

(2010) 09 MAD CK 0405

In the Madras High Court

Case No : Writ Petition No. 48009 of 2006 and O.A. No. 4493 of 2000

R. Sengodan

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0405

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; Lita Srinivasan, G.A., for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner was appointed as Police Constable, Grade II on 14.08.1974. While he was working in the erstwhile composite Salem District in Mettur in the Prohibition Enforcement Wing, a criminal case was registered against 31 persons belonging to Prohibition Enforcement Wing, Mettur Unit. The Petitioner herein was implicated as the 14th Accused. The case was tried before the Special Judge and I Additional District Judge-cum-Chief Judicial Magistrate, Salem in S.C.C. No. 152/90.

2. The Petitioner was placed under suspension with effect from 18.01.1991, in view of the pendency of the aforesaid criminal case. The learned Additional District Judge-cum-Chief Judicial Magistrate acquitted the Petitioner by his judgment dated 07.05.1999.

3. In the meantime, the order of suspension was quashed by the Tribunal by an order dated 18.01.1996 in O.A. No. 5521 of 1995. Hence, he was reinstated in service on 12.05.1996. Though the suspension was quashed and the criminal Court acquitted him of all the charges, the period of suspension was not regularised. He made various representations seeking regularisation of service of the period of suspension from 18.01.1991 to 12.05.1996.

4. In those representations, the Petitioner also requested to consider him for promotion to the post of Constable Grade-I and Head Constable as his juniors were promoted over-looking him as he was facing criminal prosecution.

5. Since no orders were passed, he filed O.A. No. 4493 of 2000 (W.P. No. 48009 of 2006) praying for direction to the Respondent to regularise the period of suspension from 18.01.1991 to 12.05.1996 as duty for all purposes with full pay and allowances for the suspension period and for consequential direction to direct the Respondent to promote him as Constable Grade I and Head Constable from the date on which his immediate junior was promoted with all consequential benefits.

6. Heard Mr. M. Ravi, learned Counsel for the Petitioner and Mrs. Lita Srinivasan, Government Advocate for Respondent.

7. The Petitioner was under suspension for the period from 18.01.1991 to 12.05.1996 when he faced criminal prosecution. The criminal prosecution ended in acquittal. Hence as per ruling 9 of the Fundamental Rules 54B, the Petitioner is entitled to regularisation of his period of suspension. The aforesaid ruling 9 of Fundamental Rule 54B is as follows:

Where a Government Servant is placed under suspension in view of the fact that complaint against him of a criminal offence is under investigation or trial, and the Government Servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge against him has not been proved or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service.

In view of the aforesaid Fundamental Rule, the Petitioner is entitled to regularisation of the period of suspension.

8. Further, if the Petitioner was not considered for promotion due to the pendency of criminal case and his juniors were promoted, he is also entitled to promotion from the date on which his juniors are promoted as the only impediment was removed. In these circumstances, a direction is issued to the Respondent to regularise the period of suspension from 18.01.1991 to 12.05.1996 and to pay him all the benefits and also to promote him to the post of Constable Grade-I and Head Constable from the date on which his immediate junior was promoted by granting notional benefits i.e., as far as the period of suspension is concerned, the Respondent is directed to pay full pay and allowances after deducting subsistence allowance paid and as far as the promotion is concerned, the Respondent is directed to fix the pay notionally within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition is allowed. No costs.