

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.7279 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

While she was working as a School Assistant in Ganugabanda, Garidepally Mandal, Nalgonda District the petitioner was sent on deputation to Kasthuriba Gandhi Bailka Vidyalaya (KGBV), Tripuram, Nalgonda District as a Special Officer. She was repatriated eight years thereafter to her parent Department (Education Department) in April, 2014. On the ground, that she had committed certain irregularities at KGBV, she was placed under suspension on 26.05.2014. The order of suspension was revoked on 05.12.2014, and she was posted at Kalamalacheruvu of Garidepally Mandal, Nalgonda District. The petitioner, however, made a request that she be posted at Kalwapally, Miryalaguda Mandal, Nalgonda District.

In the interregnum disciplinary proceedings were initiated against her and a charge memo was issued. She filed O.A.No.3790 of 20914 questioning the order of suspension. The Tribunal, by its order dated 20.10.2014, directed the respondents to pay subsistence allowance to her forthwith. She filed O.A.No.6147 of 2014 questioning the charge memo. By its order dated 24.10.2014, the Tribunal suspended the charge memo dated 17.09.2014. The petitioner then filed O.A.No.7215 of 2014 questioning her posting at Kalamalacheruvu Zilla Parishad High School in Garideaply Mandal. The Tribunal, by its order dated 29.12.2014, directed the respondents to consider her representation dated 12.12.2014 within a period of three weeks.

The District Educational Officer requested the Commissioner and Director of School Education, vide letter dated 09.01.2015, to issue instructions regarding her request to be posted at Kalwapally Upper Primary School in Miryalaguda Mandal. However, on the same day i.e., 09.01.2015, he passed an order informing the petitioner that her request for being posted at Kalwapally Upper Primary School was not feasible. Questioning the said order, the petitioner filed O.A.No.999 of 2015 and, by order dated 20.02.2015, the Tribunal directed the respondents to consider her request for being posted at Upper Primary School, Kalwapally, Miryalaguda Mandal if there was a vacancy, and to pass orders within ten days. Thereafter, the Commissioner and Director of School Education, following the judgment of the Supreme Court in ***State of U.P. vs. Siaram*** that no employee can claim posting at a particular place as of right, passed the order dated 12.03.2015 directing the District Educational Officer to pass an order of rejection.

In this writ petition, the petitioner seeks implementation of the orders of the Tribunal firstly in directing the respondents to pay subsistence allowance to her, and thereafter in directing the respondents to consider her request for being posted at Kalwapally Upper Primary School in Miryalaguda Mandal.

When we expressed our reservations on the entitlement of an employee to claim a posting of his/her choice, Sri P.V.Krishnaiah, learned counsel for the petitioner, would submit that the petitioner does not press for the said relief in this writ petition and she would, instead, approach the Tribunal for redressal of her grievance in this regard. Learned counsel would submit that it would suffice if the relief in the writ petition is confined only to the petitioner's claim for being paid subsistence allowance during the period of her suspension.

As noted hereinabove the petitioner was placed under suspension on 26.05.2014, and her suspension was revoked more than six months thereafter on 05.12.2014. In terms of Fundamental Rule 53 of the A.P. Fundamental Rules, an employee placed under suspension is entitled to be paid subsistence allowance during the period of her suspension, provided he/she is not employed elsewhere during the said period. During the pendency of the writ petition, the petitioner filed an application before the District Educational Officer informing him that she was not employed else where during the period of her suspension. It is no doubt true that, for non-compliance of the order of the Tribunal, the petitioner can invoke its jurisdiction under Section 17 of the Administrative Tribunals Act. The fact, however, remains that the obligation of the State to pay subsistence allowance is in terms of the A.P. Fundamental Rules, which have the force of law having been made in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India.

We see no reason, therefore, to deny the petitioner the relief of payment of subsistence allowance. Learned Government Pleader for Services would submit that it is only because the petitioner did not join at the place of posting were the respondents unable to pay her subsistence allowance. The entitlement of an employee to be paid subsistence allowance is for the period when he/she is placed under suspension. Her entitlement for subsistence allowance is not contingent on her joining the place of posting consequent on the revocation of suspension, and her being issued a posting order thereafter. While her failure to join at the place of posting may warrant action being taken against her in accordance with law, that would not justify denial of payment of subsistence allowance during the earlier period of suspension. The respondents shall, within four (4) weeks from today, pay her the subsistence allowance which she is entitled to. All the other reliefs, sought for in the writ petition, are dismissed as not pressed. The writ petition is disposed of accordingly.

Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

20th April 2015.

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Date: 20.04.2015

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