

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE DR JUSTICE SHAMEEM AKTHER

W.P. No. 11529 of 2017

O R D E R:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed seeking to quash the order dated 04.04.2016 in O.A.No. 2347 of 2014 passed by the Tribunal, whereby the O.A. filed by the 1st respondent was allowed.

The learned Government Pleader for Services appearing on behalf of the petitioners submits that the 1st respondent was appointed as Secondary Grade Teacher in the year 2008. While he was working at Budanampalli village, Mudigubba Mandal, Ananthapur District, his wife died, having committed suicide on 27.02.2010. In view of the same, Crime No. 15 of 2010 was registered against the 1st respondent for the offences punishable under Sections 498-A and 306 IPC. The 1st respondent was arrested on 01.03.2010, and thereafter, he was released on bail on 25.03.2010. Meanwhile, he was placed under suspension by proceedings dated 15.03.2010 of the District Educational Officer on the ground that he was involved in criminal case. Subsequent to the trial conducted by the competent criminal court, the 1st respondent was acquitted by the Assistant Sessions Judge, Gooty, vide judgment dated 03.11.2011 in S.C.No. 412 of 2010. Based on

his acquittal, he was reinstated into service vide proceedings Rc.No. 1805/ B1/ 2011, dated 03.12.2011, and therefore, he was under suspension including deemed period from 02.03.2010 to 16.12.2011. Later, the petitioners, by proceedings dated 15.03.2012, based on the clarification from the Government, regulated/ treated the suspension period of the 1st respondent from 02.03.2010 to 16.12.2011 as “not on duty” and also ordered that he is not entitled to any monetary benefit for that period.

On receipt of the said proceedings, the 1st respondent made a representation on 26.03.2012 to the Mandal Educational Officer, Mudigubba Mandal. requesting to treat the period of suspension from 02.03.2010 to 16.12.2011 as on duty as he was acquitted from the criminal case. Accordingly, the representation was forwarded to the Commissioner and Director of School Education by the District Educational Officer, however no orders are passed on his representation.

The learned counsel for the petitioners has relied upon a case reported in Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao¹, wherein the Supreme Court referred the rule position as under:

“Sub-rule (3) of FR 54-B is extracted hereinbelow:

¹ (2011) 8 SCC 155

54-B. (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 of which the communication in 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]”.

On the other hand, the learned counsel for the 1st respondent submits that while passing the proceedings dated 15.03.2012 by treating the suspension period of the 1st respondent from 02.03.2010 to 16.12.2011 as “not on duty”, the petitioners were supposed to give opportunity to the 1st respondent before passing final orders. Similar issue came before the Supreme Court in the case of Depot Manager, A.P. State Road Transport Corporation, Hanumakonda v. V. Venkateswarulu and Another² wherein it is held as follows:

“The appointing authority or any other authority mentioned in Regulation 18 can place an employee under suspension who is facing investigation or trial on a criminal charge. The employee is entitled to the payment of subsistence allowance during the

² 1994 Supp (2) SCC 191

period of suspension under Regulation 20. Regulation 20(3) which denied subsistence allowance to an employee suspended under Regulation 18(1)(b) (during investigation/trial on a criminal charge) has since been deleted by the amendment. We agree with the High Court that with the deletion of Regulation 20(3) the classification made under Regulation 21(3) has become redundant. The High Court was, however, not justified in holding that on acquittal and reinstatement an employee becomes – without any further scrutiny – entitled to the payment of full salary for the period during which he remained under suspension. Regulations 21(1) and 21(2) are equally applicable to an employee who remained under suspension because of investigation/trial on a criminal charge. The competent authority is bound to examine each case in terms of Regulations 21(1) or (*sic* and) 21(2) and in case it comes to the conclusion that the employee concerned is not entitled to full salary for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned. In other words, it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds. The employee concerned has to be given a show-cause notice in respect of the proposed action and his reply taken into consideration before passing the final order.”

As held by the Supreme Court in the above cited case relied upon by the learned counsel for the 1st respondent, the authority was supposed to pass a reasoned order after affording an opportunity to the 1st respondent, however it is not done so in the present case.

Accordingly, we hereby set aside the order dated 04.04.2016 in O.A.No. 2347 of 2014 passed by the Tribunal. However, the proceedings dated 15.03.2012 issued by the 1st petitioner – District Educational Officer shall be treated as

a Show Cause Notice to the 1st respondent. The 1st respondent shall file a reply / explanation to the Show Cause Notice within a period of two weeks from the date of receipt of a copy of this order. On such explanation being filed, the petitioners shall consider the same and pass appropriate orders thereon in accordance with law after affording the 1st respondent an opportunity of hearing.

With the above observations, the writ petition is dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

30.06.2017

SURESH KUMAR KAIT, J

bcj

DR. SHAMEEM AKTHER, J

