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W.A.Nos.1399 and 1405 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2024

CORAM :

THE HON'BLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.1399 and 1405 of 2024

and

CMP Nos. 10034, 10047 and 10050 of 2024

The Additional Director (Admn)
Treasuries Accounts Department
Panagal Building 2nd Floor
No.1, Jeens Road, Saidapet
Chennai – 600 015.

[Now 3rd Floor, Perasiriayar K.Anbzhagan Maaligai
No.571, Anna Salai, Nandanam
Chennai – 600 035]

.. Appellant
in both WAs

Vs

S.Sundar

.. Respondent
in both WAs

Prayer: Appeals under Clause 15 of the Letters Patent against the common order dated 27.06.2022 passed by the learned Single Judge in W.P.Nos.15773 of 2014 and 23474 of 2015, respectively.

For the Appellant

: Mr.Abishek Murthy
Government Advocate



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COMMON JUDGMENT
(Delivered by the Hon'ble Acting Chief Justice)

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These writ appeals are preferred by the appellant Department against the common order dated 27.06.2022 passed by a learned Judge in W.P.Nos.15773 of 2014 and 23474 of 2015 respectively.

2. Briefly stated facts are as follows:

2.1. The respondent / writ petitioner, while working as Record Clerk in Pay and Accounts Office (East), Chennai, a photograph was published in Daily Thanthi (Tamil Newspaper) dated 06.03.2003 under the caption "a gang was arrested who, disguising themselves as policemen, stole gold worth Rupees One Crore". The person standing third in the picture was identified as the respondent/ writ petitioner. Pursuant to the same, he was arrested under a criminal case and had been detained in jail for more than 48 hours. Therefore, he was placed under suspension on 05.03.2003 under Rule 17(e)(ii) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. Consequently, a case in Cr.No.125 of 2003 was registered against him for the offences under Sections 341, 395 r/w 397, 427, and 506(ii) IPC and the same culminated in S.C. No.288 of 2011 which ended in acquittal by judgment dated 29.08.2011 passed by the 2nd Additional Fast Track Court, Chennai.



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2.2. Simultaneously, disciplinary proceedings were initiated against the respondent by framing charges against him for his involvement in the criminal case and his arrest, which was considered as moral turpitude under the Tamil Nadu Government Servants Conduct Rules and the same subsequently, ended in an order of punishment of stoppage of increment for six months without cumulative effect, *vide* proceedings dated 18.01.2013. Thereafter, the respondent made a representation to the appellant to regularize his period of suspension from 05.03.2003 to 07.02.2012. The Directorate of Treasuries and Accounts, *vide* proceedings dated 09.06.2015, held that the suspension period from 05.03.2003 to 07.02.2012 has to be regulated as per Rule 54(B)-1 of the Fundamental Rules. Challenging the proceedings dated 18.01.2013 and 09.06.2015, the respondent filed W.P. Nos. 15773 of 2014 and 23474 of 2015 respectively.

3. The learned Judge by common order dated 27.06.2022, after considering the entire conspectus of the matter, held that the period of suspension should be treated as qualifying service for all purposes, viz., terminal and pensionary benefits. However, it was observed by the learned Judge that the respondent is not entitled to full salary for the period of suspension. For better appreciation, the relevant passage of the said order is extracted hereunder:-



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"8. In the present case, on completion of the departmental disciplinary proceedings and after the acquittal in the criminal case, the period of suspension was regulated as leave eligible or extraordinary leave. Thus, the period regulated is to be taken into consideration for the purpose of terminal and pensionary benefits and the said period is to be treated as qualifying services for all purposes. However, the said period of suspension cannot be treated as duty with full salary, in view of the fact that the petitioner had involved in a criminal case, and the departmental disciplinary proceedings initiated also was ended with an order of punishment.

9. This being the factum, the period of suspension is to be treated as a qualifying services for all purposes, including the pensionary and terminal benefits. However, the petitioner is not entitled for full salary for the said period.

10. With these observations the writ petitions stand disposed of."

4. Aggrieved by the order so passed by the learned Judge, the appellant Department has come up with these appeals.

5. Mr. Abishek Murthy, learned Government Advocate appearing on behalf of the appellant would submit that the learned Judge failed to consider that the disciplinary proceedings initiated against the writ petitioner ended in the order of punishment and consequently, he was given a notice in Na.Ka.No.51567/2014/M1 dated 09.06.2015 calling upon him to give his consent to regulate the absence period as eligible leave other than the UEL on MC as per Rule FR 54-B1 (5) and (7) and if eligible, compulsory wait as per ruling 3(A) of FR 9(6)(b) and joining time as per ruling 6 of FR 105. Adding further, the learned counsel submitted that as per the rule provision, the writ petitioner is eligible for only extraordinary leave without pay and allowance and the said leave cannot be



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considered for qualifying service. However, the learned judge erred in directing the authorities to treat the period of suspension as qualifying services for pensionary and terminal benefits. It is also submitted that the order of regulating the period of suspension as the eligible leave to which the writ petitioner is entitled, has not been quashed and in such event, the exercise of treating the suspension period as qualifying services is not feasible. Stating so, the learned Government Advocate sought to allow these appeals by setting aside the order impugned herein.

6. We have carefully considered the submissions made by the learned Government Advocate appearing for the appellant and also perused the materials available on record.

7. Before the writ court, the respondent / writ petitioner sought to quash the order of punishment and the order treating the suspension period as leave or extraordinary leave, without pay and allowances. Insofar as the first order of punishment, the learned Judge pointed out that the departmental disciplinary proceedings were initiated for the involvement of the writ petitioner in a criminal case and accordingly, it ended with punishment of stoppage of increment for six months without cumulative effect, after having rightly held that mere acquittal in



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a criminal case would not be a ground to grant exoneration in disciplinary proceedings. Therefore, the only question that arises for consideration herein is, whether the period of suspension can be treated as qualifying service for the purpose of pensionary benefits.

8. As per Rule 54 of the Fundamental Rules, 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. The appellant also, in pursuance of the request made by the respondent, regulated the services of the respondent as per FR 54-B-1(7) of the Fundamental Rules.

9. It is also to be noted that the respondent was suspended from service on 05.03.2003 and he was reinstated in service and rejoined duty on 08.02.2012 and the disciplinary proceedings ended with the order of punishment of stoppage of increment for 6 months without cumulative effect only on 18.01.2013. Thus, it is clear that there was inordinate delay of 9 years in completion of the disciplinary proceedings. At this juncture, it would be useful to refer to the judgment of the Apex Court in the case of **Prem Nath Bali vs. Registrar, High Court of Delhi and Ors. (16.12.2015 - SC)** [MANU/SC/1461/2015],



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wherein, it was held that where there was undue delay in completion of departmental proceedings, the delinquent cannot be deprived of getting the benefit of qualifying service. For better appreciation, the relevant passage of the said decision is extracted below:

"29. One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the Appellant but it was equally attributable to the Respondents as well. Due to such unreasonable delay, the Appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the Respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the Appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

34. Now coming to the facts of the case in hand, we find that the Respondent has fixed the Appellant's pension after excluding the period of suspension (9 years and 26 days). In other words, the Respondents while calculating the qualifying service of the Appellant for determining his pension did



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not take into account the period of suspension from 06.02.1990 to 01.03.1999.

35. Having regard to the totality of the facts and the circumstances, which are taken note of supra, we are of the view that the period of suspension should have been taken into account by the Respondents for determining the Appellant's pension and we accordingly do so.

36. In view of foregoing discussion, the appeal succeeds and is allowed in part only to the extent indicated above in relation to fixation of Appellant's pension. The Respondents are accordingly directed to re-determine the Appellant's pension by taking into account the period of suspension (06.02.1990 to 01.03.1999) and then pay to the Appellant arrears of the difference amount from the date he became eligible to claim pension and then to continue to pay the Appellant re-determined pension regularly in future as per Rules. It is to be done within three months from the date of receipt of this order. No costs."

In this case, as stated earlier, there was inordinate delay on the part of the appellant in completion of the disciplinary proceedings. Therefore, applying the legal principles laid down in the above decision, the order of the learned Judge directing the appellant to treat the suspension period of the respondent as qualifying service for terminal and pensionary benefits, but without full salary, appears to be just and reasonable.

10. This court finds no infirmity or perversity in the order so passed by the learned Judge warranting interference. Accordingly, these writ appeals stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., ACJ.) (M.S.Q., J.)
03.06.2024

Index : Yes/No.
NC : Yes/No.
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