

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

Writ Petition No.20984 of 2006

ORDER: *(per V. Ramasubramanian, J.)*

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal refusing to grant subsistence allowance from the date of imposition of the punishment for compulsory retirement up to the date of enhancement of penalty into one of dismissal from service, the petitioner is before us.

2. Heard Mr. D. Linga Rao, learned counsel for the petitioner.

3. Admittedly the petitioner was imposed with the penalty of compulsory retirement by an order dated 15-05-1998. On an appeal, the penalty was set aside by an order dated 13-05-1999 and the matter remitted back to the Original Authority.

4. The Original Authority passed a fresh order of compulsory retirement on 14-02-2001. The petitioner filed an appeal and the Appellate Authority enhanced the penalty into one of dismissal from service by order dated 12-02-2003.

5. Claiming that the order of compulsory retirement passed on 14-02-2001 was modified by the subsequent order of dismissal and that therefore, he is entitled to subsistence allowance during the said period, the petitioner filed O.A.No.7113 of 2004. The application was dismissed by the Tribunal forcing the employee to come up with the above writ petition.

6. There are three types of situations that may arise, when an order of penalty is challenged in an appeal. The Appellate Authority may either confirm the order of penalty or enhance the same or set aside the penalty in total or set aside the penalty and impose a lesser penalty. In cases where the appeal is dismissed and in cases where the penalty is enhanced, the employee actually loses the battle. These two cases stand in contrast to the case where an appeal is allowed and the order of penalty is either reduced or erased. It is only in these types of cases that the employee will be entitled the subsistence allowance post the original order up to the date of the order of appellate authority. Therefore, the Tribunal was right in rejecting the prayer. We find no reasons to interfere with the order of the Tribunal.

Accordingly, the writ petition is dismissed. It is stated that the application is already pending before the Tribunal as against the penalty of dismissal, we make it clear that the same has to be dealt with independently.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 28-12-2016

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