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**(2013) 09 MAD CK 0263**

**Madras High Court**

**Case No:** Writ Petition No. 8285 of 2009

C. Paramasivam

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

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**Date of Decision:** Sept. 30, 2013

**Hon'ble Judges:** D. Hariparanthaman, J

**Bench:** Single Bench

**Advocate:** Ravi Shanmugam, for the Appellant; K.V. Dhanapalan, AGP, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The petitioner was appointed as Grade II Police Constable in Tamil Nadu Special Police Battalion on 13.10.1981. Thereafter, on 03.04.1998, he was promoted as Grade I Police Constable. He was further promoted as Head Constable on 08.10.2000. While so, the petitioner was placed under suspension on 08.07.2005. The Deputy Commissioner of Police, Traffic, Coimbatore issued a charge memo dated 26.07.1995 in P.R. 58/05 under Rule 3(b) of Tamil Nadu Police Subordinate Service (D & A) Rules, 1955. Three charges were levelled against the petitioner. However, it is not necessary to go into the details of the charges.

2. The Enquiry Officer recorded a finding dated 02.09.2005 that all the charges levelled against the petitioner were proved.

3. The Deputy Commissioner of Police, Traffic, Coimbatore, passed an order dated 15.09.2005 imposing the punishment of reduction in rank from Head Constable to Grade I Police Constable for one year. As against the said order, the petitioner preferred an appeal dated 04.10.2005 to the Commissioner of Police, Coimbatore.

4. The Commissioner of Police issued a show cause notice dated 26.10.2005 on the appeal preferred by the petitioner as to why the punishment should not be

enhanced to compulsory retirement from service. The petitioner submitted his explanation dated 31.10.2005 to the said show cause notice, pleading to drop further action. But the respondent passed an order dated 22.11.2005 enhancing the punishment to that of compulsorily retirement from service.

5. The petitioner filed a writ petition in W.P. No. 39286 of 2005 to quash the order of punishment dated 15.09.2005 imposed by the Deputy Commissioner of Police as well as the order dated 22.11.2005 of the Commissioner of Police enhancing the punishment. By an order dated 14.12.2007, this Court set aside the punishment of compulsory retirement and enhanced the period of reduction in rank as Grade I Police Constable upto 2007.

6. Thereafter, by an order dated 23.05.2008, the Commissioner of Police reinstated the petitioner restoring his position as Head Constable as per the order of this Court dated 14.12.2007.

7. The Commissioner of Police issued a Show cause notice dated 04.08.2008 asking the petitioner to show cause as to why the period of suspension and out of employment period should not be treated as eligible leave and extra-ordinary leave without pay and allowance. The petitioner submitted his explanation dated 18.08.2008 stating that he should be given pay and allowance in view of the order passed by this Court. According to the petitioner, he is entitled to wages as Grade I Police Constable upto 2007 and as Head Constable until he was reinstated.

8. However, the Commissioner of Police passed the impugned order dated 07.04.2009 treating the period from 08.07.2005 to 16.10.2005 as eligible leave and from 23.11.2005 to 22.05.2008 as eligible leave including loss of pay. The petitioner has now filed this writ petition to quash the order dated 07.04.2009 and has sought for a direction to the respondent to treat the out of employment period from 23.11.2005 to 14.12.2007 as duty with pay and allowances as Grade-I Police Constable and the period from 15.12.2007 to 22.05.2008 as duty with pay and allowances as Head Constable with all consequential monetary and service benefits.

9. The respondent has filed a counter affidavit refuting the allegations. It is stated that since the petitioner is not exonerated from the charges and ultimately, punishment was imposed by this Court in W.P. No. 39286 of 2005, he cannot seek for wages for the period of non-employment.

10. Heard both sides.

11. The learned counsel for the petitioner relied on the order of this Court dated 14.12.2007 made in W.P. No. 39286 of 2005 and more particularly, paragraphs 9 and 10. He has also placed reliance on Rule 54-A(3) of the Fundamental Rules in support of his submissions. It is submitted that the Commissioner is perfectly correct in treating the period of suspension from 08.07.2005 to 16.10.2005 as leave. But in view of the order of this Court dated 14.12.2007 and in the light of Rule 54-A(3) of

the Fundamental Rules, the petitioner cannot be deprived of wages for the period from 23.11.2005 to 31.12.2007 as Grade I Constable and from 01.01.2008 to 22.05.2008 as Head Constable.

12. On the other hand, the learned Special Government Pleader has relied on Paragraphs 28 and 29 of the counter affidavit and submitted that since the petitioner suffered punishment, the respondent has rightly treated the period of absence as eligible leave. The learned Special Government Pleader further submitted that this Court did not issue any direction to pay wages for the period of non-employment. Hence, the petitioner cannot claim for wages for the period of non-employment.

13. I have considered the submissions made by the learned counsel on either side.

14. The facts are not in dispute. The petitioner faced disciplinary action under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules and the same resulted in the imposition of punishment of reduction in rank from Head Constable to Grade I Police Constable for one year by the Deputy Commissioner of Police vide order dated 15.09.2005. Aggrieved over the said punishment, the petitioner preferred appeal to the respondent on 04.10.2005.

15. The Commissioner of Police thought it fit to enhance the punishment. Hence, the Show Cause Notice dated 26.10.2005 was issued as to why the punishment should not be enhanced to compulsory retirement. After getting explanation from the petitioner, the respondent passed an order dated 22.11.2005, enhancing the punishment to that of Compulsory Retirement. The petitioner was out of service from 23.11.2005.

16. The petitioner has successfully questioned the aforesaid order dated 22.11.2005 imposing the penalty of Compulsory Retirement in W.P. No. 39286 of 2005. This Court has set aside the punishment of Compulsory Retirement vide order dated 14.12.2007. While setting aside the penalty of Compulsory retirement, this Court thought of modifying the earlier punishment of reduction in rank for one year by extending the period of operation upto the end of 2007, i.e., the order dated 15.09.2005 of the Deputy Commissioner of Police, imposing the punishment of reduction in rank from Head Constable to Grade I Police Constable for one year was modified by this Court upto 31.12.2007 viz., compulsory retirement was set aside and the petitioner was directed to undergo the punishment of reduction in rank to the post of Grade I Police Constable upto 31.12.2007.

17. At this juncture, it is relevant to extract the following passages found in paragraphs 9 and 10 of the order dated 14.12.2007 made in W.P. No. 39286 of 2005:-

9. The petitioner, who was awarded punishment of rank reduction for a period of one year from the post of Head Constable to Grade I Constable, aggrieved over the

same, took it on appeal, but the Commissioner of Police has issued a notice on him as to why not punishment be enhanced and he has also imposed punishment of compulsory retirement. The Court, after considering the materials available, is of the considered opinion that the punishment of compulsory retirement for the allegations made, was excessive. Under these circumstances, the punishment of compulsory retirement has got to be set aside. But, at the same time, enhancement of punishment should have been made to some extent. In the opinion of the Court, the punishment of rank reduction from the post of Head Constable to Grade I Police Constable could be enhanced till this time, namely 2007.

10. Hence, the punishment awarded by the Commissioner of Police as one for compulsory retirement is modified as one for reduction in rank of the petitioner from the post of Head Constable to Grade-I Police Constable till the period of 2007 and further, necessary directions are issued to the respondents for reinstatement of the petitioner into service and his seniority also has got to be taken into account. Accordingly, directions are issued and the writ petition is ordered. No costs. Consequently, the connected miscellaneous petition is closed.

18. It is also relevant to extract Rule 54-A(3) of the Fundamental Rules, which reads as follows:-

(3) If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be.

19. As stated above, the petitioner was removed from service due to the imposition of punishment of Compulsory Retirement and he was out of service from 23.11.2005. The said punishment of Compulsory Retirement was set aside by this Court as stated above. The effect is that the petitioner should be put back to his original position, but this Court held that he should be put back not in original position but in a lower position. At the same time, he shall continue in the lower post upto 31.12.2007. The order is to be read along with Rule 54-A(3) of the Fundamental Rules. From a reading, I am of the view that the petitioner shall be paid wages from 23.11.2005 to 31.12.2007 for the post of Grade I Police Constable and from 01.01.2008 to 22.05.2008 for the post of Head Constable.

20. The learned counsel for the petitioner has fairly submitted that the respondent is correct in treating the period of suspension from 08.07.2005 till the imposition of punishment as the period of leave. He has no quarrel over the same. The period of

out of employment that was caused due to the imposition of punishment of compulsory retirement was set aside and therefore, the petitioner is entitled to be paid wages from 23.11.2005 onwards as stated above.

21. In these circumstances, I am of the view that the impugned order is liable to be quashed and accordingly it is quashed. A direction is issued to the respondent to pay salary to the petitioner for the period from 23.11.2005 to 31.12.2007 for the post of Grade I Police Constable and for the period from 01.01.2008 to 22.05.2008 for the post of Head Constable. The respondent is directed to pay the salary within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is allowed to the extent indicated above. No costs.