

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.27971 of 2014

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

This Writ Petition is preferred against the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No.6002 of 2013 dated 01.11.2013 and C.A.No.1905 of 2013 and VMA.No.2131 of 2013 dated 01.11.2013. The first respondent herein, a retired Assistant Engineer, invoked the jurisdiction of the Tribunal seeking a direction to the respondents to fix his pay as per the revised pay scales from time to time, and also release all increments that were not released without any reason, and to treat the period of suspension as on duty for all purposes.

Facts, to the limited extent necessary, are that a criminal case was instituted against the respondent in C.C.No.358/2009 on the file of the III Metropolitan Magistrate, Vijayawada for offences under Sections 409 and 420 IPC. He was acquitted by the learned Magistrate by his judgment dated 03.04.2013. During the pendency of the criminal case, the respondent was placed under suspension on 04.09.2003. He continued to remain under suspension till 21.11.2004. Thereafter a charge memo was issued, and an enquiry officer appointed. On conclusion of the enquiry, the Enquiry Officer submitted an enquiry report. No orders were, however, passed pursuant thereto.

The first respondent submitted a representation on 25.04.2013 enclosing a copy of the judgment of the criminal Court, and requested that the period of suspension be regulated. On the ground that no action was taken, he invoked the jurisdiction of the Tribunal.

By the order under challenge in this Writ Petition, the Tribunal, relying on the judgment of the Supreme Court in **G.M.Tank v. State of**

Gujarat and others^[1], held that, even if the departmental enquiry is pending, the respondents cannot proceed with it further; the increments due to a Government employee cannot be withheld, unless there is a specific order; the petitioner's increments were withdrawn, and his pay scales were not revised, on the ground that he was facing a departmental enquiry and a criminal case; the action of the respondent was not in tune with the rules; and, pendency of the departmental enquiry and criminal case, is a ground for withholding increments, but not for revising the pay from time to time. Relying on its earlier order in O.A.No.6002 of 2013 dated 01.11.2013, the Tribunal held that the period of suspension should be treated as on duty.

Before us, learned Government Pleader for Services would submit that the first respondent has been paid all his increments; this Writ Petition is confined only to the extent the Tribunal had set aside the disciplinary proceedings initiated against the first respondent, and in treating the period of his suspension as on duty; though the first respondent did not question the validity of the departmental enquiry, the Tribunal had declared continuance thereof as illegal; as held by the Supreme Court, in **Greater Hyderabad Municipal Corporation. v. M. Prabhakar Rao**^[2], the question whether an employee is entitled to have the period of suspension treated as on duty, on the ground of his acquittal in a criminal case, is a matter to be examined by the Government; mere acquittal in a criminal case does not automatically result in the period of suspension being treated as on duty; and the order of the Tribunal necessitates interference to this limited extent.

On the other hand, Sri T.Benerjee, learned counsel for the respondents, would submit that the first respondent has not been paid all his increments; only four increments have been paid; and, in the light of the judgment of the Supreme Court in **G.M.Tank**¹, the Tribunal was justified in holding that continuance of disciplinary proceedings is

illegal.

As the continuance of disciplinary proceedings, after his acquittal in the criminal case, has not even been put in issue in the O.A., the Tribunal has erred in declaring continuance of the disciplinary proceedings as illegal.

In **Greater Hyderabad Municipal Corporation²**, the Supreme Court held:

“.....Sub-rule (3) of FR 54-B does not state that in case of acquittal in criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of FR 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of FR 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before it, such opinion of the competent authority would not be interfered with by the Tribunal or the Court.....”

In the light of the aforesaid judgment, the Tribunal has erred in directing that the period of suspension of the respondent should be treated as on duty. The only relief which could have been granted by the Tribunal is to direct the Government to consider, within a specified timeframe, how the period of suspension of the respondent should be treated. The order of the Tribunal is set aside. The petitioners herein shall examine the first respondent's claim, for the period of his suspension being treated as on duty, at the earliest and, in any event, not later than two months from the date of receipt of a copy of this order. To the extent indicated hereinabove, the order of the Tribunal is set aside.

The Writ Petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no

order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

19th March, 2015.
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[\[1\]](#) (2006) 5 SCC 446

[\[2\]](#) (2011) 5 SCC 155