

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.19613 of 2012

% 31-7-2015

Radhe Shyam Yadav

... Petitioner

Vs.

\$ The Prl. Secretary to Govt.,
Education (SE.PS.I) Dept.,
Govt. of A.P., Hyderabad;
and 5 others

... Respondents

! Counsel for the Petitioners: Sri P.Lakshmana Rao

Counsel for Respondents 1 to 5: Government Pleader for
School Education

Counsel for Respondent No.6: None appeared

< Gist:

> Head Note:

? Cases referred:
1. AIR 1994 SC 552

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.19613 of 2012

Between

Radhe Shyam Yadav

... Petitioner

and

The Prl. Secretary to Govt.,
Education (SE.PS.I) Dept.,
Govt. of A.P., Hyderabad;
and 5 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 31-7-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.19613 of 2012

Order:

This writ petition is filed for a Writ of *certiorari* to quash Memo No.16854/PS1/A1/2008, dated 10-12-2008 and direct the respondents to treat the period of suspension of the

petitioner from 03-01-2003 to 17-5-2007 as 'on duty' for all purposes and to pay him all consequential benefits.

2. Briefly stated, the facts giving rise to filing of the writ petition are as follows:

The petitioner was appointed as a Secondary Grade Teacher (SGT) in the 6th respondent-School on 11-02-1985. Subsequently, order dated 04-3-2003 was passed by the 4th respondent-DEO directing the 6th respondent to take appropriate action to promote the petitioner as School Assistant. While so, on 06-01-2003, the 6th respondent suspended the petitioner from service with effect from 03-01-2003 on the basis of a letter 06-01-2003 addressed by the Inspector of Police, Narayanaguda Police Station, Hyderabad, wherein it is stated that the petitioner and another were involved in Crime No.483 of 2002 of Narayanaguda Police Station, Hyderabad, registered on the allegation of committing offences under Sections 468, 471 and 420 IPC. The matter was investigated into and a charge-sheet was filed against the petitioner and the case was tried as C.C.No.607 of 2003 on the file of the Court of IX Additional Chief Metropolitan Magistrate, Hyderabad. The indictment made against the petitioner is that the petitioner and another accused were involved in supplying fake educational certificates to the needy people. According to the prosecution, on the basis of the information given by the *de facto* complainant, certain fake certificates were

recovered from the petitioner and another accused and they were tried for the charges under Section 468, 471 and 420 IPC. The learned IX Additional Chief Metropolitan Magistrate, Hyderabad took the view that the evidence was not sufficient to prove the charges levelled against the petitioner and another, accordingly gave the benefit of doubt and acquitted them of the charges. Pursuant to the said acquittal, the 6th respondent passed an order dated 16-5-2007 revoking the suspension imposed on the petitioner and permitted him to join duty as SGT from 18-5-2007. Subsequently, the petitioner retired from service on 31-12-2008 as SGT on attaining the age of superannuation. In this writ petition, the contention of the petitioner is that because he was acquitted of the charges levelled against him in the criminal case, the period of suspension from 03-01-2003 to 17-5-2007 ought to have been treated as 'on duty' and that he is entitled for all consequential benefits including his notional promotion as School Assistant and also further promotion.

3. The respondents 1 to 5 filed a counter affidavit seriously opposing to grant the relief which was prayed for by the petitioner in the writ petition. They contended, *inter alia*, as follows:

(a) The petitioner had not come out of the criminal case on a meritorious acquittal and that he was given benefit of doubt. The Court which tried him did not record any finding that the petitioner was not at all involved in the case and was

unnecessarily implicated by the prosecution. Pursuant to the order of acquittal, the suspension of the petitioner was revoked and he was permitted to join duty by the 6th respondent.

(b) The petitioner submitted a representation to regularise the period of suspension from 03-01-2003 to 17-5-2007 on the ground that he was exonerated from the criminal charges. On the proposal of the District Educational Officer, Hyderabad, dated 25-10-2007, the Regional Joint Director of School Education, Hyderabad submitted proposals to the Commissioner and Director of School Education seeking necessary orders regarding regularisation of the gap period in respect of the petitioner. The Commissioner and Director of School Education, in turn, submitted proposals to the Government vide his letter dated 10-9-2008 and the Government, in turn, vide its Memo dated 10-12-2008 after careful examination directed to treat the suspension period as “not on duty” as per F.R. 54-B(7) of the Andhra Pradesh Fundamental Rules read with G.O.Ms.No.30, Finance, dated 15-02-2007.

(c) The petitioner was involved in a private case for which the respondents are not responsible. He was kept under suspension as per Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules on account of his involvement in criminal case and his arrest by the Police. Since the petitioner was given benefit of doubt, it cannot be said that he is not at all involved in the criminal case for

supplying of fake certificates. The petitioner during the suspension period did not attend to any work and therefore, he is not entitled for any salary during the said period on the principle of 'no work, no pay'.

4. I have heard Sri P.Lakshmana Rao, learned counsel appearing for the petitioner and the learned Government Pleader for School Education appearing for the respondents 1 to 5.

5. The sole question which falls for consideration in the present writ petition is whether on account of the acquittal of the charges under Sections 468, 471 and 420 IPC of the petitioner on benefit of doubt, whether the period of suspension of the petitioner can be treated as 'on duty'. The important aspect which has to be borne in mind in the present case is that the petitioner was acquitted of the charges as the legal evidence was insufficient to bring home his guilt beyond reasonable doubt. Therefore, he was given benefit of doubt by the trial Court. If the acquittal was recorded on a positive finding that the petitioner did not commit the offence at all, the situation would have been different. Further, during the period of suspension which has a reasonable basis, namely, the involvement of the petitioner in a serious crime, the petitioner rendered no work. Therefore, the respondents cannot be saddled with the liability to pay him his salary and allowances for the period during which he was kept under suspension on the

principle of 'no work, no pay'.

6. According to the Andhra Pradesh Fundamental Rules, the competent authority has to review the case and take appropriate decision as to whether the period of suspension can be treated as 'on duty' and that the employee who was involved in a criminal case is entitled for other consequential benefits. If the authority in its discretion found that the period of suspension cannot be treated as 'on duty', this Court is not supposed to take a different view substituting its own opinion since the employer is entitled to exercise the discretion in the matter.

7. In this context, it would be relevant to refer to the judgment of the Supreme Court in **Management of Reserve Bank of India v. Bhopal Singh Panchal**^[1] relied on by the learned Government Pleader for School Education. The Supreme Court dealing with similar situation held as follows:

"... .. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case.

It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise.

The power thus vested cannot be validly challenged. During this period, the employee renders no work.

He is absent for reasons of his own involvement in the

misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of “no work, no pay’ and positively inequitable to those who have to work and earn their pay.”

8. In the instant case also, the petitioner did not secure clean acquittal. His acquittal was on the ground that the legal evidence was insufficient to record a conviction. Therefore, the trial Court acquitted him by giving benefit of doubt. It is not the case where the petitioner was kept under suspension on account of any misconduct he committed during the course of his employment. On account of his own conduct, he was involved in a criminal case of serious nature and on that score, he was kept under suspension. The respondents, therefore, cannot be found fault with for placing the petitioner under suspension. Obviously, the petitioner was paid subsistence allowance during the period of suspension and he did not discharge any duties. Therefore, whenever the suspension is based on the involvement of an employee in a criminal case and ultimately if the employee is acquitted of the said case, he cannot automatically claim all the benefits on the ground that he was acquitted.

The Disciplinary Authority has a discretion having regard to the totality of the facts and circumstances to grant such benefits, which, in the considered opinion of the Disciplinary Authority, could be granted to the petitioner.

9. F.R. 54-B(3) lays down that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

10. By virtue of the aforementioned provision, the employee would be entitled for full pay and allowances for the suspension period only if the competent authority is of the opinion that the suspension is wholly unjustified. If the competent authority arrives at the opinion that the suspension is not without any basis and it is not on unjustifiable grounds, it may in its discretion refuse to pay the pay and allowances to the reinstated employee for the period of suspension. Sub-rule (7) lays down that the period of suspension shall not be treated as period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose. In the instant case, the competent authority after examining the issue treated the period of suspension as not on duty and thereby denied the pay and allowances to the petitioner during the suspension period.

11. In the instant case, the petitioner was involved in a serious offence relating to dealing with fake certificates. On the basis of that he was acquitted of the charges as the legal evidence is insufficient to record a conviction against

him, he cannot claim that his suspension is without any basis or wholly unjustified. The issue lies with the discretion of the Disciplinary Authority and in the instant case, the Disciplinary Authority rightly exercised its discretion treating the period of suspension of the petitioner as “not on duty”. Therefore, there are no valid grounds to interfere with the impugned order and to quash the same in exercise of jurisdiction under Article 226 of the Constitution of India.

12. The writ petition, therefore, fails and accordingly the same is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

31st July, 2015.

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Note:-

L.R. Copy to be marked.

(B/o)

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.19613 of 2012

31st July, 2015.
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[\[1\]](#) AIR 1994 SC 552