

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15175 of 2017

ORDER: (*Per VRS,J*)

The State has come up with the above writ petition challenging an order of the Andhra Pradesh Administrative Tribunal directing them to regularize the period of suspension of the first respondent as duty period and to pay all consequential benefits.

2. Heard the learned Government Pleader for Services (AP) and Mr.P.Laxma Reddy, learned counsel for the first respondent.

3. The first respondent, while she was working as Civil Surgeon Specialist in the ESI Hospital, was placed under suspension on 05.02.2004 on account of a criminal case being registered for offences under Sections 304A and 420 of Indian Penal Code. But, by a judgment dated 11.01.2005, the Criminal Court acquitted the first respondent herein.

4. Though the first respondent made a representation on 25.01.2005 to reinstate her into service, the Government took nearly 18 months to pass G.O.Rt.No.1555 dated 15.07.2006, to reinstate the first respondent.

5. Thereafter, the Government issued a charge memo under G.O.Rt.No.1677 dated 02.08.2006. The first respondent denied the charges and an enquiry followed. After the Enquiry Officer

submitted a report, the Government passed G.O.Rt.No.1286 dated 09.08.2011 dropping the charges against the first respondent.

6. However, no order in terms of Fundamental Rule 54B was passed, on the question as to how to treat the period of suspension. Therefore, the first respondent made representations, which were ultimately rejected by an order dated 09.01.2013.

7. Therefore, challenging the order dated 09.01.2013, the first respondent filed O.A.No.8768 of 2013. The same was allowed by the Tribunal directing the Government to treat the period of suspension as 'Duty Period'. Aggrieved by the said order, the State is on Writ Petition.

8. Placing reliance upon Fundamental Rule 54-B and the judgment of the Supreme Court in ***Greater Hyderabad Municipal Corporation v. M.Prabhakar Rao⁽¹⁾***, it is contended by the learned Government Pleader for Services (AP) that it is not a case where the suspension can be said to be wholly unjustified. The first respondent, according to the learned Government Pleader, faced a criminal prosecution for serious offences and that ended in acquittal. Because of such acquittal, the proceedings came to be dropped. Therefore, the contention of the Government Pleader is that the first respondent was partly responsible for the fate that fell upon her.

9. We have carefully considered the above submissions.

¹ 2011 (8) SCC 15

10. If the first respondent had been placed under suspension only on account of criminal prosecution, the refusal of the petitioners to treat the period of suspension as duty period, after acquittal by the Criminal Court would have been justified. But, in this case, the suspension was dated 05.02.2014 and the acquittal by the Criminal Court was on 11.01.2005. The suspension was only on account of criminal case.

11. Therefore, after the acquittal by the Criminal Court on 11.01.2005, the Government could have reinstated the first respondent. They did so only on 15.07.2006, after more than 18 months. It is only thereafter, a charge memo was issued on 02.08.2007, which was followed by an enquiry. The Enquiry Officer submitted a report holding the charges not proved. Therefore, the disciplinary proceedings came to be dropped. In the above circumstances, the suspension has to be considered as wholly unjustified.

12. The decision in **Greater Hyderabad Municipal Corporation (1 supra)** arose out of a case where there were no disciplinary proceedings. That is why we pointed out earlier that if it was a case of a mere acquittal in a Criminal Court, the question as to whether the suspension was justified or not can be separately gone into. But, if a person is exonerated of the charges even in the departmental proceedings, there is no other method of construing the period of suspension. Hence, the Tribunal was right in allowing the application.

13. Therefore, the Writ Petition is dismissed.

14. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

1st November, 2017
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