

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.8579 OF 2008

ORDER:

The petitioner was appointed as Assistant Engineer on 24.09.1993 and promoted as Assistant Divisional Engineer in the year 2002. While so, his wife committed suicide and he was arrested in that connection. He was prosecuted in S.C.No.266 of 2004 and was ultimately acquitted by the learned V Additional Metropolitan Sessions Judge, Hyderabad. Initially, he was kept under suspension due his arrest from 28.11.2001 and subsequently, he was released on bail. Even during the period of bail, he was not reinstated into service and he was reinstated into service only after acquittal by the Criminal Court. He was reinstated on 21.10.2004. The second respondent passed an order on 06.04.2005 treating the period of suspension as on leave to which the petitioner was eligible. Against the said order, the petitioner filed an Appeal on 28.05.2005 and the same was also rejected on 18.08.2006. He filed Review and when the same was also dismissed on 04.02.2008, the present writ petition is filed.

Though the learned counsel for the petitioner relied on Regulation No.57 of the Andhra Pradesh State Electricity Board Service Regulations (the Regulations, for brevity), it merely gives the discretion to the competent authority to pass appropriate orders for treating the period spent on suspension. Regulation No.57(2) of the Regulations provides that if the competent authority is of the opinion that the employee has been fully exonerated, or in the case of suspension that it is wholly unjustified, the employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be. Regulation 57(4) of the Regulations clearly states that in such cases, the period of

absence from duty shall be treated as the period spent on duty for all purposes. The learned counsel also relied on an order passed by the A.P.Genco., on 04.06.2001 in respect of one B.Nageswara Rao, Sub Engineer, who was also involved in a criminal case under Sections 498-A and 304-B IPC, which is almost similar to the case of the petitioner herein. Further the competent Criminal Court acquitted the petitioner with the following observations.

It is in the evidence that about one month prior to the incident, the accused celebrated their daughter's birthday at Hyderabad and P.Ws.3 and 4 happily participated in the function. This suggests that the accused had no complainable conduct towards the deceased and the relationship of A.1 with his wife was normal and cordial. Therefore, the allegations of the prosecution that the accused was responsible for the death of the deceased lacks sound foundation.

Considering the defence put forth by the accused and the undisputed facts that the deceased lost one of her twins we cannot rule out the possibility of the deceased exhibited over emotional temptation for committing suicide instead of sharing her feelings with her parents or the accused. Thus, for the voluntary act of the deceased motives cannot be attributed to the accused inasmuch as evidence is lacking to prove the alleged conduct of the deceased. Therefore, the point goes in favour of the accused and against the prosecution.

In view of the above observations, the involvement of the petitioner could not be there for the death of his wife. These facts are not taken into consideration by the competent authority and in view of the same, the writ petition is allowed by setting aside the impugned order on 04.02.2008 and remanding the matter to the second respondent for re-consideration of the case of the petitioner in the light of Regulation 57(4) of the Regulations read with the observations made by the Criminal Court and pass appropriate orders within a period of eight weeks from the date of receipt of copy of this order.

The writ petition is accordingly allowed. Consequently, miscellaneous petitions, if any pending, in this writ petition, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

22.12.2017
pln

