

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No. 1132 of 2017

Date : 11.7.2017

Between :

G Narayana S/o Veeraiah
57 years Occu: Crafts Teacher
O/o Govt Residential School for Hearing Handicapped
Miryalguda, Nalgonda district

Petitioner

And

The Director/ Commissioner,
Disabled Welfare and Senior Citizens,
AP at Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

At the relevant point of time, petitioner was working as Warden cum Crafts Teacher in Government Residential School for Visually Handicapped at Karimnagar. By proceedings dated 26.1.2010 petitioner was suspended on the ground of his involvement in Crime No. 25/2010 under Section 376 (b) of IPC, Karimnagar II Town Police Station. He was served with charge memo dated 4.12.2010. The sum and substance of the allegation in the charge memo is that he committed the offence of rape on a minor visually handicapped student studying in 9th class by taking the student to his house. Domestic enquiry was conducted into the said allegation. Enquiry officer submitted his report. One of the finding recorded by the Enquiry Officer is that delinquent officer has taken the student out of the school premises to his house. While taking note of this finding recorded by the Enquiry Officer, the Disciplinary Authority held that since petitioner was acquitted in criminal case and the major charge is not proved in the domestic enquiry also, he be awarded with only punishment of censure and accordingly the said punishment was imposed. Consequently the period of suspension from 25.1.2010 to 2.9.2012 was treated as 'Not on duty'. To complete the narration, suspension of the petitioner was revoked from 2.9.2012. Criminal case launched against the petitioner ended in acquittal as the main complainant and the victim turned hostile. Petitioner filed O.A No. 7947 of 2013 before A.P. Administrative Tribunal challenging the order imposing the punishment of censure and consequently treating the period of suspension as not on duty, transferred to this Court.

2. Heard learned counsel for petitioner and learned Government Pleader.

3. Learned counsel for petitioner contends that on the same set of allegations, criminal prosecution was launched against the petitioner and in the criminal proceedings petitioner was honourably acquitted; consequent to the acquittal even if there is a finding against the petitioner in the domestic enquiry, the consequential proceedings initiated cannot be sustained. As the criminal Court held petitioner not guilty of committing offence of rape on the girl student, based on which allegation, the disciplinary action was initiated, the punishment of censure and treating the period of suspension as not on duty, is ex facie illegal.

4. In support of his contentions, learned counsel for petitioner placed reliance on the decision of Supreme Court in *Brahma Chandra Gupta Vs Union of India*¹, judgment of Full Court of this Court in *The District Manager, A.P. State Road Transport Corporation, Bhimavaram Vs Labour Court, Guntur and another*² and judgment of single Judge of this Court in *A.V.Vinod Kumar Vs. Executive Committee of the Central Warehousing Corporation, New Delhi and another*³.

5. Per contra, learned Government Pleader submits that in the domestic enquiry, the Enquiry Officer has recorded a clear finding against the petitioner in so far as taking the girl child out of the school premises. Taking the girl student out of the school premises is wholly illegal. Thus, even if the allegation of rape is not proved, the fact that the petitioner has taken out visually impaired girl student out of the school premises is sufficient to take disciplinary action, and therefore punishment imposed is valid. He would further submit that once disciplinary action ended in imposing punishment, period of suspension cannot be claimed as regular service and there is no illegality committed by the Disciplinary Authority in treating the suspension period as 'Not on duty'.

¹ AIR 1984 SC 380

² AIR 1980 AP 132

³ 2007 (5) ALD 445

6. Basic facts are not in dispute. The disciplinary proceedings as well as criminal prosecution were launched against the petitioner on the allegation of taking the visually impaired minor child out of the school premises and committing rape on said student. On the issue of committing rape, the petitioner was acquitted by the competent criminal Court. The acquittal was granted on the ground that the mother of victim as well as victim turned hostile and not supported the version of the prosecution. In the departmental proceedings the allegation is cumulative i.e., taking the girl student out of the school premises and committing rape. In view of the findings recorded by the competent criminal Court, the enquiry authority has not taken into consideration the allegation with reference to committing rape but the other issue remained for consideration i.e. taking the girl student out of the school premises. The deposition of the petitioner before the enquiry officer would disclose that the petitioner accepted the fact of taking the visually handicapped girl child out of school premises. Though, petitioner was trying to defend his decision by saying that mother of the child asked him to take the girl child from the school and to drop her at a particular place and he was only obliging the request made by the mother of the child, admittedly, petitioner has not taken prior permission of the Principal before taking the girl student out of the school premises. The defense sought to be taken by the petitioner was that he tried to contact the Principal but his Phone was switched off. The deposition of the other witnesses also supports the fact that the petitioner has taken the girl child out of the school premises. Thus, to that extent the charge is held proved in the departmental proceedings and on this aspect the acquittal of the criminal Court has no relevance.

7. In the Government service, conduct of the employee is relevant. In the instant case, the warden of the hostel is not authorized to take a girl child out of school premises on his own. Only parents of the child can take away the child from the hostel premises. Even according to the petitioner's own admission, assuming that he can take the child out, he did not take prior permission of the

Principal and took away the child out of school. Based on finding of Enquiry Officer, the disciplinary proceedings resulted in imposing the punishment of censure.

8. The punishment of censure imposed by the disciplinary authority is based on the material on record. The finding of enquiry officer on the issue of taking the girl student away from the school premises is proved based on evidence on record. Once there is sufficient material on record to support the findings and a categorical finding is recorded by Enquiry Officer, which finding is accepted by the disciplinary authority, this Court in exercise of power of judicial review cannot upset such finding of fact as an appellate Court. As the decision of the disciplinary authority is supported by the material on record, no exception is called for interference with the said decision. The acquittal granted by the competent Criminal Court does not come to the rescue of the petitioner with reference to taking the girl child out of the school premises.

9. Fundamental Rule 54-B deals with regulation of period of suspension of an employee. Sub rule (5) of 54-B indicates that in cases other than those falling under sub rules (2) and (3), the employee is not entitled to pay and allowances other than the subsistence allowance already paid. This case is not covered by the exception provided in Sub Rules (2) and (3). According to sub rule (7), in cases falling under sub rule (5) the period of suspension shall not be treated as a period spent on duty. Exceptions to denial of pay and allowances for suspension period are attracted in a case where employee dies before the disciplinary or Court proceedings instituted against him are concluded (sub rule 2) or the competent authority holds the suspension of the employee as wholly unjustified (sub rule 3). FR 54-B (5) & (7) are applicable to the case of the petitioner and in terms there of, question of regularization of the period of suspension and grant of all benefits does not arise once punishment is imposed.

10.1 The decisions relied upon by the petitioner turn on the facts of those cases.

10.2 The decision of the Supreme Court in Brahma Chandra Gupta concerns placing an employee under suspension during the pendency of criminal prosecution. On acquittal granted by the criminal Court, Supreme Court held that as criminal proceedings ended in acquittal and as no departmental proceedings were initiated against the employee, direction to pay full amount of salary was upheld.

10.3 The District Manager also concerns suspension of employee pending enquiry into criminal offence and acquittal by the criminal Court. Therefore these two decisions do not come to the rescue of the petitioner.

10.4 In A.V. Vinod Kumar, learned single Judge of this Court held that if punishment of censure is imposed in disciplinary proceedings, the period of suspension cannot be treated as 'Not on duty' and treating the period as 'Not on duty' would amount to major punishment.

10.5 I have carefully considered the said decision of the learned single Judge. It appears from the reading of the judgment that no provision similar to the provision in FR 54-B, was considered by the learned single Judge. The statutory provision is staring at the petitioner. FR-54-B clearly prohibit treatment of period of suspension as on duty if the disciplinary proceedings ended in imposing punishment. Whether the punishment ultimately imposed is censure or any other minor punishment has no relevance and no such distinction is made by the Rules. Therefore, said decision also does not come to the rescue of the petitioner.

11. Before parting with the case, it is also appropriate to notice that allegation against the petitioner is as a warden he was involved in taking a visually impaired minor girl out of the premises of the school. Such an issue cannot be

said as a minor lapse on the part of the employee, even assuming the story created by the employee that mother of the child requested him to take the child out of the school is true and therefore petitioner ought to have been content with the manner in which disciplinary proceedings were concluded.

12. For the reasons stated above, this Court is not persuaded to grant the relief as claimed by the petitioner. Writ Petition is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 11.7.2017
TVK

P NAVEEN RAO,J



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