



W.P.(MD).No.22221 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 03.10.2024

ORDER PRONOUNCED ON : 14 .10.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.22221 of 2024
and WMP(MD).No.18779 of 2024**

S.Kailasam

....Petitioner

Vs

1.The Director General of Police /Prisons and
Correctional Service
Egmore, Chennai -8

2.The Superintendent of Prisons
Central Prison
Trichy

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the respondent No.2 in No.1802/QJIT.2/2022 dated 14.03.2024 and quash the same and further direct the respondents to regularise the period of suspension of the petitioner from 07.02.2019 to 10.04.2023 as period of service for all purpose following Tamil Nadu Fundamental Rules, pay the back-wages and other benefits including increments.



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For Petitioner : Mr.T.S.Mohamed Mohideen

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

A Grade-II Constable working in the Central Prison, Trichy has filed the instant writ petition challenging an order passed by the second respondent herein wherein the period of suspension between 07.02.2019 to 10.04.2023 has been treated as extraordinary leave on loss of pay.

2.According to the learned counsel appearing for the writ petitioner, he was suspended for his involvement in a criminal case on 07.02.2019 and he was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was acquitted from the criminal case on 04.01.2023 on the ground of benefit of doubt.

3.On 03.04.2023, the order of suspension was revoked and the petitioner was reinstated in service. On 26.04.2023, the petitioner was exonerated from all the charges. Thereafter, the present impugned order has been passed treating the period of suspension as extraordinary leave on loss of pay.

4.The learned counsel for the writ petitioner had relied upon Rule 54(B)(9) of the Tamil Nadu Fundamental Rules had contended that the



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suspension of the petitioner is only traceable to the pendency of the criminal case. The charge memo was issued two months after the order of suspension.

The petitioner has been exonerated from all the charges and therefore, the entire suspension period should be treated as a duty period.

5.The learned counsel had relied upon two Division Benches judgments in W.A.No.1430 of 2013 dated 02.09.2013 and W.A.No.1026 of 2016 dated 06.09.2016 to impress upon the Court that once the suspension order is traceable to a criminal case and after acquittal, an employee is reinstated, the suspension period should be treated as duty period.

6.Per contra, the learned Special Government Pleader appearing for the respondents herein extensively relying upon the counter contended that the petitioner was under suspension only pursuant to a charge memo issued under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Only after exoneration, the petitioner has been reinstated. During the non-employment period, the petitioner has received 50% of subsistence allowance. There was a delay on the part of the writ petitioner in submitting his explanation to the charge memo. Therefore, the delay is attributable only to the writ petitioner. That apart, the writ petitioner being under probation, he is not entitled to avail earned leave. In such circumstances, the non-employment period has to be treated only as an extraordinary leave on loss of pay. Hence, he prayed for dismissal of the writ petition.



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7.I have considered the submissions made on either side and perused the material records.

8.The primary grievance of the writ petitioner is that the suspension period should not have been treated as extraordinary leave on loss of pay, but should have been treated as a duty period, in view of Rule 54(B)-1(9) of Fundamental Rules.

9.Rule 54(B)-1(9) of Tamil Nadu Fundamental Rules is extracted as follows:

“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*



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suspension, or dismissed or removed or compulsorily retired from service.”

10.A careful perusal of the above said Fundamental Rules makes it manifest that where a Government servant is placed under suspension in view of the fact that a complaint against him in a criminal offence is pending and he is acquitted by the Court either on merits or on benefit of doubt, he must be regarded as having been prevented from discharging his duties and the period of suspension shall be treated as duty period 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.

11.In the present case, a perusal of the suspension order reveals that the petitioner is suspended invoking Rule 17(e)(1)(ii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules which is extracted as follows:

“17.(e)(1)-A member of a service may be placed under suspension from service, where-

(ii) a case against him in respect of any criminal offence is under investigation, inquiry or trial.”

12.A perusal of the above said Rules reveals that if a case has been registered as against the Government servant in respect of any criminal offence and the same is under investigation, enquiry or trial, a Government



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servant could be placed under suspension.

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13. Though the petitioner has been suspended on 07.02.2019, he has been issued with a charge memo only on 25.04.2019. Therefore, it is clear that the suspension is solely traceable only to the involvement of the writ petitioner in the criminal case. A charge memo was issued to the writ petitioner on 25.04.2019. The petitioner was exonerated from the departmental proceedings by an order dated 26.04.2023. Therefore, it is clear that the petitioner has been acquitted from the criminal case and exonerated from the departmental proceedings also. In such circumstances, Rule 54(B)-1(9) of Fundamental Rules which is extracted supra is clearly applicable to the facts of the present case. Since the petitioner has been placed under suspension solely on the ground of his involvement in the criminal case, having been acquitted on benefit of doubt, the entire suspension period has to be treated as duty period.

14. The petitioner was arrested on 05.02.2019 and he was released on bail only on 23.03.2019. The period during which the petitioner was in judicial custody, cannot be treated as duty period.

15. The Hon'ble Division Bench in a judgment in W.A.No.1026 of 2016 dated 06.09.2016 after relying upon the First Bench decision in W.A.No.1430 of 2013 dated 02.09.2013, has proceeded to hold that the suspension period has to be treated as duty period. However, in the present case, under the



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impugned order, the second respondent has treated the said period as extraordinary leave on loss of pay which is not legally sustainable.

16.In view of the above said deliberations, excluding the period of judicial custody, remaining period shall be treated as duty period and all the attendant and monetary benefits, including increments, shall be disbursed to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

17.With the above said deliberations, this writ petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

14.10.2024.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa



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1.The Director General of Police /Prisons and
Correctional Service
Egmore, Chennai -8

2.The Superintendent of Prisons
Central Prison
Trichy



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.22221 of 2024
and WMP(MD).No.18791 of 2024

14.10.2024