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THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2025

PRONOUNCED ON : 01.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.26 of 2024
and C.M.P.No.187 of 2024**

1.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007.

2.The Additional Commissioner of Police,
Traffic, Vepery,
Chennai - 600 007.

3.The Deputy Commissioner of Police,
Traffic, Chennai - 600 002. ...

Appellants

versus

D.Sathiyaseelan
S/o.Dassaiyan (PC 8768),
J3, Guindy Traffic Police Station,
Chennai. ...

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order passed in W.P.No.17089 of 2014 dated 02.01.2023.

For Appellants : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader



For Respondent : Mr.L.Chandarkumar

JUDGMENT

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(Judgment of the Court was made by **G.ARUL MURUGAN, J.**)

This intra-court appeal is preferred against the order dated 02.01.2023 in W.P.No.17089 of 2014, wherein the appellants were directed to treat the suspension period of the respondent from 24.05.1995 to 31.05.2000 and from 25.10.2005 to 26.08.2010 as “duty period” for all purposes and extend the consequential benefits.

The short facts to be noted in the appeal are as follows:-

2. The respondent was initially appointed as Grade-II Constable on 25.10.1984. While he was serving in R-4 Pondy Bazaar Traffic Police Station, Chennai, he availed medical leave from 20.04.1995 due to sickness. While on medical leave, without obtaining prior permission from the competent authority, he had left the headquarters and went to Kanyakumari and on 24.05.1995, he along with four persons by hiring a car, had intercepted a Government bus that was plying to Thiruvananthapuram within the Eraniel Police Station limits and had forcibly abducted one of the passengers, Mr.Srinath of Kannanore District, Kerala State.



3. The victim was beaten and robbed of a sum of Rs.60,300/-, but however, the villagers had caught hold of the respondent and his associates along with the cash. On the complaint of the victim, a case in Crime No.206 of 1995 under Section 395 IPC was registered on the file of the Eraniel Police Station against the respondent and four others and they were all arrested and remanded to judicial custody.

4. The respondent was placed under suspension with effect from 24.05.1995 for having been involved in a criminal act and for the misconduct. The disciplinary proceedings were initiated by framing charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, for the following delinquencies:-

“(i) Gross neglect of duty in leaving the Headquarters to other district on 20.04.1995 on own accord without getting any prior permission or Sanction, and

(ii) Reprehensible conduct in intercepting a Tamil Nadu Bus plying towards Trivandrum on 24.05.1995 at 10.15 hours at Sungankadai, Ayankulathangarai along with 3 others and robbed away Rs.60,300/- from one Srinath travelling in that bus.”

5. Pursuant to the orders passed by the Tamil Nadu Administrative Tribunal, the respondent was reinstated into service on 31.05.2000. The



respondent had submitted his reply and not satisfied with the reply, the enquiry officer was appointed. Based on the enquiry report, the disciplinary authority concurred with the findings and by order dated 25.10.2005, had imposed a punishment of dismissal from service. The appeal preferred to the appellate authority also came to be rejected on 16.12.2005.

6. The orders of punishment as confirmed by the appellate authority was challenged in W.P.No.314 of 2006 and by order dated 20.04.2009, the order imposing punishment was set aside but was remitted to the disciplinary authority only on the ground that since the criminal case registered against the respondent had ended in acquittal. On remand, by order dated 11.06.2009, the disciplinary authority had reimposed the punishment of dismissal from service. The appeal preferred also came to be rejected on 13.07.2009. In the second writ petition filed in W.P.No.14937 of 2009 again challenging the punishment imposed, by order dated 24.03.2010, the orders were set aside and the appellate authority was directed to rehear the appeal after affording reasonable opportunity.

7. On the second remand, the appellate authority, by order dated 20.08.2010, had partially allowed the appeal and had modified the

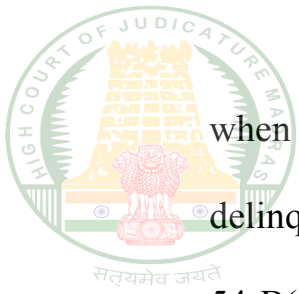


punishment of removal from service to that of “reduction in pay by 3 stages for 3 years with cumulative effect”. Pursuant to which, the respondent had joined duty on 27.08.2010.

8. Based on the modified punishment, a show cause notice dated 01.11.2013 was issued calling for the explanation of the respondent as to why the period of suspension from 24.05.1995 to 31.05.2000 and the period from 25.10.2005 to 26.08.2010 should not be treated as eligible leave. The respondent submitted his explanation on 16.11.2013, pursuant to which, by order dated 31.01.2014, the above period was settled in the following manner:-

i]	24.05.1995 to 31.05.2000	1835 days LWP (P)
ii]	25.10.2005 to 31.03.2006	158 days E.L. (P)
iii]	01.04.2006 to 26.08.2010	1589 days LWP (P)

9. Based on the above order settling the period, the pay of the respondent was restored with increments and consequently, he was promoted as Grade-I Police Constable on upgradation as on 01.10.2013. Challenging the impugned orders in settling the above periods, the respondent had preferred the writ petition. The writ court, by holding that



when once a criminal case has ended in acquittal due to which the delinquent was placed under suspension, then as per the Fundamental Rules 54-B(1)(9), automatically the suspension period has to be treated as a period on duty and further in so far as the period when he was out of employment between 2005-2010 ought have to be considered having been prevented from discharging his duties, is also to be treated as duty period and thereby had allowed the writ petition. Assailing the same, the Department is on appeal.

10. Mr.P.Kumaresan, learned Additional Advocate General, instructed by Mrs.S.Anitha, learned Special Government Pleader, appearing for the appellants contended that, when the respondent had been involved in criminal activities for which serious charges came to be framed, which has resulted in a punishment, the period of suspension has been rightly settled by the competent authority as per the Fundamental Rules. He further contended that it is not a case where he has been completely exonerated from the charges, but though an order of removal from service came to be passed, but however, it was only modified by the appellate authority by reducing the pay by 3 stages for 3 years with cumulative effect.



11. He further contended that when the punishment came to be imposed for the proven charges, which had also become final and when the disciplinary authority had not passed any orders to treat the period of suspension as duty de hors the punishment, the authority had settled the period of suspension in a lawful manner.

12. It is his further contention that when the respondent was removed from service and later the punishment came to be modified, the authority competent to order reinstatement shall consider and pass orders in respect of treating the period and the same has been decided to be treated as a period on leave, in accordance with the Rules. He further contended that the writ court, by placing reliance on Rule 54-B(1), had allowed the writ petition, which is not applicable to the case on hand and sought for indulgence of this court.

13. Mr.L.Chandrakumar, learned counsel for the respondent contended that when the respondent was acquitted from the criminal case, then as per the Fundamental Rule 54-B(1)(9), the period of suspension has to be automatically treated as a period on duty and further, since the punishment of removal from service came to be modified, the period from



dismissal to reinstatement has to be taken as the period in service. The learned Judge has rightly taken note of the Fundamental Rules and allowed the writ petition, which is perfectly in order and sought for dismissal of this writ appeal.

14. Heard the rival submissions and perused the materials available on record.

15. The respondent herein, while he was serving as a Constable in R-4 Pondy Bazaar Traffic Police Station, had availed medical leave from 20.04.1995 and is alleged to have been involved in a criminal case for which a case came to be registered in Crime No.206 of 1995 under Section 395 IPC on the file of the Eranial Police Station. The respondent along with the others were arrested and remanded to judicial custody and for the misconduct, a charge memo came to be issued under Rule 3(b) of the Rules, framing the aforesaid two charges. The respondent was also placed under suspension with effect from 24.05.1995 and pursuant to the orders passed by the Tamil Nadu Administrative Tribunal, the suspension was revoked and he was reinstated into service on 31.05.2000.



16. On receipt of the reply from the respondent, not being satisfied, an enquiry officer was appointed. The enquiry officer submitted a report holding that the charges are proved and the disciplinary authority, by concurring with the findings of the enquiry officer's report, imposed a punishment of dismissal from service on 25.10.2005, which was also confirmed by the appellate authority on 16.12.2005.

17. However, the punishment was set aside by order of this Court dated 20.04.2009 in W.P.No.314 of 2006 and the matter was remanded to the disciplinary authority. Pursuant to the remand, again the disciplinary authority by order dated 11.06.2009, reimposed the punishment of removal from service and also confirmed by the appellate authority on 13.07.2009.

18. Again in the second round, this Court, by order dated 24.03.2010 in W.P.No.14937 of 2009, set aside the punishment and remanded the matter to the appellate authority. The appellate authority, by order dated 20.08.2010, modified the punishment of removal from service to that of reduction in pay by 3 years with cumulative effect. In view of the modified punishment, the respondent joined duty on 27.08.2010.



19. Even though the respondent was acquitted from the criminal case, still he has not been exonerated from the charges in the disciplinary proceedings, but however, only the punishment was modified. While modifying the punishment, the appellate authority had not ordered to treat the period either under suspension or the period between removal from service and reinstatement as a period spent on duty. As such, in view of the modified punishment, the competent authority had issued notice to the respondent and on receipt of his reply, had passed orders on 31.01.2014 by settling the two periods, i.e., the suspension from 24.05.1995 to 31.05.2000 and the period not on duty from 25.10.2005 to 26.08.2010, as leave in the manner mentioned above.

20. When the appellate authority had not passed order in respect of treating the above periods as spent on duty, then the competent authority shall pass a specific order settling those periods. In the instant case, the suspension period from 24.05.1995 to 31.05.2000 totalling 1835 days has been settled as leave without pay. If a Government servant is placed under suspension where both an enquiry into grave charges against him is pending or contemplated and a criminal proceeding is also instituted in respect of the same charges, then subsequently he is reinstated into service, then the



settling of the period is governed by Rule 54-B-1(11), which reads as follows:-

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“54-B-1(11) When a Government servant is placed under suspension where an enquiry into grave charges against him is pending or contemplated and a criminal proceedings are also instituted simultaneously in respect of the same charges and subsequently he is reinstated into service, the period of suspension shall be-

(i) treated as duty if there is a specific order or direction of a court of competent jurisdiction to this effect notwithstanding the fact that a penalty has been imposed in the departmental inquiry;

(ii) regulated under F.R.54, only after the final order of the criminal court is delivered in which he is acquitted notwithstanding the fact that departmental enquiry has been finalised and a penalty has also been imposed upon him prior to the finalisation of criminal proceedings.”

21. As per sub-clause (i) when both the disciplinary proceedings and the criminal charge are pending and subsequently the delinquent is reinstated into service, then the suspension period shall be treated as duty only if there is a specific order or direction to that effect, notwithstanding the fact that a penalty has been imposed.



22. Here, the respondent has not been exonerated from the charges and when both the disciplinary proceedings and the criminal case were pending, though he was acquitted from the criminal case, still for the proven charges, the punishment alone was modified from removal from service to that of reduction in pay scale by the appellate authority. While modifying the punishment, the appellate authority had not passed any order to treat the period of suspension as duty irrespective of the fact of imposing the penalty. When there was no such order, the period could be regulated under Fundamental Rule 54 by the competent authority.

23. While the authority had settled this period as leave without pay, the writ court, by placing reliance on Rule 54-B(1)(9), had interfered with the impugned order. Sub-rule(9) only deals with a situation in case where the delinquent was placed under suspension only as a criminal complaint was pending or the dismissal or removal from service was due to the conviction on criminal charge but subsequently reinstated on acquittal.

24. When the punishment of removal from service was imposed in the disciplinary proceedings for proven charges, in our considered opinion, the period cannot be treated as duty by relying on sub-rule(9), but however,



will be governed only by the provisions of sub-rule(11) and as such, we are not in agreement with the conclusion arrived at by the writ court.

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25. Further, in respect of the period from 25.10.2005 to 26.08.2010, out of which 158 days from 25.10.2005 to 31.03.2006 were treated as earned leave and 1589 days for the period from 01.04.2006 to 26.08.2010 were treated as leave without pay, the same is governed by Fundamental Rule 54.

26. As per Fundamental Rule 54(1), when the Government servant, who has been removed from service, is reinstated as a result of appeal, the authority competent to order reinstatement shall make a specific order regarding the pay and allowances to be paid for the period of his absence from duty and as to whether or not the said period shall be treated as a period spent on duty.

27. Fundamental Rule 54(2) deals with a situation where the Government servant who was removed from service has been fully exonerated from the charges then as per sub-rule (6) he would be entitled to full pay and allowances as though he had not been removed from service. In



such case, as per sub-rule (3), even the period of suspension preceding removal shall also be treated as a period spent on duty.

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28. However, in cases other than those covered under sub-rule (2), the competent authority may determine the same after giving notice to the Government servant. For easy reference, Fundamental Rule 54(5) is extracted hereunder:-

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

29. Therefore, as per sub-rule (5), in all other cases where the Government servant is reinstated not being fully exonerated from the charges then the period of absence preceding removal from service shall not be treated as period spent on duty, unless the competent authority



specifically directs to be so. Further, as per the proviso, such authority may direct the period of absence from duty, including the period of suspension preceding removal, by converting into leave of any kind due and admissible to the Government servant.

30. In the instant case, the respondent has not been exonerated from the charges, but only the punishment was modified from removal of service to reduction in pay scale by the appellate authority. While modifying the punishment, the appellate authority had not specifically directed the period of absence from duty to be treated as a period spent on duty.

31. In such circumstances, the entire period of suspension and also the period of absence from duty is covered by sub-rule (5) and as per the proviso, the competent authority has passed the order by settling those periods by converting them into leave, both under loss of pay and also earned leave as per the eligibility due and admissible to the respondent. When the order restoring the pay dated 31.01.2014 by settling the suspension period and period of absence from duty was completely inconsonance with Fundamental Rule 54(5) and 54-B(1)(11), the writ court had interfered with the impugned order and had directed the entire period to



be treated as period spent on duty.

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32. In view of the above rule position, we are not in agreement with the decision arrived at by the writ court and is liable to be interfered with. Accordingly, the impugned order of the writ court is set aside by restoring the order impugned in the writ petition.

33. Since the entire period of suspension and also the subsequent period of absence from duty had been settled by the order impugned in the writ petition, it is made clear that for those periods the respondent will be deemed to be in continuity of service, for calculating pensionary benefits.

34. In view of the above, this Writ Appeal stands *allowed*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.M., J.) (G.A.M., J.)
01.04.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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W.A.No.26 of 2017





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R.SUBRAMANIAN, J.
and
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Pre-Delivery Judgment made in
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and C.M.P.No.187 of 2024

01.04.2025