



W.A.(MD)No.1122 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.07.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A(MD)No.1122 of 2024

S.Raveendran

... Appellant

VS

1.The Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai.

2.The Director General of Police,
Chennai – 600 004.

3.The Superintendent of Police,
Railway, Trichy.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 14.02.2023 passed in W.P(MD)No.14077 of 2020.

For Appellant : Mr.M.Gnanagurunathan
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader



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JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This intra-Court appeal is directed against the order, dated 14.02.2023 made in W.P(MD)No.14077 of 2020, wherein, the Writ Court had rejected the claim of the appellant to treat the suspension period between 28.09.1996 and 21.11.2012, as duty period and grant the consequential benefits.

2.The appellant was originally appointed as Grade-II Police Constable on 14.12.1981 and subsequently, got promoted as Grade-I Police Constable on 07.10.1985. On the allegation of demanding and receiving illegal gratification, a criminal case was registered in Cr.No.3 of 1996 by the Vigilance and Anti Corruption Department, for the offence under Section 7 of the Prevention of Corruption Act, 1988. In view of registration of the case, the appellant was placed under suspension on 30.08.1996 and a charge memo was issued on 23.11.1998 framing four charges. The appellant had submitted his explanation on 04.10.2002 and not satisfied with the reply, an Enquiry Officer was appointed and after concluding the enquiry, the enquiry report was submitted on 30.10.2002.



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3.A second show cause notice was issued to the appellant on 13.08.2012 for which, an explanation was submitted on 30.08.2012 and thereafter, the first respondent had issued G.O.(2D)No.354, dated 22.10.2012, imposing a punishment of reduction in rank for a period of five years. Pursuant to the order of punishment, the suspension was revoked on 19.11.2012 and the appellant was directed to report duty. The appellant had also filed an appeal as against the order of punishment to the Government and the first respondent by order, dated 17.02.2016, had rejected the appeal and confirmed the punishment. After the punishment period, the appellant was promoted as Grade-I Police Constable in the year 2018 and on attaining the age of superannuation, he retired from the service on 31.05.2019.

4.In the meanwhile, the second respondent had issued a memo, dated 16.03.2015 to the third respondent directing to regularise the appellant's suspension period from 28.09.1998 to 21.11.2012, as per FR-54-B-1(3). Subsequently, by proceedings, dated 05.05.2015, the suspension period was regularised as eligible leave for 100 days, 180 days as half pay leave and the remaining period was regularised, as leave without pay and challenging the same, the appellant preferred the Writ Petition.



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5.The learned Judge after observing the fact that the proceedings has been initiated against the Writ Petitioner, as the criminal case was registered for offence under Section 7 of the Prevention of Corruption Act, 1988 and after the punishment of reduction in rank for a period of five years was imposed, pursuant to the departmental proceedings, the Writ Petitioner was promoted as Grade-I Police Constable and also got retired from the service in the year 2019 and as the Writ Petitioner had challenged the proceedings, dated 05.05.2015, after a lapse of five years, the Writ Petition is not sustainable on the ground of delay and laches. The learned Judge had also observed that since the appellant being a member of the Police Force, in view of the charges framed against him, he deserves for major punishment of dismissal from service, however, taking a lenient view in the matter, only a punishment of reduction in rank for a period of five years was imposed and the suspension period was also regularised, as a non-duty period, which is perfectly in order and thereby, dismissed the Writ Petition. Challenging the impugned order of the Writ Court, the Writ Petitioner had preferred the above appeal.



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6.The learned Counsel for the appellant argued that after completion of the enquiry, the Enquiry Officer submitted his report as early as on 30.10.2002. But, however, the respondents have not taken any further proceedings for nearly 10 years and only on 13.08.2012 had issued the second show cause notice for which immediately, a reply was submitted on 30.08.2012 and the order of punishment came to be passed on 22.10.2012. The learned Counsel further submitted that the respondents had passed the impugned proceedings by regularising the suspension period by not treating it as duty period, as per FR54-B(1)(3), but, whereas, since the respondents had taken nearly ten years to complete the enquiry, which ended in issuance of the punishment order on 22.10.2012, the delay is directly attributable only on the Government and therefore, the respondents ought to have considered the regularisation under FR54-B(1)(5) and (7).

7.The learned Counsel further submitted that as the respondents had not properly considered regularising the suspension period, nearly a period of sixteen years is simply wiped out from the service of the appellant without any benefits and the learned Judge has not considered this legal point by which the appellant is entitled for regularisation of this suspension



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period as a duty period, which is erroneous, he contended and sought for interference of this Court in allowing the appeal.

8.The Additional Government Pleader appearing for the respondents submitted that the delay occurred in conclusion of the disciplinary proceedings was only on account of the appellant, who had, by challenging the proceedings, stalled the enquiry by obtaining an interim order from the Court, which only resulted in the delay. The learned Additional Government Pleader further submitted that as soon as the orders were passed in the Writ Petitions, final orders were passed by imposing the punishment and the departmental proceedings were concluded. It is his further contention that after the punishment period, the appellant got promoted as Grade-I Police Constable and also got superannuation from service in the year 2019 and thereafter, as an afterthought, after nearly five years, have filed the Writ Petition, which is hit by laches.

9.The learned Additional Government Pleader further contended that in view of the proviso contained under FR 54 B-1(7), the period of suspension had, in fact, been converted into leave in which, 100 days was



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converted as earned leave, 180 days was converted as half pay leave and only the balance period was treated as leave without pay and therefore, the orders passed in regularising the suspension period is perfectly justified, which was taken note of by the Writ Court and ultimately dismissed the Writ Petition, which needs no interference and sought for dismissal of the appeal.

10. Heard the rival contentions and perused the materials available on record.

11. The appellant, who was originally appointed as Grade-II Police Constable on 14.12.1981, got promoted as Grade-I Police Constable on 07.10.1985. While he was working under the third respondent in the Trichy Railway Station, a case was registered against him in Cr.No.3 of 1996 by the Vigilance and Anti Corruption Department for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, on the allegation of demand and receipt of illegal gratification, due to which, the appellant was placed under suspension on 30.08.1996 and a charge memo was issued on 23.11.1998 framing four charges. The appellant had submitted his reply



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on 04.10.2022 and being not satisfied with the same, an Enquiry Officer was appointed and after enquiry, the Enquiry Officer had submitted his report on 30.10.2002 holding that the first charge is proved.

12.Pursuant to the enquiry report, a second show cause notice was issued on 13.08.2012 for which, the appellant had submitted his explanation on 30.08.2012. Ultimately, the first respondent vide G.O.(2D)No.354, dated 22.10.2012, imposed a punishment of reduction in rank for a period of five years and a direction was also issued to revoke the suspension and to reinstate him into service immediately. The appellant was reinstated into service and after the punishment period, he was promoted as Grade-I Police Constable in the year 2018 and on attaining the age of superannuation, he retired from service on 31.05.2019. Even while he was in service, by proceedings, dated 05.05.2015, the third respondent, after reinstating the appellant, had regularised the suspension period, as eligible leave for 100 days, half pay leave for 180 days and the leave without pay for nearly a period of 15 years 4 months and 16 days.



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13.If the Government servant, who was under suspension, got reinstated then how the suspension period has to be regularised is dealt with under Rule 54-B of the Fundamental Rules of the Tamil Nadu Government. As per FR 54-B(1)(b), 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, then the authority competent to order reinstatement shall consider and make a specific order, whether or not, the said period shall be treated as the period spent on duty. Therefore, in view of FR 54-B(1)(b), it is the prerogative of the Government, wherever, a Government servant, who has been suspended, is reinstated, to decide as to whether or not the said period should be treated as a period spent on duty. In the instant case, the third respondent had passed orders by regularising the suspension period and by holding the period for 15 years 4 months and 16 days as leave without pay, which is perfectly in consonance and prerogative available as per FR 54-B(1)(b)

14.However, it is the vehement contention of the learned Counsel for the appellant that since in respect of the charges, the enquiry has been



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completed and the enquiry report was submitted as early as on 30.10.2002 and for no reasons, the respondents simply delayed the issue and ultimately, after nearly ten years, only on 22.10.2012, had issued the order of punishment and that the delay of ten years is directly attributable on the Government for which, the appellant could not be made to suffer. It is his further contention that the respondents ought to have completed the proceedings and imposed the punishment immediately on the submission of the enquiry report and that atleast the period from 30.10.2002 till the date of punishment of 22.10.2012 could have been avoided and the appellant would have been in service. In such circumstances, when the delay is directly attributable on the Government, then the regularisation of suspension period ought to have been considered only under FR 54-B(1)(5) and (7). It is the contention of the learned Counsel for the appellant that in view of the above Rule, the appellant is entitled to get his suspension period regularised, as period on duty.

15.It is, therefore, now to be seen as to whether the delay caused after the submission of the enquiry report and the punishment imposed is either attributable on the appellant or the respondents. It could be seen from the



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records that even though the Enquiry Officer had submitted his report on 30.10.2002, the appellant had challenged the charge memo, dated 23.11.1998 in W.P.(MD)No.1842 of 2007 and had obtained an order of interim stay of all further proceedings pursuant to the charge memo. When the enquiry itself has been completed and an enquiry report was filed as early as on 30.10.2002, for the reasons best known to him, the appellant had challenged the charge memo in the year 2007 and had obtained an interim order as against the respondents from completing the disciplinary proceedings. Only when the Writ Petition filed by the appellant and the connected Writ Petitions were taken for final hearing on 24.08.2011, it has been submitted by the appellant that since he was under suspension from 1996, the first respondent may be directed to finalise the disciplinary proceedings already initiated based on the enquiry report submitted on 30.10.2002 and a final order can be passed within a time frame.

16.By recording the said submission, the Writ Petitions came to be disposed of by order, dated 24.08.2011 by directing the respondents to finalise the disciplinary proceedings and pass a final order within a period of three months. Immediately, thereafter, the respondents had issued the



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second show cause notice on 13.08.2012 for which, the appellant had submitted his explanation on 30.08.2012 and the first respondent had, by order, dated 22.10.2012, imposed the punishment. Therefore, it is evident that it is only at the instance of the appellant, the disciplinary proceedings were not able to be concluded and the appellant having challenged the charge memo and obtained interim order and kept the Writ Petition pending for nearly six years, had submitted before the Writ Court that the respondents may be directed to conclude the proceedings within a time frame.

17.From the details referred to above, immediately on the orders passed in the Writ Petition, the respondents have proceeded further and concluded the proceedings by imposing a punishment. When the delay is not attributable on the part of the respondents and it was the appellant, who had knowing well that the enquiry report had already been submitted on 30.10.2002, had preferred the Writ Petition in the year 2007 and had obtained an order of interim stay, he cannot shift the blame on the respondents for the delay occurred.



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18.As rightly contended by the learned Additional Government Pleader, the third respondent had already passed orders by regularising the suspension period in view of the proviso contained under FR54-B(1)(7) by converting the suspension period into leave, whichever was admissible and based on which, 100 days leave has been converted as earned leave, further 180 days was converted as half pay leave and only the remaining period was regularised as leave without pay. Therefore, the orders passed regularising the suspension period of the appellant, as indicated above, is in consonance with the applicable rules and it cannot be treated as a duty period.

19.The learned Judge though had arrived at a decision that the appellant is not entitled for regularisation of the suspension period as a duty period, we are in agreement of the decision arrived by the learned Judge, but on the different reasons, as discussed above. In such circumstances, no interference is required in the decision arrived at by the learned Judge.



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20.In view of the above, the Writ Appeal stands dismissed. However,
there shall be no order as to costs.

[R.S.K., J] & [G.A.M., J]
10.07.2024

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

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To

1.The Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai.

2.The Director General of Police,
Chennai – 600 004.

3.The Superintendent of Police,
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