

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition No.33000 of 2017

% 30-10-2017

1. The Prl. Secretary to Govt., Higher Edn. (I.E.1) Dept.,
Telangana State, Secretariat Bldgs., Hyderabad-22

2. The Commissioner of Intermediate Edn., Telangana State,
Nampally, Hyderabad-01

... Petitioners/Respondents 3&4

Vs.

\$ 1. Kum. A.Bhavani, D/o Sri A.Shankaraiah,
Aged about 31 years, Occ: Jr. Lecturer in Hindi,
Govt. Jr. College, Yacharam, Ranga Reddy Dist.,
R/o. Plot No.14, Vanasthalipuram, Hyderabad

... Respondent/Applicant
in O.A.No.8237/2012

2. Prl. Secretary to Govt. Higher Edn., IE1) Dept.,
Secretariat Bldgs., Hyderabad-22

3. Commissioner of Intermediate Edn., A.P.,
Nampally, Hyderabad-01

... Respondents/Respondents

(R2 & R3 are not necessary parties in this W.P.)

! Counsel for the Petitioners: Government Pleader for
Services-I (Telangana)

Counsel for Respondent No.1: Smt. Ch.Sujatha

Counsel for Respondents 2&3: ---

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition No.33000 of 2017

Order: (per V.Ramasubramanian, J.)

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal directing the Government to regularise the period of suspension of the 1st respondent herein as duty period with all consequential benefits, the State of Telangana has come up with the above writ petition.

2. Heard the learned Government Pleader for Services-I (Telangana) appearing for the petitioners and Smt. Ch.Sujatha, learned counsel appearing for the 1st respondent.

3. When the 1st respondent herein was working as a Junior Lecturer (Hindi) in the Government Junior College, she was placed under suspension on 13-10-2009.

The following Article of Charge was framed against her:

“That the said Ms A.Bhavani, JL in Hindi, Govt. Jr. College, Yacharam, Ranga Reddy District during the academic year 2009-10 was continuously absent to her duties from 03-6-2009 to 06-6-2009 without obtaining prior permission from Higher authorities. Further, she has signed in the attendance register in columns marked as CLs., by higher authorities ignoring the instructions of the in-charge Principals which is highly unbecoming which leads to disobedience, insubordination towards higher officers on her part. Thus she acted in an irresponsible way towards her legitimate duties and attracts rule 3(2) of APCS (Conduct) Rules, 1964 and warrants deterrent action against her for tampering the attendance register of the college.”

4. Eventually the Director of Intermediate Education, imposed a penalty of stoppage of one increment without cumulative effect, by an order dated 30-10-2010. By the very same order, the 1st respondent was directed to be reinstated into service after revocation of the order of suspension.

5. Aggrieved by the penalty, the 1st respondent filed a regular appeal to the Government. By an order dated 28-10-2011, the Government modified the penalty into one of "Censure". This order has attained finality.

6. However, the competent authority did not pass any order as to how to treat the period of suspension from 28-10-2009 to 18-11-2010. Therefore, the 1st respondent filed an application in O.A.No.8237 of 2012 on the file of the A.P. Administrative Tribunal. Finding that a major penalty proceedings ultimately resulted only in a minor penalty of censure and also finding that the issue with respect to the treatment of the period of suspension in such cases, was already covered by a decision of this Court in **A.V. Vinod Kumar v. Executive Committee of Central Warehousing Corporation, New Delhi** [2007 (5) ALD 445], the Tribunal allowed the application filed by the 1st respondent and directed the Government to treat the period of suspension as duty for all purposes including pay and allowances. Aggrieved by the said order, the State has come up with the above writ petition.

7. Placing reliance upon Fundamental Rule 54-B(7), it is contended by the learned Government Pleader for Services-I that at the most the competent authority can only treat the period of suspension as leave of any kind due and admissible to the Government servant and that therefore the order of the Tribunal directing the period of suspension to be treated as duty period is contrary to the Fundamental Rules.

8. We have carefully considered the above submissions. Before dealing with the legal issues, we are compelled to take note of certain things. We have already extracted the one and only charge framed against the 1st respondent.

9. Though there was only one Article of Charge, the same was actually split into two portions, the first comprising of the absence of the 1st respondent from 03-6-2009 to 06-6-2009 without permission and the second comprising of her action in signing the attendance register. The enquiry report in respect of such major penalty proceedings runs to just two pages. The analysis and assessment of the evidence, is confined to one paragraph of the enquiry report which reads as follows:

“In her defence statement she denied the charges framed against her. The incharge Principal stated that Smt. A.Bhavani signed in the attendance register on the CL marked columns for four days on 08-6-2009. Further she stated that she has not taken any prior permission for four days. The teaching staff members (those who were attended on that day) are also stated that she has not attended the college for four days. Further she signed on CL marked columns for four days. Attendance register also clearly

shows that she has signed on CL marked columns. There is a lot of difference between her normal signatures and that four days signature. Hence it is construed that she is a guilty.”

10. It is based upon the aforesaid finding that the Director of Intermediate Education passed the original order of penalty, imposing a punishment of stoppage of one increment without cumulative effect. In other words, the Disciplinary Authority did not find it proper to impose a major penalty, despite the proceedings being initiated for a major penalty.

11. The mistake committed by the Disciplinary Authority was that he failed to address himself to the question whether the suspension for a period of nearly one year, in this case was justified or not. He simply ordered reinstatement.

12. The Government modified the penalty and reduced the same into one of censure. The Government also did not pass any order in terms of F.R. 54-B. Therefore, the conclusion that is inevitable is that there was no enough material for the Government to impose a major penalty. Having kept the 1st respondent under suspension for a period of more than a year from 28-10-2009 to 18-11-2010, the only honourable way out for the Government was to impose some penalty and this is what they have done.

13. Coming to the contention revolving around F.R. 54-B, it is seen that sub-rule (1) of F.R. 54-B requires the

competent authority to make a specific order regarding pay and allowances to be paid for the period of suspension.

Sub-rule (1) of F.R. 54-B reads as follows:

“(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement while under suspension; the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.”

14. Sub-rule (2) of F.R. 54-B deals with the case of a Government servant under suspension, who dies before a final order is passed. Sub-rule (3) deals with cases where the competent authority finds the suspension wholly unjustified. Sub-rule (3) reads as follows:

“(3) 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:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation within sixty days from the date on which communication to this regard is served on him and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not

being the whole) of such pay and allowances as it may determine.”

15. Under sub-rule (4), the period of suspension should be treated as a period spent on duty for all purposes, if the case falls under sub-rule (3). Sub-rule (4) reads as follows:

“(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.”

16. It is only in cases which do not fall under sub-rules (2) or (3), that the pay and allowances payable to the Government servant should be limited to the subsistence allowance already paid. Sub-rules (5) and (7) of F.R. 54-B read as follows:

“(5) In cases other than those falling under sub-rules (2) and (3) the pay and allowances payable to the Government servant for the period of suspension, shall be limited to the subsistence allowance already paid under FR 53.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.”

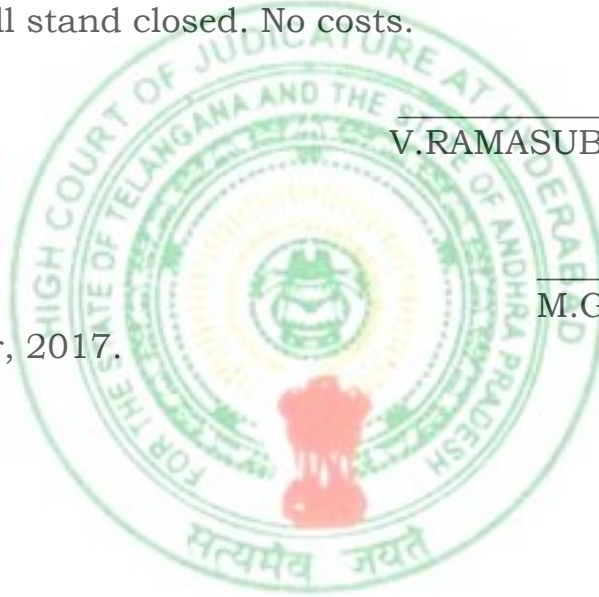
17. It is only in cases which fall under sub-rule (5) that the period of suspension shall not be treated as a period spent on duty. In this case the competent authority did not even address itself to the question whether the suspension was wholly unjustified or not. In other words, there was no compliance with F.R. 54-B(3). Therefore, the Tribunal itself had to apply its mind.

18. As rightly observed by the Tribunal, the 1st respondent was put on defence in major penalty proceedings. Eventually the Department could impose only the minor penalty of censure. Therefore, keeping the 1st respondent under suspension for more than a year, in cases of this nature, was obviously unjustified. Therefore, the Tribunal was right in allowing the application. We find no merits in the writ petition, hence, it is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

M.GANGA RAO, J.

30th October, 2017.
Ak



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition No.33000 of 2017
(per VRS, J.)



30th October, 2017.
(Ak)