



W.P.(MD).No.14519 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.14519 of 2021

and

W.M.P.(MD)Nos.11462 and 11463 of 2021

S.Boobalakrishnan

...Petitioner

Vs.

1.The Inspector General of Police,
Armed Police,
Chennai-600 010.

2.The Deputy Inspector General of
Police,
Armed Forces (Welfare and
Modernisation),
Tiruchirappalli-620 012.

3.The Commandant,
Tamil Nadu Special Police VI
Battalion,
Madurai-625 014.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned order Na.Ka.No.C4/304/10524/2020 dated 22.01.2021 passed by the 3rd respondent and quash the same and consequently directing the respondents to treat the period from 02.11.1995



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to 14.04.2002 as duty period as per FR.54(A)(3) and to upgrade / promote the petitioner as Gr.I Police Constable from 01.03.2005 and as Head Constable from 01.03.2010 and as Special Sub Inspector of Police (SSI) on par with his batch-mates, and grant all the service and monetary benefits within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy
For Respondents : Mr.P.Veera Kathiravan,
Additional Advocate General,
Assisted by
Mr.D.Gandhi Raj,
Special Government Pleader

ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to call for the records related to the impugned order Na.Ka.No.C4/304/10524/2020 dated 22.01.2021 passed by the 3rd respondent and quash the same and consequently to direct respondents to treat the period from 02.11.1995 to 14.04.2002 as duty period as per FR.54(A)(3) and to upgrade / promote the petitioner as Gr.I Police Constable from 01.03.2005 and as Head Constable from 01.03.2010 and as Special Sub Inspector of Police (SSI) on par with his batch-mates, and grant all the service and monetary benefits.



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2. The facts and circumstances which led to the filing of this writ petition are as follows:

2.1. The petitioner was appointed as Grade II Police Constable in Tamil Nadu Special Police VI Battalion on 28.02.1995. He applied for a medical leave for a period of 19 days from 07.09.1995 to 26.09.1995. However, he was not able to join duty thereafter. In view of the same, on 01.11.1995, a desertion notice came to be issued by the respondents. Following which, on 11.12.1995, the desertion order was also served upon him. Pursuant to the same, the petitioner was visited by a charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Service Rules on 28.01.1996 for the charge of desertion from service and consequently on conduct of disciplinary proceeding as against him on 07.06.1996, the petitioner was removed from service. Assailing the same, the petitioner preferred O.A.No.2148 of 2000 before the Tamil Nadu Administrative Tribunal and the learned Tribunal by its order dated 12.03.2002, had set aside the removal order by observing that the punishment of removal from service is excessive, harsh and disproportionate to the proven charges and therefore, the learned Tribunal directed that the proved charges for unauthorized absence, the applicant is to be deprived of backwages for the period of unemployment and also to invoke a punishment of stoppage of



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increment for a period of three years with cumulative effect, following which, the petitioner was reinstated on 15.04.2002.

2.2. However, challenging the order of the learned Tribunal dated 12.03.2002, he filed yet another writ petition in W.P.(MD)No.25251 of 2005 and the Hon'ble Division Bench of this Court, by its judgment dated 22.08.2007 had modified the punishment inflicted by the learned Tribunal from one of reinstatement without back wages, setting aside the punishment of postponement of increment with cumulative effect. Pursuant to the same, the petitioner made a representation during July 2006 to promote him as a Grade I Police Constable on par with his batchmates as per G.O.Ms.No.15 dated 07.01.2010. However, the same was not considered. Hence, he made yet another representation on 31.08.2020 in this regard. But his representation was not further considered, hence, he filed another writ petition in W.P.(MD)No.15377 of 2020 seeking to direct the respondents to consider his representation dated 31.08.2020 before this Court and this Court, by its order in W.P.(MD)No.15377 of 2020 dated 04.11.2020 disposed of the same, directed the respondents to consider the petitioner's representation within a period of six (6) weeks. Pursuant to the same, on



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22.01.2021, the impugned order of rejection came to be passed by the 3rd respondent. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner, Mr.Sakthi Kumaran submitted that, the petitioner had made a representation on 31.08.2020 seeking to direct the respondents to consider his case to be promoted to the post of Grade I Police Constable on par with his batch mates. The respondents ought to have considered the same, on the basis of the order passed by the Hon'ble Division Bench of this Court in W.P.(MD)No. 25251 of 2005 wherein the punishment imposed by the Department on the petitioner had been already set aside. In view of the same, he is entitled for the service benefits including promotion. For which, he relied upon Rule 54-A(3) of the Fundamental Rules of the Government of Tamil Nadu and submitted that the petitioner is entitled for all service benefits and hence, his case ought to have been considered by the respondents for promotion. Since the same was not done, the impugned order need to be interfered with and pressed for allowing the writ petition.

4. Per contra, the learned Additional Advocate General Mr.P.Veera Kathiravan assisted by Mr.D.Gandhiraj, Special Government Pleader, relying



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upon the counter affidavit filed by the 3rd respondent categorically submitted that, the contention of the petitioner's counsel claiming that the petitioner is entitled to be promoted on the basis of Rule 54-A(3) of the Fundamental Rules of the Government of Tamil Nadu, is not a correct submission. On the other hand, the relevant rule which would be applicable to the facts and circumstances of this case would be Rule 54(5) of the Fundamental Rules of the Government of Tamil Nadu. Pointing out the same, he submitted that, the period of absence from duty including the period of suspension preceding the removal of the petitioner from service shall not be treated as the period spent on duty unless the competent authority specifically directs it shall be treated as duty period for any specified purpose. Accordingly, he pressed for dismissal of the writ petition.

5. Heard the learned counsels on either sides. Carefully perused the materials available on record.

6. This is a case wherein the petitioner was initially subjected to a punishment of removal from service dated 07.06.1996 for the charge of desertion from service. The petitioner filed O.A.No.2148 of 2000 before the Tamil Nadu Administrative Tribunal as against the said punishment of



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removal. The learned Tribunal felt that the punishment of removal from service for the proven charge of desertion from service was shockingly disproportionate and on that basis had set aside the order of removal imposed on the petitioner and the relevant portion of the same is extracted as follows:

“11. The learned counsel for the applicant also has drawn my attention to a ruling reported in 1994 Supp. (2) SCC 75 in Union of India and others Vs. Giriraj Sharma. The Supreme Court has observed in the said Ruling as follows:

“The incumbent while admitting the fact that he had overstayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for overstaying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order. But the circumstances forced him to do so. In that view of the matter, the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty, if they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission”.

13. In view of the circumstances stated above, the punishment of removal from service is excessive, harsh and disproportionate to the proved



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charge. Therefore, I am inclined to set aside the order of removal imposed on the applicant and to reinstate the applicant. However, for the proved charge of unauthorised absence, the applicant is to be deprived of backwages for the period of unemployment and also to be imposed with punishment of stoppage of increment for three years with cumulative effect.

14. In the result, the original application is allowed. The order or removal passed against the applicant by the 3rd respondent is set aside and the department is directed to reinstate him and the applicant is to be punished with stoppage of increment for three years with cumulative effect and also denial of backwages for the period of unemployment.”

7. By an order dated 12.03.2002, the learned Tribunal had set aside the punishment of removal from service and thereby directed the respondents to reinstate the petitioner without back wages along with a punishment of stoppage of increment for a period of three years with cumulative effect. After being reinstated the petitioner filed yet another writ petition before the Hon'ble Division Bench of this Court in W.P.(MD)No. 25251 of 2005 and the Hon'ble Division Bench of this Court, by its order dated 22.08.2007 disposed of the said writ petition in favour of the petitioner and the relevant portion of the same is extracted as follows:



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“4. Considering the facts and circumstances of the case, though the Tribunal has satisfied that the imposition of the punishment of removal from service is disproportionate to the root charges and accordingly allowed the original application ordering reinstatement, but modified the punishment. While modifying the punishment, the Tribunal imposed two punishments. While denying backwages on reinstatement, the second punishment of stoppage of increment for three years with cumulative effect is also ordered to be imposed. Further, it is submitted that during the course of hearing after the order of the Tribunal dated 12.03.2002, the petitioner was reinstated in service on 15.04.2004 and is continuing in service. While imposing the punishment of denial of backwages on reinstatement, the Tribunal should not have ordered the punishment of stoppage of increment for three years with cumulative effect. Therefore, we consider it appropriate to set aside the order of the Tribunal to the extent of directing the respondent to impose the punishment of stoppage of increment for three years with cumulative effect.”

8. Accordingly, the Hon'ble Division Bench of this Court had set aside the order of the Tribunal imposing the punishment of stoppage of increment for a period of three years with cumulative effect, however, the Department reiterated that the petitioner is not entitled for back wages. Pursuant to the



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same, the petitioner had made several representations from July 2016 seeking to promote him as Grade I Police Constable and the last of which was made on 31.08.2020.

9. However, the same was not considered and yet another writ petition in W.P.(MD)No.15377 of 2020 came to be filed by the petitioner and the same was allowed on 04.11.2020 directing the respondents to consider the petitioner's representation, following which, the impugned order rejecting the petitioner's claim to treat the period of unemployment from 07.08.1996 to 14.06.2002 as duty period for all purposes came to be passed. The learned Additional Advocate General appearing for the respondents vehemently contended that when the petitioner was reinstated without back wages and that too at the instance of the judgment passed by the Hon'ble Division Bench of this Court in W.P.(MD)No.25251 of 2005 dated 22.08.2007, the petitioner is not entitled to seek the respondent authorities to consider his period of absence as duty period for all purposes. However, the learned Additional Advocate General relying upon the Fundamental Rule 54(5) categorically submitted that the period of absence from duty including removal from service shall not be treated as period spent on duty for any purpose unless the competent authority specifically directs that it shall be



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treated for any specified purpose. But in the instant case, no such direction has been issued by the authorities concerned at any point of time.

10. However, this Court is of the considered view that the learned Additional Advocate General's reliance on Sub Clause 5 of Rule 54 of the Fundamental Rules may not be correct for the purpose that the same deals with the cases falling under Sub Rule 4 of the aforesaid Rule. For better clarity the aforesaid Rule 54 is extracted as follows:

"F.R.54. (1) When a Government servant, who has been dismissed, revoked or compulsorily retired, is reinstated as a result of appeal or review or would have been so reinstated (but for his retirement on superannuation while under suspension or not), 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 his absence from duty including the period of suspension preceding his dismissal, removal, 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.



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(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government 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 in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole), of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.



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(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowance to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal removal or compulsory retirement, as the case may be, 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:

Provided that any payment under this sub-rule to a Government servant shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such Government servant are passed by the appellate authority or reviewing authority or immediately preceding the date of retirement on superannuation of such Government servant, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal



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or compulsory retirement, as the case may be, shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated for any specified purpose:

Provided that if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, 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 non-permanent Government servant; and

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

11. Obviously the petitioner's case will not be covered under any of the conditions elaborated covered under the Fundamental Rule 54 Sub Clause 1,2,3,4 and 5. On the other hand, the learned counsel for the petitioner relied upon the Fundamental Rule 54-(A) Sub Clause 3 and submitted that,



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the petitioner is entitled for the benefit of considering his period of absence as duty period and the same is extracted as follows:

“F.R.54-A. (3) *If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be.”*

12. This Court is inclined to observe that the Fundamental Rule 54 deals with those employee who have been dismissed, removed or placed at compulsory retirement but reinstated as result of an appeal or review before the Department concerned. However, Fundamental Rule 54-(A) deals with those Government employees whose removal, dismissal or compulsory retirement is set aside by a Court of law pursuant to which a Government employee is reinstated. The instant *lis* is a clear case which would be



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covered by Fundamental Rule 54-(A) and not Fundamental Rule 54 of the Government of Tamil Nadu.

13. This Court has dealt with a similar case in ***W.P.(MD)No.31036 of 2013 reported in 2017 SCC Online Madras 16504*** and the relevant portion of the same is extracted as follows:

“22.However, in so far as the said absence period on the part of the petitioner is concerned, whether it is to be treated as duty period without backwages or to be treated as leave period without pay is concerned, the said Rule 54(1) and (2), as has been quoted by the learned Government Advocate, on a perusal and in the opinion of the Court, may not be applicable to the present facts of the case.

23.Then, the only option available to the second respondent is to invoke F.R. 54-A.(3) and if the said Rule is invoked without giving any backwages, the said absence period shall be treated as duty for all purposes. If it is treated as duty for all purposes, it goes without saying that the petitioner shall be entitled to get other service benefits for which, he is entitled to, as per the Rules, which are in force except backwages.

24.In view of the above Rule position and the discussions made, this Court is of the considered view that the impugned order is liable to be set aside.



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25. In the result, the impugned order is quashed. The petitioner's period of absence between 25.06.1993 and 15.07.2003 shall be treated as duty period for all purposes. However, the petitioner shall not be entitled for any backwages or monetary benefits for the said period, which has been regularised now. It is needless to mention that in view of this, the petitioner shall be entitled to seek other service benefits."

14. Fully fortified by the mandates of the aforesaid order passed by this Court in the aforesaid case, I am of the considered view that even in the instant case in hand the option available to the respondent authority is to invoke Fundamental Rule 54-A(3) and if the said Rule is invoked without giving back wages, the said absence period shall be treated as duty for all purposes. As far as the case of the petitioner is concerned, already the Hon'ble Division Bench of this Court had categorically concluded that the petitioner is not entitled for back wages but that will not absolve the respondent authorities from giving him the other service benefits. Thus, if it is treated as duty period for all purposes, it is needless to state that the petitioner shall be entitled to get all the other service benefits to which he is entitled to as per the Rule which are in force except back wages. Accordingly, he is entitled for the promotion as claimed by him to be



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promoted as Grade I Police Constable from 01.03.2005 and Head Constable from 01.03.2010 and SSI form 01.11.2003 in terms of his representation.

15. Accordingly, the impugned order dated 22.01.2021 is hereby quashed and the same is remanded back to the authorities to pass appropriate orders in the line of the judgment of this Court in W.P.(MD)No. 31036 of 2013 within a period eight (8) weeks from the date of receipt of a copy of this order.

16. With the above directions, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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- 1.The Inspector General of Police,
Armed Police,
Chennai-600 010.
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L.VICTORIA GOWRI, J.

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