondent who was working as an Enforcement Officer in petitioner's organization was arrested on 03.07.2008, in respect of criminal offence, which was under investigation and remanded in judicial custody for a period exceeding 48 hours. By order dated

23.07.2008, the first respondent was placed under suspension. Subsequently, the above said suspension was revoked on 01.04.2009 by the competent authority. Meanwhile, the criminal case was instituted by CBI against the first respondent in C.C.No.1 of 2009 for the alleged offence under Section 13(2) of Prevention of Corruption Act, 1988 on the file of IX Additional Special Judge for CBI cases, Chennai. By judgment dated 28.10.2011, the criminal case in C.C.No.1 of 2009 as ended in acquittal.

2(i). Meanwhile CBI registered another case against the first respondent and his wife in C.C.No.1 of 2010 for the alleged offences under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act, 1988 for accumulating assets disproportionate to known sources of income.

2(ii). The first respondent submitted a representation dated 17.11.2011 to the second petitioner seeking regularization of the period of suspension as a duty period for all purpose and also for consequential service benefits in the light of the order of acquittal. No action was taken by the petitioners, thereafter the first respondent filed O.A.No.999 of

2013 before the Central Administrative Tribunal, for seeking a relief of regularization of the period of suspension as duty period with other consequential benefits. While the above said representation was pending before the authorities concerned, the Tribunal at the stage of admission itself disposed of the O.A.No.999 of 2013 vide order dated 25.07.2013 directed the petitioners to consider the representation dated 17.11.2011 and pass orders on merits in accordance with law and as per rules within a period of two months from the date of receipt of a copy of that order.

2(iii). Thereafter, on 18.02.2014, the second petitioner has passed an order stating that since the other criminal proceedings in C.C.No.1 of 2010, as well as the departmental proceedings initiated subsequently in the year 2011 are pending against the first respondent for disproportionate assets, no action can be taken to regularize the period of suspension. It is also stated that the acquittal by the criminal Court is on procedural grounds and therefore it cannot be stated that the suspension is wholly unjustified.

2(iv). Aggrieved over the order dated 18.02.2014, the first respondent has preferred an appeal under Rule 19 of the EPF Staff (CC

& A) Rules, 1971. The third petitioner has rejected the same on 05.06.2015 stating that there is no provision to prefer the said appeals, as it was not passed under EPF (CC & A) Rules.

2(v). In view of the pendency of the criminal case in C.C.No.1 of 2010, departmental proceedings were initiated by the petitioners against the first respondent for having concealed transactions of immovable and movable properties and in the name of his family members and not reporting them. After conducting due enquiry, the competent authority has passed an order of compulsory retirement of first respondent with effect from 20.01.2017. By judgment dated 13.06.2017 in C.C.No.1 of 2010 the first respondent and his wife were found guilty and sentenced to undergo two years imprisonment and pay a fine of Rs.50,000/-.

3. Aggrieved over the orders passed by the petitioners dated 18.02.2014 and 05.06.2015, the first respondent has preferred O.A.No.1083 of 2015. The Tribunal vide order dated 08.06.2022 quashed and set aside the orders, dated 18.02.2014 and 05.06.2015 and "*it is declared that the applicant is entitled to treat the period of suspension in respect of which orders were passed on the basis of his having been kept under custody for a period of 48 hours as of duty and*

consequently, the said period has to be reckoned for all purposes i.e., for payment of pay and allowances, for qualifying service of promotion, retiral benefits and the like. Necessary orders are to be passed accordingly by the competent authority." Aggrieved over the above said Tribunal order, the present writ petition has been preferred by the petitioners / organization.

4. The learned counsel appearing for the petitioners would submit that the Tribunal failed to consider the fact that the criminal case of accumulation of disproportionate assets against the first respondent and his wife in C.C.No.1 of 2010 was pending at the time of passing of order dated 18.02.2014 by the second petitioner. In the order, it is clearly indicated that the charge of corruption had not been completely washed out and disciplinary proceedings also pending. The acquittal in C.C.No.1 of 2009 vide judgment dated 28.02.2011 on the basis of technical aspect does not have merit in the eye of law for the purpose of regularization of his suspension period.

5. Per contra, the first respondent Mr.V.Vasudevan, appeared as party-in-person would submit that the pendency of the subsequent

criminal proceedings in C.C.No.1 of 2010, as well as departmental proceedings initiated on the allegation of having disproportionate assets in the year 2011 does not have any bearing, for the regularization of the suspension period which arose due to previous criminal proceedings in C.C.No.1 of 2009, which was also ended in acquittal. The period of suspension is prior to the year 2010 and therefore no bearing, whatsoever the issue of regularization of the suspension period. He would submit even though in his representation dated 17.11.2011, he had sought for the reliefs of regularization of suspension period, promotion, TA – DA for attending the Court cases and Advocate Fees reimbursement. Now, he is restricting the claim only with regard to the regularization of suspension period and the same may be confirmed as per the direction issued by the Tribunal.

6. We have considered the rival submissions made on either side and perused the available records.

7. It is not dispute that the first respondent, while working as Enforcement Officer in the petitioner's organization was arrested on 03.07.2008, in respect of criminal offence, which was under investigation

and remanded in judicial custody for a period exceeding 48 hours. On the said basis, by an order dated 23.07.2008 the first respondent was deemed to be placed under suspension with effect from 03.07.2008. Subsequently vide order dated 01.04.2009 suspension was revoked. Meanwhile criminal proceedings initiated in C.C.No.1 of 2009 by CBI for alleged offence under Section 13(2) of the Prevention of Corruption Act, and vide judgment dated 28.10.2011, acquitted the first respondent. As against the judgment of acquittal, the petitioners have not preferred any appeal. By representation dated 17.11.2011, the first respondent seeks the following reliefs :-

> *"a. That the period of suspension of the applicant may be regularised under the relevant rules with full back wages and all service benefits.*
>
> *b. That applicant may be considered for promotion to the post of Assistant PF Commissioner as his junior has already been promoted and fix his seniority above to his immediate junior.*
>
> *c. That TA & DA for attending the Court cases at Chennai may be reimbursed as the distance between*

the Madurai and Chennai is around 420 kilometers and the bus fare costs around Rs.900/- per to and fro charges.

d. That advocate fee being Rs.1.5 lakhs be reimbursed as the cost of litigation."

8. While pending the said representation, the first respondent had filed O.A.No.999 of 2013, which was disposed of by the Tribunal at the stage of admission itself by directing the petitioners to pass an appropriate orders. The 2nd petitioner has considered the representation dated 17.11.2011 and rejected vide order dated 18.12.2014, citing the reason that the judgment of the criminal Court acquitting, the first respondent was purely, on technical grounds.

9. On perusal of order dated 18.02.2014 passed by the second petitioner reveals that the request for regularization of the period of suspension from 03.07.2008 to 31.03.2009 is not accepted on the following grounds:

"i. The suspension was revoked vide order no. Vig. X (20)2008 dated 01.04.2009 by the CPFC, being the disciplinary authority for the post of EO/AO. While revoking the suspension vide order no. Vig. X(20)2008 dated 01.04.2009, the then competent authority has chosen not to specifically treat the period as on duty.

ii. The Criminal Charge for having disproportionate assets bearing No. CC.1/2010 before the CBI court is still pending, which indicates that the charge of corruption has not been completely washed off.

iii. The departmental proceedings for major penalty for having disproportionate assets is also going on which indicates that the applicant has not been completely absolved of the charges of corruption.

iv. The applicant has not revealed the fact *before Hon'ble CAT, Chennai Bench in OA.No.999/2013 that a criminal case bearing CC No.1/2010 is pending in CBI Court and a charge sheet under rule 10 of EPF(CCA) Rule, 1971 has been issued on 07.09.2011, against him neither he has mentioned these facts in his representation.*

DoP&T vide OM No.142/5/84-AVD.I dated 20.06.1986 has clarified that "In a case where, after investigation by the CBI, a prima facie case is made out and pursuant thereto Regular Departmental Action for imposition of a major penalty has been instituted against a Government servant and a charge sheet has been served upon him alleging specific act of corruption or gross misconduct involving moral turpitude; immediately after the charge sheet has been served upon the Government servant."

v. Para 16, 17 and 28 of the order dated 28.10.2011 passed by the Additional Special Judge, *CBI indicated that the main reason of the failure of the prosecution was on the procedural ground. These remarks of the CBI court read with the charges levelled against the applicant in CC 1/2010 in the disproportional assets case are reasonable ground to hold that suspension was justified and the benefits under FR 54B(3) read with FR 54B(4) is not available to the applicant."*

10. Aggrieved over the above said order dated 18.02.2014 the first respondent has preferred an appeal under 19 EPF Staff (CC & A) Rules, 1971, before the first petitioner. The first petitioner has passed the following order on 05.06.2015 :-

"In this connection, it is stated that the appeal filed under Rules 19 of the Employee Provident Fund Staff (CC & A) Rules, 1971 against order dated 18.02.2014 passed by the Central PF Commissioner regarding regularization of period of suspension and attendant benefits thereon has been examined in

compliance with the order of the Hon'ble CAT, Chennai Bench OA No.999/2013 dated 25.07.2013. That order was not passed against and disciplinary proceedings issued under EPF (CC & A) Rules.

Since, the order against which Sh.V.Vasudevan is appealing is not any order passed under EPF Staff (CC & A) Rules, the process and provisions of appeal under EPF (CC & A) Rules is not applicable in his case. He may be informed accordingly."

11. On perusal of records reveals that the revocation of suspension order was passed in exercise of the powers conferred by Rule 6(5)(a) of the EPF Staff (CC & A) Rules, 1971 vide order No. Vig. X. (20)2008, dated 01.04.2009. But the competent authority did not take any decision regarding the regularization of the suspension period wherein it has been merely stated that the first respondent suspension order stands revoked with immediate effect.

12. It is relevant to cites the relevant Rules in EPF (CC & A) Rules,

1971 here under :-

“PART – IV SUSPENSION.

6. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Central Govt. Central Board may place an employee under suspension:-

(a) where a disciplinary proceedings against him contemplated or is pending; or

(aa) Where in the openion of the authority aforesaid, he has engaged himself in activities pre-judicial to the interest of the security of the State; or

(b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or

revoked by the authority competent to do so,

(b) Where an employee is suspended or is deemed to have been suspended, (Whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

"19. <u>ORDER AGAINST WHICH APPEAL LIES:-</u> Subject to the Provisions of rule 18, an employee may prefer an appeal against all or any of the following orders, namely --

(i) an order of suspension made or deemed to have been made under rule 6;

(e) determining his pay and allowances--

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal removal, or compulsory retirement from service or from the date of his reduction to a lower grade or post, time scale or stage in a time scale of pay, to the date of his reinstatement or restoration to his grade or post; or"

13. It is also relevant to cite Rule 54-B.1 to 7 of Fundamental Rules here under :-

"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.

**[G.O. Ms. No. 282, P&AR (FR-Spl.) Department, dated 12-6-90 – w.e.f. 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 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."

14. By invoking the relevant service law applicable to the first respondent, the petitioners were duty bound to take a decision regarding regulating the period of suspension. On perusal of records reveals that the first respondent was placed under deemed suspension from 03.07.2008 to 01.04.2009 consequent to remanded in custody for more than 48 hours. The first respondent, was acquitted by the competent Court in CC.No.1 of 2019 vide judgment dated 15.12.2011. The second case was also registered against the first respondent in 2010 i.e., posterior to the revocation of the deemed suspension. The second case did not involve any arrest at the time of initiation of criminal proceedings in C.C.No.1 of 2010 and as such even if the second case was initiated, during the currency of suspension since the earlier suspension was under the provisions of deemed suspension in terms of Sub Rule 2(a) of Rule 6 of EPF staff (CC & A) Rules 1971 and passed in exercise of the powers conferred by Sub rule (1)(b) of Rule 6 of EPF Staff (CC & A) Rules 1971, the same order cannot be applied or extended to the subsequent criminal proceedings in CC.No.1 of 2010. It is settled law that an

employee if suspended citing the initiation of criminal proceedings, which ultimately ended in order of acquittal in favour of the employee and no appeal has been preferred and departmental proceedings also ended in exoneration from the charges then the period of suspension is to be regularized, as duty period or on leave or otherwise in all purpose including pay and allowances etc. The criminal proceedings relating to disproportionate assets was in the year 2010 in C.C.No.1 of 2010 and the departmental proceedings on the same allegation was initiated in the year 2011 and the period of suspension is prior to 2010. Therefore there is no bearing whatsoever on the issue of regularization of the said period. In view of the above legal position the submissions made by the learned counsel appearing for the petitioners has no force at all. The Tribunal held that the purpose of rule which envisages an order by the competent authority as to how the period of suspension is to be treated as an employee is reinstated of revocation of his suspension, is that the authority would pass an order after taking into consideration the final outcome in the event, which went to placing the employee under suspension. Here no such order has ever been issued after the first respondent was reinstated on 01.04.2009 and accordingly the impugned orders dated 18.02.2014 and 05.06.2015 were quashed and set aside.

We are of the considered view that the order of the Tribunal was justified and legally sustainable and does not required any interference by this Court.

15. In the light of the above detailed discussion on considering the facts and circumstances of the case and in view of the submission made by the first respondent, we are of the firm view that the first respondent is entitled for the relief of regularization of suspension period alone and not entitled to any other reliefs as sought for in his representation dated 17.11.2011. Therefore, this Court directs the petitioners/competent authority shall pass necessary orders to regularize the period of suspension, as duty period or on leave or otherwise, as per the service law applicable to the first respondent, in accordance with law, within a period of ***four weeks*** from the date of receipt of a copy of this order.

16. With the above observations, this writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

(S.M.S.J,) **(M.J.R.J,)**

18.11.2024

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To
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