

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.6845 OF 2003

ORDER:

The present Writ Petition is preferred by an employee of the respondent – Corporation requesting to declare the action of respondent No.1 in rejecting payment of arrears of salary to him from the date of his suspension till reinstatement i.e., from February, 2000 to 22.06.2001, in not releasing the periodical increment to him during the period of suspension, and in not extending the revised pay scales 1999, as illegal and arbitrary and consequently, to set aside the memo, dated 09.04.2002, issued by respondent No.1.

2. Heard Sri K. Rama Subba Rao, learned counsel for the petitioner, and Sri K. Satya Srinivasa Rao, learned Standing Counsel for Andhra Pradesh State Warehousing Corporation.

3. The facts leading to making the present request are that the petitioner, who was working as Junior Assistant under the control of respondent No.2, was arrested by the police, Gudur, and sent for judicial custody on 06.02.2000, on the alleged charge of harassing his wife and later, Crime No.8 of 2000, for the offences under Sections 498A and 306 IPC, was registered and since he was in judicial custody beyond 48 hours, respondent No.2 placed him under suspension, by passing an order to that effect on 18.02.2000, which was served on the petitioner.

4. The petitioner states, that the Sessions Case tried by the Additional Assistant Sessions Judge, Gudur, ended in acquittal by judgment, dated 08.02.2001, and when the same was brought to the notice of respondent No.2, he was reinstated into service on 22.06.2001 and since then, he has been making requests to the respondent - Corporation for payment of difference between the subsistence allowance already paid to him and emoluments, since he was reinstated, but the authorities issued memo, dated 09.04.2002, declining to grant full wages on the ground that the suspension was based on the issue unconnected with the Corporation and the subsistence allowance paid during the suspension period was adequate for the purpose.

5. The aforesaid memo is under challenge in the instant Writ Petition with the request as mentioned in the above.

6. Counter is filed by the respondent – Corporation opposing the request.

7. Learned counsel for the petitioner would submit that Regulation 39 of the Andhra Pradesh State Warehousing Corporation Employees Regulations, 1965 (for short, 'the Regulations') would mandate that on reinstatement, the difference between subsistence allowance already paid and emoluments, which the employee would have received but for that suspension, shall be refunded, if charges preferred against such employee placed under suspension are not

proved in the departmental proceedings, and if the employee is not removed or dismissed from service, the suspension period be treated as period of duty or leave by the authority, who passed the final order. It is also his submission that no departmental enquiry was initiated against the petitioner, and since the petitioner was acquitted and no moral turpitude was involved, the respondent – authorities ought to have treated the suspension period as on duty or on leave, but in spite of the same, the respondent – authorities issued the impugned memo, dated 09.04.2002, which does not speak as to whether the respondent–authorities examined the issue to treat the suspension period of the petitioner as on duty or on leave and on the other hand, the respondent–authorities declined to accept the request of the petitioner on the mere ground that he was placed under suspension relating to an issue, which was unconnected with the Corporation, and, therefore, the impugned memo is unsustainable.

8. Perused Regulation No.39 of the Regulations. What was presented by the learned counsel for petitioner is true. The respondent–authorities ought to have issued the impugned memo answering in terms of Regulation No.39 of the Regulations, but it cannot be vague just stating that the subsistence allowance paid during the suspension period is adequate for the purpose and that the question of payment of full wages would have arisen had suspension been initiated by the Corporation on issues connected with the Corporation.

Learned Standing Counsel for the Corporation, of course, has not disputed with regard to what is stated in Regulation No.39.

9. Since memo, dated 09.04.2002, is not in accordance with Regulation No.39 of the Regulations and as the request of the petitioner was declined on a different ground, which is not contemplated by Regulation No.39 of the Regulations, certainly, the impugned memo is liable to be set aside and accordingly, the same is set aside.

10. However, having regard to the facts and circumstances, it is desirable to direct the petitioner to file a fresh application/request for refund of the difference between subsistence allowance already paid and emoluments, which he would have received during the suspension period, within a period of two weeks from the date of receipt of a copy of this order. The authority concerned is directed to decide the request of the petitioner in terms of Regulation No.39 of the Regulations within eight (8) weeks thereafter.

11. Accordingly, the Writ Petition is allowed with the above direction. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 19, 2016.
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