

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

W.P.No. 42043 OF 2015

DATED 16TH JUNE, 2016

Between:

The State of Andhra Pradesh,
Rep. by its Principal Secretary to Government,
School Education Department, Secretariat,
Hyderabad, and others

... Petitioners

AND

V.R.Pedda Reddy and another

... Respondents

Counsel for the petitioners
Services (A.P.)

: G.P. for

Counsel for 1st respondent
Kanthrigala

: Sri Mahadeva

Counsel for the 2nd respondent

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THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Respondent No. 1 was a School Assistant (Social Studies) of Mandal Parishat Upper Primary School. Disciplinary proceedings were initiated against him based on a report of the Mandal Education Officer, Gurramkonda Mandal, that he has tampered with the date of birth in his service record. By proceedings dated 18-10-2011, petitioner No. 3 has placed him under suspension. Respondent No. 1 has filed O.A.No. 9461 of 2012 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal') for declaring the action of petitioner No. 3, in not paying subsistence allowance during the suspension period as per Fundamental Rule 53, as illegal and arbitrary. He has also sought for a direction to petitioner No. 3 to pay subsistence allowance.

2. By the impugned order, the Tribunal has allowed the O.A. directing petitioner No. 3 to pay subsistence allowance during the period of suspension.

3. Learned Government Pleader informed us that this order was passed at the admission stage without issuing notices to the petitioners. She has further stated that only in the year 2013, respondent No. 1 made a representation for implementing the order of the Tribunal. She has also stated that after a full-fledged inquiry, the inquiry officer has submitted his report categorically finding that respondent No. 1 has tampered the service register and, following the procedure, petitioner No. 3 has dismissed respondent No. 1 from service with effect from the date on which he was suspended *i.e.* 18-10-2011 and ordered for recovery of excess amount of Rs.23,00,000/- received by him towards salary.

4. Learned counsel for respondent No. 1 submitted that assailing the said dismissal order, his client has filed an O.A. which is pending before the

Tribunal.

5. Learned Government Pleader submitted that the Tribunal has committed a serious error in ordering payment of subsistence allowance as the very ground on which respondent No. 1 was suspended was that he has tampered with the date of birth in his service register but for which he would have been made to retire on 31-05-2004 itself. She has further stated that the stand of the petitioners stood vindicated by the findings rendered by the inquiry officer and dismissal of respondent No. 1 on those findings.

6. Learned counsel for the 1st respondent has strenuously tried to sustain the order of the Tribunal.

7. The facts of the case, as noted above, are somewhat peculiar. This is not a case of an ordinary employee in service being placed under suspension. If the tampering of the date of birth of respondent No. 1 was detected, he would not have been in service beyond 31-05-2004. When the very basis of the suspension of respondent No. 1 was that he was continuing in service by tampering with the date of birth, he is not entitled to payment of any subsistence allowance as a regular employee who has not reached the age of superannuation by the time of suspension. Without noticing these facts, the Tribunal has, in a routine manner, allowed the O.A. Since the order of dismissal is stated to be the subject matter of the O.A. filed by respondent No. 1, if he succeeds in the said O.A. and convinces the Tribunal that he has not tampered his date of birth and that he was entitled to be continued in service as per the date of birth in the service register, then he would be entitled to payment of subsistence allowance till he reached the age of superannuation.

8. Subject to this right of respondent No. 1 to claim subsistence allowance in the event as referred to above, the order of the Tribunal is set aside and the Writ Petition is, accordingly, allowed.

9. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 54219 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD,

J.

Date: 16-06-2016.

JSK