



WP(MD)No.10216 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.10216 of 2021

P.Pushpam

.. Petitioner

v.

1.The District Collector,
Madurai District,
Madurai.

2.The Commissioner,
Chellampatty Panchayat Union,
Usilampatty Taluk, Madurai District.

3.The Personal Assistant to the District Collector (Noon Meal),
Madurai District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.23366/2020/Sa.Voo.Thi-1, dated 05.04.2021, quash the same and consequently, directing the respondents to disburse the monetary benefits



WP(MD)No.10216 of 2021

and other benefits along with belated payment interest at the rate of 18% pa for the period of suspension from 22.08.2011 to 27.02.2014 in terms of Rule 54-9(b) of the Fundamental Rule in view of the order in CrI.OP(MD)No. 12000 of 2015 and in the light of the Division Bench judgment in WA.No. 1026 of 2016, dated 06.09.2016.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.K.Balasubramani,
Special Government Pleader

ORDER

The petitioner is a retired Noon Meal Organizer. While she was in service, she was placed under suspension on 22.08.2011 that she was involved in a criminal case in Crime No.119 of 2011. She has filed a writ petition before this Court in WP(MD)No.16118 of 2013. The same was allowed by this Court on 28.11.2013, with a direction to the respondents to pay subsistence allowance to the petitioner pending the disciplinary proceedings. Thereafter, the criminal case was quashed by this Court and the petitioner was reinstated into service by the Department on 27.02.2014. The petitioner has also retired from service on 31.05.2019. After retirement,



the petitioner has made a request for salary and other allowance, for the suspended period, as per FR54B of the Fundamental Rules and it was rejected by the impugned order dated 05.04.2021. As against the same, the petitioner has filed this writ petition.

2.Learned Counsel for the petitioner submitted that the petitioner was suspended on 22.08.2011 without any valid reasons. He was not issued with any charge memo. Not even an enquiry was conducted. He was reinstated only on 27.02.2014. He was not paid with any subsistence allowance during the suspension period, despite the directions of this Court in WP(MD)No.16118 of 2013, dated 28.11.2013. The petitioner is also entitled for pay and other allowance during the suspension period, as per FR54B(9 & 10) of the Fundamental Rules and the same is extracted as under:-

“54B – 9. Where a Government servant is

(a) placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or trial; or

(b) dismissed or removed from service or compulsorily retired



on the ground of conduct which has led to his conviction on a criminal charge and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension or dismissed or removed or compulsorily retired from service.

10. When a Government servant, who was suspended, is fully exonerated of the charges on appeal, the period of suspension shall be treated as duty; and he shall be entitled to pay and allowances for the entire period of suspension, provided the period of suspension ended before the date of his superannuation."

3.Learned Counsel for the petitioner has a relied on a decision passed by this Court in *Superintendent of Police and Others v. C.Govindan* [WA.No.1026 of 2016, dated 06.09.2016], wherein, the Division Bench of this



Court has held as follows:-

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"4. ...

" ... 9. It is relevant to extract sub-rule 9(b) of FR 54-B as under:

'9:- Where a Government servant is :-

(a)

(b) *dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension or dismissed or removed or compulsorily retired from service.'*

10. As per the above said Rule, if the Government servant is subsequently reinstated in service on his acquittal either on merits



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WP(MD)No.10216 of 2021

or by giving benefit of doubt, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension, shall be treated as duty for all purposes and he shall be paid full pay and allowances, which he would have been entitled to, but for the fact that he was not placed under suspension or dismissed from service. The said Rule is squarely applicable to the present facts of the case and in fact, in respect of one Ramadoss, who was arrayed as A-26 and who was also one of the appellants in CA.No.444/1999, which was allowed by this Court along with the other two criminal appeals in CA Nos. 386 and 393/1999, his period of suspension has been treated as "spent on duty" and the consequential benefits were also directed to be paid to him.

11. Since the learned single Judge has taken into consideration the factual and legal position and has rightly arrived at the conclusion to allow the writ petition, this Court is of the view that there is no error or infirmity in the impugned order.

12. In the result, this writ appeal is dismissed at the admission stage itself. The appellants/official respondents are directed to comply with the order passed in W.P.No.17360/2010, within a period of one month from the date of receipt of copy of this judgment. However, there shall be no order as to costs. Consequently, connected MP is also dismissed."



5. We are of the view that the aforesaid judgment is squarely applicable to the case of the respondent / writ petitioner and by applying the same, the respondent / writ petitioner is entitled for the benefit of continuity of service and consequential monetary benefits including backwages. At this stage, it is submitted that the petitioner has been paid subsistence allowance during the suspension period.

6. In such view of the matter, the writ appeal is dismissed at the stage of admission itself. The appellants / official respondents are directed to settle all the benefits to the respondent / writ petitioner, if not already done so, within a period of three months from the date of receipt of a copy of this judgment."

4. The learned Counsel for the petitioner has relied upon yet another decision of this Court in ***Tamil Nadu Generation and Distribution Corporation Ltd and Others v. A.Karthikeyan*** [WA.No.1434 of 2018, dated 13.07.2018], wherein, a Division Bench of this Court has held as under:-

"16. Mr.P.R.Dhilipkumar, learned counsel for the appellants submitted that consequent to the acquittal of the respondent from the Criminal Proceedings, it is the duty of the appellants, to regularise the period spent on suspension, but there cannot be a direction to the appellants to consider regularization, as per Ruling 9, r/w Rule 57(B) of the Fundamental Rules and placed reliance on the judgment referred to



above, prayed that portion of the orders, be quashed/set aside. Ruling 9, r/w Rule 57(B) extracted supra, applies to the respondent. Subsequent orders of inclusion in the panel, placing the respondent at the appropriate seniority and promotion effected, all go to show that the appellants have treated the period spent on suspension as duty, and accordingly promoted him.

17. Though the respondent has been acquitted on benefit of doubt, vide order, dated 10.02.2016, in Special Case No.14 of 2006, on the file of the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, no departmental Proceedings have been initiated. Having ordered promotion by implementing the directions of the Writ Court, at this stage, it is not open to contend that, the department, had the rights to proceed departmentally, against the respondent, though acquitted on the benefit of doubt. Contentions on the merits of the criminal case, for disallowing monitory benefits cannot be accepted, in the ruling No. 9, r/w Rule 57(B) of TNEB Service Regulations, applicable to the case of the respondent.

18. As rightly pointed out by Mr.V.Ajay Khose, learned counsel for the respondent, now the point to be considered by the appellants is, as to how the period of suspension between 28.01.2003 to 11.04.2006, has to be regulated, as stated supra, the appellants have complied with the order dated 01.06.2017, made in W.P.No.11304 of 2017, except the above. When ruling No.9, r/w Rule 57(B) of TNEB Service Regulations, is applicable to the case of the respondent, direction issued by the Writ



Court, to take note of the same, while considering the representation of the petitioner, cannot be said to be manifestly illegal, warranting interference. Order made in W.P.No.11304 of 2017 dated 01.06.2017, is sustained. Appellants are directed to pass order on the aspect of pay and allowance, within a period of four weeks from the date of receipt of a copy of this order."

5.Learned Special Government Pleader, by referring to the proceedings dated 27.02.2014, by which the petitioner was reinstated, submitted that the petitioner has given an undertaking before the respondents that he is not insisting for any backwages and therefore, he was reinstated without conducting any enquiry on 27.02.2014.

6.He further submitted that the petitioner has received money and cheated the person, for which, the criminal case was registered and the petitioner was remanded. Therefore, as per the Tamil Nadu Government Servants Conduct Rules, disciplinary proceedings was contemplated as against the petitioner on 26.05.2011. Thereafter, the petitioner was reinstated on 27.02.2014, in pursuant to the undertaking given by him and



the subsequent development of quashment of the criminal case registered against the petitioner, on account of a compromise settlement arrived between the parties.

7.This Court considered the rival submissions made on either side and perused the materials placed on record.

8.No doubt, the Fundamental Rule, as referred by the petitioner, provides for pay and allowances in the event if the person, who has been suspended, has been subsequently exonerated from the criminal case. At the same time, it is a settled position that the departmental disciplinary enquiry is governed by the rule of 'preponderance of probabilities' and not governed by 'proof beyond reasonable doubt' or by the 'rules of evidence' which is governing the criminal trial.

9.The observations made by the Hon'ble Supreme Court in *State of Rajasthan and Others v. Heem Singh* [2021 (2) CTC 332], with regard to the effect of an acquittal in a disciplinary proceedings, are extracted as under:-



“34. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association v. Union of India, this Court held:

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

In Inspector General of Police v. S. Samuthiram, a two-Judge Bench of this Court held that unless the accused has an “honorable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”. Noticing this, the Court observed:



“Honourable acquittal:

24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In R.P. Kapur v. Union of India [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari [1972



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SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor* [ILR (1934) 61 Cal 168] which is as follows:

“8. ... ‘The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.’”

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of



establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.””

10. Even if a person is acquitted from the criminal case, the Department can proceed as against that person and can take a decision independently, *dehors* the decision taken in the criminal case. In the present case, the petitioner was involved in a criminal case and that criminal case was subsequently ended in an order of acquittal on the compromise arrived



between the petitioner and the defacto complainant in that criminal case.

Subsequently, the petitioner was also reinstated on 27.02.2014 without conducting any enquiry, based on the undertaking offered by the petitioner at that time.

11.In fact, the petitioner has made the request for the benefits, only after her retirement. Had she made such request for the benefits when she was in service, the Department would have reopened the departmental disciplinary proceedings. Therefore, this Court is not inclined to pass any order that she is entitled for pay and other allowance during the suspension period. At the same, she is entitled for subsistence allowance during the period of suspension, from 22.08.2011 to 27.02.2014, as directed by this Court in WP(MD)No.16118 of 2013, dated 28.11.2013.

12.Therefore, this writ petition is partly allowed with a direction to the respondents to pay the eligible subsistence allowance to the petitioner for the suspension period from 22.08.2011 to 27.02.2014, within a period of four weeks from the date of receipt of a copy of this order.



WP(MD)No.10216 of 2021

WEB COPY There shall be no order as to costs.

Index : Yes / No

28.11.2024

NCC : Yes / No

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WP(MD)No.10216 of 2021

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WP(MD)No.10216 of 2021

28.11.2024