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W.A.No.791 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2025

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A.No.791 of 2023

V.Selvaraj .. Appellant

Vs.

1. The Principal Secretary to Government
Home Department, Fort St. George
Chennai – 600 009.
2. Director of Fire & Rescue Services
Tamil Nadu, No.17, Rukmani Lakshmipathy Road
Chennai – 600 008. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent, against
the order made in W.P.No.13194 of 2019 dated 01.12.2022.

For the Appellant : Mr.G.Bala
For the Respondent : Mr.M.Venkateswaran
Special Government Pleader

JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)
This intra-Court appeal has been directed against the order of
the Writ Court dated 01.12.2022 made in W.P.No.13194 of 2019.

2. The appellant/writ petitioner joined the Fire and Rescue



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Service Department in the year 1974. He was promoted as Driver in the year 1981. A criminal case was lodged against him in the year 2007 in Crime No.79 of 2007, where, the appellant/writ petitioner was arrayed as Accused No.3. The Trial Court convicted the appellant/writ petitioner to undergo life imprisonment for the alleged offences punishable under Section 302 of the Indian Penal Code, 1860.

3. In view of the conviction of the appellant/writ petitioner, the respondent Department, by invoking Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, imposed the punishment of dismissal from service with effect from 26.08.2009. As against the order of conviction ordered by the Trial Court, the appellant/writ petitioner preferred an appeal before the High Court and the High Court, since confirmed the order of conviction, the appellant/writ petitioner preferred an appeal before the Hon'ble Supreme Court of India.

4. The Apex Court allowed the said appeal on 08.02.2018. Since the Hon'ble Supreme Court of India has allowed the appeal filed by the appellant/writ petitioner, whereby, the conviction has been set aside, the appellant/writ petitioner thereafter has filed a



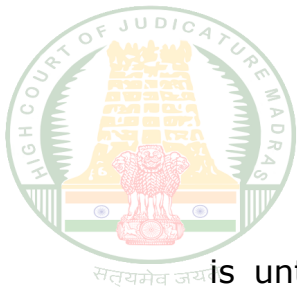
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petition/request on 17.05.2018, requesting the respondent Department to set aside the order of punishment of dismissal from service dated 26.08.2009 and treat the entire period, where he was out of service, as duty period, as the appellant/writ petitioner already superannuated by 31.12.2012.

5. This petition/request, submitted by the appellant/writ petitioner, having been considered by the respondent Department, was disposed by the order dated 29.08.2018, whereby, they treated the acquittal of the appellant/writ petitioner, by virtue of the judgment of the Hon'ble Supreme Court of India dated 08.02.2018, as a reason for modifying the order of punishment of dismissal from service into compulsory retirement. Accordingly, the modified order of punishment of compulsory retirement was ordered by the respondent Department through the order dated 29.08.2018. This order, in fact, was under challenge before the Writ Court.

6. The learned Single Judge, having considered these factual matrix, has recorded in paragraph 4 of the impugned order that the appellant/writ petitioner submitted the said petition/request after a lapse of many years and made a request to treat the period of non-service as duty period with full salary benefits. The very claim itself



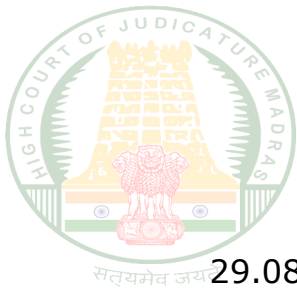
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is untenable in view of the fact that the appellant/writ petitioner accepted the modified order of punishment and received pensionary benefits accordingly. The relevant portion of the impugned order reads thus:

"4. The petitioner was involved in a criminal case and convicted both by the Trial Court and High Court. He was acquitted by the Hon-ble Supreme Court and consequently, the authorities themselves have considered the case of the writ petitioner, took a lenient view and modified the punishment of dismissal from service to that of compulsory retirement. All the terminal and pensionary benefits due to the writ petitioner were settled in full and the petitioner is receiving pension as of now. While so, the petitioner submitted a further application, after the lapse of many years and made a request to treat the period of non~service as duty, with full salary. The very claim itself is untenable, in view of the fact that the petitioner accepted the modified punishment of compulsory retirement and received all the pensionary benefits. If at all he was not satisfied with the modified punishment of compulsory retirement imposed on him, he should have challenged the said order of compulsory retirement, which he had failed to do. After accepting the modified punishment of compulsory retirement and receiving the terminal and retirement benefits in full, and after a lapse of many years, he had filed a mercy petition, and such mercy petition is not maintainable, as there is no rule to entertain mercy petition by the Director of Fire and Rescue Services."

7. The impugned order before the Writ Court dated



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29.08.2018 is extracted hereunder, in entirety, for easy reference:

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Proceedings of the Director of Fire & Rescue Services, Tamil Nadu.
17, Rukmani Lakshmipathy Road, Egmore, Chennai-8.

Present: K.P.Maghendhran, IPS
DGP / Director

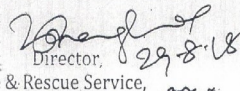
Rc.No:5200/A3/2018 Date: 29.08.2018

Sub: Fire & Rescue Service - Directorate- Cuddalore District -
Cuddalore- Sipcot Fire & Rescue Service Station - Mercy Petition
Of Thiru.V.Selvaraj (Dismissal from Service), UGDM 3834
-P.R.No:01/2009 -Orders.

Ref: 1.P.R.No:01/2009 Dtd:02.03.2009 of Cuddalore Division Officer.
2.Proceedings of Cuddalore Division Officer,Final Order
P.R.No:01/2009, Dtd:26.08.2009 .R.C.No:3172/B1/2007.
3.Supreme Court of India, Judgement of Criminal Appeal No:455 of 2010
Dated:01.02.2018
4.Mercy Petition of Tr. V.Selvaraj (Dismissal from Service), UGDM 3834,
Dated:17.05.2018.

Order :

I have gone through the mercy petition, PR.No:01/2009, and all connected records. He was "Dismissed from service" after conviction in a murder case. His appeal has been rejected by Madras High Court, which upheld his conviction. On further, appeal to the Supreme Court of India, the individual has been acquitted on technical grounds, but has not been honourably acquitted. Hence, his period of absence on dismissal cannot be treated as duty. However, it is seen that the individual has completed about 34 years of service at the time of dismissal from service. Considering his otherwise clean record of service, I take a lenient view and modify the punishment of "Dismissal from service" to that of "Compulsory Retirement from Service" with full pensionary benefits.


Director, 29-8-18
Fire & Rescue Service,
Tamilnadu. 18/8/18 26/8/18

To: Thiru. V.Selvaraj (Dismissal from Service),UGDM 3834
No:448,Subramaniyar Koil Street,
Suthukulam, Cuddalore Muthu Nagar - 607003.

Thro: The District Officer, Cuddalore District,
To : The District Officer, Cuddalore District,
Copy to: The Deputy Director Central Region, Trichy.

Sent in Duplicate for
Acknowledgement



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8. *Mr.G.Bala*, learned counsel appearing for the appellant/writ petitioner has pointed out that the appellant/writ petitioner was dismissed from service by the order dated 26.08.2009, thereafter, the legal battle went on and the High Court also confirmed the order of conviction, as against which, the appeal preferred by the appellant/writ petitioner was pending till the year 2018, where, on 08.02.2018 only, the Hon'ble Supreme Court of India allowed the appeal filed by the appellant/writ petitioner, thereby, the order of conviction was set aside.

9. Immediately, on 17.05.2018, a petition/request was made by the appellant, which in fact was disposed by the order dated 29.08.2018 by treating the said petition as a mercy petition, thereby, the punishment of dismissal from service has been modified into compulsory retirement. That approach of the respondents in modifying the order punishment is against the relevant Rule, because the punishment itself was awarded only on the reason that the appellant/writ petitioner has been convicted by the Competent Court and subsequently, when the conviction itself is set aside by the Hon'ble Supreme Court of India, the original position is to be restored and for all practical purposes, he should



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have been taken into the capacity as an employee, who has been working from the date of removal of service till the date of his superannuation and therefore, the said period shall be treated as duty period with all consequential service and financial benefits.

10. We have heard *Mr.M.Venkateswaran*, learned Special Government Pleader appearing for the respondents, who would contend by relying upon the averments made in the counter affidavit filed before the Writ Court, especially paragraph 6, that the appellant/writ petitioner was dismissed from service not only on the basis of conviction that has been ordered against him, but also for the other charges framed against him, where charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, were faced by the appellant/writ petitioner and in the meanwhile, since the conviction was ordered, he was removed from service and therefore, merely because the conviction alone has been set aside by the Apex Court, the appellant would not be *ipso facto* entitled to seek the benefit of treating the entire non-service period as duty period with all consequential benefits. Therefore, the approach of the learned Single Judge, in passing the impugned order, cannot be found fault with, he contended.



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11. We have given our anxious consideration to the submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

12. The admitted facts are that the appellant/writ petitioner was convicted and pursuant to which, he was dismissed from service with effect from 26.08.2009. Thereafter, he filed an appeal before the High Court, where also the order of conviction has been confirmed. As against the same, the appellant/writ petitioner preferred an appeal before the Apex Court, where the matter was pending. In the meanwhile, the appellant/writ petitioner attained superannuation on 31.12.2012. After some years, the appeal filed by the appellant/writ petitioner was allowed by the Hon'ble Supreme Court of India vide order dated 08.12.2018. Thereafter only, on 17.05.2018, he has made a petition/request to treat the entire non-service period as duty period with all consequential benefits. However, this petition/request was treated as a mercy petition by the respondent Department, as has been averred in paragraph 6 of the counter affidavit, which has been pointed out by the learned Special Government Pleader.

13. In fact, it is not a mercy petition. On perusal of the order



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that has been passed by the respondent Department, it has stated that *"on further appeal to the Hon'ble Supreme Court of India, the individual has been acquitted on technical grounds, but has not been honourably acquitted. Hence, his period of absence on dismissal cannot be treated as duty"*. In this context, if we peruse the order passed by the Hon'ble Supreme Court of India, whether it was a technical acquittal or honourable acquittal, the relevant portion of the order states that, *"we are of the view that the Accused No.3 – Selvaraj S/o Veerappan deserves an order of acquittal. We order accordingly."*

14. In paragraph 10 of the judgment of the Apex Court, the following orders have been passed:

"10. Consequently and in the light of the above while setting aside the order of the High Court insofar as Accused No.3 – Selvaraj S/o Veerappan is concerned we hold the said accused to be not guilty of the offence(s) of which he has been charged. We, accordingly, acquit the Accused No.3 – Selvaraj S/o Veerappan while confirming the conviction of the Accused No.4 – Kalaimohan S/o Desingu."



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15. Insofar as the appellant/writ petitioner is concerned, since he was the Accused No.3, the Apex Court has made it clear that the said accused, that is the appellant herein, to be not guilty of the offences of which he has been charged and accordingly acquitted the Accused No.3 while confirming the conviction of the Accused No.4. Therefore, it is a clear finding given by the Hon'ble Supreme Court of India, where, honourable acquittal has been ordered against the appellant/writ petitioner, as the appellant/writ petitioner has been declared to be not guilty of the offences for which he has been charged.

16. When that being the order passed by the Hon'ble Supreme Court of India, we are at loss to understand as to on what basis the respondent, that is the Director of Fire and Rescue Services, in his order dated 29.08.2018, has stated that the individual has been acquitted on technical grounds, but has not been honourably acquitted. This finding given in the order dated 29.08.2018 is without any basis.

17. Moreover, insofar as the averments that have been made in the counter affidavit, as pointed out by the learned Special



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Government Pleader, that the appellant/writ petitioner was dismissed from service not only on the basis of conviction, but also on the basis of other charges are concerned, it is an admitted case that the respondent employer has invoked only Rule 17(c). Even though some other charges have been framed against the appellant/writ petitioner, no enquiry was conducted and the charges have not been proved.

18. Moreover, only based on the proven charges, such punishment of dismissal from service was ordered. The only reason for such order of punishment of dismissal from service is because of the conviction that has been ordered by the Competent Criminal Court. Once the said conviction goes, where the appellant/writ petitioner has not been held guilty, as declared by the Hon'ble Supreme Court of India, and such acquittal being a honorable acquittal, the question of considering the petition/request, made by the appellant to treat his absent period as duty period, as mercy petition, and thereby, modification of the order of punishment that has been given vide order dated 29.08.2018 is totally wrong and the same would go against the Rule position.



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19. These aspects have not been considered in proper perspective by the learned Single Judge while disposing the writ petition through the impugned order. Therefore, we are not hesitant to hold that the order impugned herein is an erroneous one and hence, the same is liable to be interfered with.

20. Resultantly, the impugned order is set aside and consequently, the writ petition stands allowed by setting aside the order dated 29.08.2018, insofar as it refuses to treat the non-service period, that is from the date of suspension of the appellant/writ petitioner till the date of superannuation that is 31.12.2012, as a duty period and as a sequel, there shall be a direction to the respondents to treat the non-service period, that is from the date of suspension till the date of superannuation, that is till 31.12.2012, of the appellant/writ petitioner as duty period and therefore, he shall be entitled to get all service benefits, including the salary by way of backwages. He shall also be entitled to get pensionary benefits with accrued arrears. The said benefits shall be conferred upon the appellant/writ petitioner by the respondent Department within a period of three months from the date of receipt of a copy of this order.



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21. With these directions, the present writ appeal stands allowed. However, there shall be no order as to costs.

(R.S.K., J.) (A.D.M.C., J)
17.03.2025

Neutral Citation:Yes/No

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To:

1. The Principal Secretary to Government
Home Department, Fort St. George
Chennai – 600 009.
2. Director of Fire & Rescue Services
Tamil Nadu, No.17, Rukmani Lakshmipathy Road
Chennai – 600 008.



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R. SURESH KUMAR, J.
AND
A.D.MARIA CLETE, J.

(drm)

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