



W.A(MD)Nos.2109 and 2117 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2024

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CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)Nos.2109 and 2117 of 2023
and
C.M.P(MD)No.16834 and 16937 of 2023**

- 1.The Director General of Police,
Mylapore,
Chennai – 4.
- 2.The Additional Director General of Police,
(Law and Order),
Mylapore, Chennai – 4.
- 3.The Commissioner of Police,
Trichy City,
Trichy.
- 4.The Deputy Commissioner of Police,
(Law and Order),
Trichy City, Trichy. ... Appellants/Respondents (In both W.As)

-vs-

G.Anbalagan ... Respondent in W.A(MD)No.2109 of 2023
/Writ Petitioner

I.Paulraj Jones ... Respondent in W.A(MD)No.2117 of 2023/
Writ Petitioner

COMMON PRAYER: Appeal filed under Clause 15 of Letters Patent, against
the order dated 16.11.2022 passed in W.P(MD)Nos.917 and 911 of 2021.

For Appellants :Mr.Mr.P.T.Thiraviyam,



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Government Advocate

For Respondent : Mr.G.Thalaimutharasu

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COMMON JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

Aggrieved by the order of the Writ Court, dated 16.11.2022 made in W.P(MD)Nos.917 and 911 of 2021, the State is on appeal.

2. Challenge is to the order of the Writ Court dated 16.11.2022 in and by which the Writ Court while quashing the proceedings in C.P.O.Nos. 673and 674 of 2020 dated 23.10.2020 and the consequential order passed on 02.12.2020 and 05.12.2020 regarding the treatment of the period during which the respondent in both the writ appeals were out of employment, directed the appellants to treat the period from 07.10.2004 till the date of reinstatement as on duty and also directed the appellants to pay salary from 03.09.2010.

3. The respondents who were appointed as Grade-II Constables in the year 1993 were visited with a charge memo on 31.12.2002. After an enquiry, the Disciplinary Authority imposed a punishment of dismissal from service. The same was appealed against by the respondents. The Appellate Authority namely the Commissioner of Police, Trichy, confirmed the order of dismissal from service. The respondents sought for a review



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under the Police Subordinate Service (Discipline and Appeal) Rules. The revisional authority, namely, the Additional Director General of Police(Law & Order), held that the punishment is disproportionate to the proved delinquency and reduced the punishment, to reduction in time scale of pay by two stages for one year and also concluded that the period of reduction shall not operate to postpone the future increment. This order of the revisional authority was passed on 12.06.2024. However, the Director General of Police took up a suo motu review and by an order dated 07.10.2004 while setting aside the order the revisional authority, restored the order the Disciplinary Authority namely the punishment of dismissal from service. This order made by the Director General of Police on 07.10.2004 was challenged by the respondents. W.P(MD)No.765 of 2005 was filed by the respondent in W.A(MD)No.2109 of 2023 and W.P(MD)5837 of 2005 was filed by the respondent in W.A(MD)No.2117 of 2023.

4. The writ petitions came to be disposed of by this Court on 03.09.2010. After elaborate discussion of the Rule position, this Court concluded that there is no power of second review vested with the Director General of Police under the Police Subordinate Service (Discipline and Appeal) Rules. Therefore, the order the Director General of Police, dated 07.10.2004, was set aside with a direction to reinstate the respondents with all attendant benefits. Though the order in the writ petition came to be passed on 03.09.2010, Appeals were sought to be filed by the



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Department in W.A(MD)SR.Nos.5629 and 5633 of 2014 along with an application seeking condonation of delay of 1162 days. The delay applications came up for hearing before the Hon'ble Division Bench on 24.09.2018. The same were dismissed on the conclusion that the delay has not been properly explained. Thereafter, the respondents were reinstated into service on 25.03.2019. When the respondents sought for the orders regarding the treatment of the period during which the proceedings were pending before this Court, the Department passed its order impugned in the writ petitions treating the period of suspension between 30.09.2002 to 15.02.2004 as unearned leave with half pay and the period between 16.02.2004 to 24.03.2019 as leave without pay. This order was subject matter of challenge in the present writ petitions. Before the writ Court, it was the contention of the Department that the respondents have requested for such treatment by their letter dated 15.10.2020. It was the contention of the respondents before the Writ Court that the said letter was obtained against their wishes.

5. The Writ Court considering the status of the respondents in the appeals and the fact that they have been fighting with the Department for almost 16 years from 2004 to 2020, concluded that the letter dated 15.10.2020 will not bind them. On the said conclusion, the writ Court allowed the writ petitions recording the concession made by the learned counsel for the petitioners that he would be satisfied if the petitioners



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granted monetary benefits from 03.09.2010 the date on which their earlier writ petitions were allowed by this Court till the date of their reinstatement and the period from 07.10.2004 to be treated as period on duty for calculation of other benefits. Aggrieved, the Department is on appeal.

6. We have heard Mr.P.T.Thiraviyam, learned Government Advocate for the appellants and Mr.G.Thalaimutharasu, learned counsel appearing for the respondent in both the writ appeals.

7. Mr.P.T.Thiraviyam, learned Government Advocate would vehemently contend that the principle 'No-Work, No-Pay' should be applied. He would also point out that under Sub-Clauses 4 and 5 of Fundamental Rule 54, it is incumbent for of the competent authority to pass orders regarding treatment of the period of absence during which disciplinary proceedings are pending and if there is no such positive direction, it will be treated as leave without pay. He would also fall back upon the letter dated 15.02.2020 alleged to have been executed by the respondents.

8. On the second question, namely, binding nature of the letter dated 15.02.2020, we are in complete agreement with the opinion expressed by the learned single Judge. The plight of a Grade-II Constable, who has fought from 2004 to 2020 from the date of their removal from



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service till the date of reinstatement can well be imagined. They would have been so meek and weak to sign on the dotted lines just to enter the office again. Therefore, we do not think that we should give weightage to the letter, dated 15.02.2020.

9. On the contention based on Rule 54(5), Rule 54(5) would only apply to competent authority and not to this Court. The order made in the writ petitions where the enhancement of the punishment was challenged makes it very clear that the writ petitioners would be entitled to all benefits. Operative portion of the order reads as follows:

“47. As this Court has come to the conclusion that the impugned order is without jurisdiction, it deems it fit not to delve into other contentions, on the merits. In view of the above, both the writ petitions are allowed.”

10. Once the writ petitions are allowed, the prayer in the writ petitions should be deemed to have been granted in full. The prayer in the writ petitions was as follows:

“Prayer in W.P(MD)No.765 of 2005: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders of the 1st respondent in his proceedings Rc.No.167536/PRI(3)/2004, dated 07.10.2004 and quash the same consequently direct the respondent to reinstate the



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petitioner into service as police constable with all attendant benefits and back wages.

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Prayer in W.P(MD)No.5837 of 2005: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders of the 1st respondent in his proceedings Rc.No.167536/PRI(3)/2004, dated 09.12.2004 and quash the same consequently direct the respondent to reinstate the petitioner into service as police constable with all attendant benefits and back wages.”

11. Therefore, the appellants cannot now contend that this Court has not passed any orders regarding treatment of the period during which the respondents were out of employment and therefore, it would be open to them to treat the same as leave without pay.

12. The order restoring the major punishment of dismissal from service was set aside on the ground that there was no power of *suo motu* review under the Rules. This Court has also allowed the writ petitions in full, thereby granting the prayer for reinstatement with all attendant benefits also. Hence, it cannot be contended that this Court has not made any specific orders regarding treatment of the period during which the respondents were out of employment. Strictly, the respondents would be entitled to salary from 07.10.2004. However, since the respondents have given up the claim for monetary benefits between 07.10.2004 to



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03.09.2010, the writ Court granted monetary benefits from 03.09.2010.

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13. For the foregoing reasons, we do not see any reason to interfere with the direction issued by the writ Court. The Department will comply with the order of the writ Court in its letter and spirit, if the same has not already been complied with, within a period of twelve weeks from the date of receipt of this order.

14. These writ appeals are dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

02.09.2024

NCC :Yes/No

Index :Yes/No

Internet: Yes

PM

To:

- 1.The Director General of Police,
Mylapore,
Chennai – 4.
- 2.The Additional Director General of Police,
(Law and Order),
Mylapore, Chennai – 4.
- 3.The Commissioner of Police,
Trichy City,
Trichy.



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4.The Deputy Commissioner of Police,
(Law and Order),
Trichy City, Trichy.



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R.SUBRAMANIAN, J.

and

L.VICTORIA GOWRI, J.

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