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W.A.(MD)NO.1439 OF 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.1439 of 2025 AND

C.M.P.(MD)No.8550 of 2025

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Home, Fort St. George,
Chennai – 9.
2. The Director General of Police,
Head of Police Force, Mylapore,
Chennai – 600 004.
3. The Commandant,
Tamil Nadu Special Police 1st Battalion,
Trichy. ... Appellants / Respondents

Vs.

R.Suresh ... Respondent / Writ petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the judgment dated 03.07.2024 in W.P.(MD)No.14474 of 2024 allowing this appeal.



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For Appellants : Mr.N.Satheesh Kumar,
Additional Government Pleader.

For Respondent : Ms.M.Padmavathy
for Mr.Prem Narayanan.

* * *

J U D G M E N T

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

The State is on appeal challenging the order dated 03.07.2024 made in W.P.(MD)No.14474 of 2024 filed by the respondent herein.

2. The respondent herein was appointed as Police Constable Grade-II. He came to be dismissed from service vide order dated 23.07.2008. This order was also confirmed by the appellate authority. However, ten years later mercy petition submitted by the respondent herein was entertained and the Director General of Police, Government of Tamil Nadu vide proceedings dated 22.06.2018 set aside the dismissal order and directed reinstatement. All that the order dated 22.06.2018 stated was that the respondent herein was reinstated in service with modified penalty of postponement of increment for a period of three years which shall operate to postpone his future increments from the date of original orders.



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3. The respondent herein rejoined service on 05.09.2018. The stand of the Department was that the intervening period has to be treated as one not spent on duty, and the punishment imposed by the DGP has to be enforced with effect from 05.09.2018. Challenging the stand of the Department, the respondent herein filed the aforesaid writ petition. The writ petition was disposed on 03.07.2024 in the following terms:-

“ 8. In fact, the order dated 22.06.2018, it is made specific that the order has been modified by stoppage of three annual increments with effect from the date on which, the original punishment was imposed. Since the original punishment relates back to 17.07.2008, while regularising the pay of the petitioner and refixing it, the 3rd respondent ought to have been taken into account of the date of original order, ie., 17.07.2008 and calculated the stoppage of increment only from 17.07.2008 and not at any time later. Since the order has been passed without properly considering the order of the 2nd respondent, dated 22.06.2018, the impugned order is liable to be set aside.



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9. In the result, this writ petition allowed and the impugned order in C.No.E2/PR.No. 32/2007 BO.No.1020/2022, dated 07.07.2022 is set aside and the third respondent is directed to redo the exercise by regularising and refixing the pay of the petitioner by computing the stoppage of increment from the year, during which period, the original punishment has been passed and as how it has been directed by the second respondent's order, dated 22.06.2018 and pass appropriate orders within a period of four weeks from the date of copy of this order. No costs. Consequently, connected miscellaneous petition is closed. ”

4. What calls for consideration is whether the order of the learned single Judge is justified. It is beyond dispute that the competent authority while directing reinstatement to the respondent herein, did not give any direction as to how the intervening period should be treated. In these circumstances, as rightly pointed out by the learned Additional Government Pleader, the Fundamental Rules of the Tamil Nadu Government (ie.) FR 54(5) would come into play. It reads as follows:-



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“ 54. ...

(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. ”

It is also stated that the period from 23.07.2008 till 05.09.2018 had been adjusted against the writ petitioner's eligible leave. The writ petitioner has 97 days leave in his credit. Therefore, rest of the period has to be treated as non-duty period. Therefore, the principle “no work, no pay” will automatically be applicable. In these circumstances, the Department cannot implement the penalty of withholding of punishment for this period. In the very nature of things, the penalty can be enforced only after the writ petitioner



rejoined service. An increment can be withheld only when there is possibility of earning it. Therefore, the learned single Judge failed to take note of FR 54(5). The order impugned in the writ petition is set aside. This writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
19th June 2025

NCC : Yes / No
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