THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.28138 of 2015

Date:02-06-2017

Between:

The Chief Commissioner of Land Administration,
Telangana State, Hyderabad.

…Petitioner.

And

Sri J. Shiva Shankar and antoher.

…Respondents.

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.28138 of 2015

ORDER: (Per Hon'ble Sri Justice N. Balayogi)

This is a writ petition whereby the petitioners seek quashing of the order dated 28-08-2014 passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.5167 of 2014 while set aside the proceedings in Government Memo No.25833/Vig.II(2)/2009-1, dated 24-07-2009 and consequential proceedings of CCLA Ref.No.VS.1(4)/2620/2002, dated 28-09-2010 and directing the authorities to treat the period of suspension of the first respondent from 02-07-2000 to 02-09-2001 as 'on duty' with all consequential benefits including pay and allowances, increments and Revision Pay Scales and other attendant benefits.

2. The brief facts giving raise to this writ petition are as under:-

The first respondent placed under suspension by the District Collector, Nizamabad on 02-07-2000 and disciplinary proceedings have been finalized by the Special CS & CCLA awarding punishment of stoppage of one annual grade increment with cumulative effect for the irregularities committed by claming LTC on producing fake railway tickets. He was reinstated on 02-09-2001 and an appeal preferred by the first respondent to the Government, the Government had set aside the orders of the CCLA vide Government Memo No. 73764/Vig.II(2)/2002-12, dated 22-10-2007.

3. On the representation of the first respondent, the Government rejected the claim to treat the suspension period as on duty and treated the suspension period as not on duty vide memo dated 24-07-2009.

4. Aggrieved by the said orders, the first respondent filed O.A.No.5167 of 2014 without explaining the reasons for delay. The said O.A was allowed and the Government was directed to treat the period of suspension of the first respondent from 02-07-2000 to 02-09-2001 as 'on duty'.

5. The said above orders in O.A.No.5167 of 2014 dated 28-08-2014 are illegal and unjust without considering the factual aspects of the punishment imposed and allowed the O.A without considering the provisions under F.R 54-B. Further, the Tribunal did not considered the issue whether the suspension of the applicant was justified in the facts of the case. The Government set aside the punishment only because in other case punishment was not imposed, therefore, the order treating the suspension period as not 'on duty' was justified.

6. This Court, on 04-09-2015, ordered stay of all further proceedings pursuant to the orders in O.A.No.5167 of 2014.

7. Pursuant to the orders in O.A.No.5167 of 2014, dated 28-08-2014, the first respondent filed C.A.No.605 of 2015 seeking to commit the first petitioner-Chief Commissioner of Land Administration for the State of Telangna, Nampally Railway Station Road, Abids and Secretary to the State of Telangana, Revenue Department for contempt of lawful authorities for their wilful disobedience of the orders in O.A.No.5167 of 2014 dated 28-08-2014.

8. The first respondent filed counter contending that he was unjustly placed under suspension on the ground that he was not staying in Headquarters and has drawn Rs.12,154/- towards LTC and a Charge Memo was issued on 23-04-2001. During the enquiry, the Enquiry Officer held that the four charges were not proved, but the Charge No.5 was held proved. Basing on that, the first petitioner herein was issued proceedings No.Spl.CS & CCLA.Ref.No.V.S.I(4)/1699/2000, dated 27.8.2002 imposing punishment of stoppage of one annual grade increment with cumulative effect. On 17-10-2002, the first respondent filed an appeal before the Government and as the Government did not passed any orders, filed O.A.No.3066 of 2003, thereafter the Government issued proceedings dated 22-10-2007, by setting aside the punishment, on the ground that the first petitioner herein had taken duel yardsticks, against 78 employees, against whom similar charge was framed were let off, whereas the first respondent was given punishment.

9. The first respondent made a representation dated 22-01-2008 to regularise the period of suspension from 02-07-2000 to 02-09-2001 as on duty, but instead of treating the period suspension on duty, the Government issued memo dated 24-07-2009 rejecting his request on untenable grounds, though the first respondent entitled for the benefit in terms of F.R 54-A(3) & 54-B (3).

10. The delay in preferring the O.A was condoned by the A.P. Administrative Tribunal by order dated 26-08-2014.

11. In fact, the first respondent approached the Tribunal during 2012 itself with condone delay petitions. There is no substance in the grounds.

12. A reading of the proceedings in Spl.CS & CCLA Ref.No.V.S.1(4)/1699/2000, dated 27.8.2002, goes to suggest that District Collector, Nizamabad District reported that the first respondent has not found discharging his duties properly and there are other allegations against him. The Article No.5 is deals with claim of LTC amount of Rs.12,154/- on 10-12-1999 by submitting fake railway tickets. The special CS&CCLA, having considered the remarks of the District Collector, Nizamabad and the explanation of the first respondent against which the remarks of the District Collector, Nizamabad, came to the conclusion that the first respondent submitted fake documents in support of his journey preferred on LTC and drawn the LTC amount of Rs.12,154/- and he has remitted back the amount only after pointing out the defects by the Accountant General's, Audit Party during the course of audit. Accordingly, the charge of drawing Rs.12,154/- towards LTC by producing fake tickets is proved. The Government imposed the punishment of stoppage of one annual grade increment with cumulative effect for the irregularities in claiming LTC by producing fake tickets.

13. The Government, having considered the representation of the first respondent on the directions of the Administrative Tribunal, has observed that the first respondent has been punished with stoppage of one annual grade increment, whereas all others, who were guilty of similar offence were let off and to give equal treatment to equally placed officers and whatever punishment was

given to 78 employees needs to be given to the first respondent. Hence, the Government set aside the orders of the Chief Commissioner of Land Administration vide proceedings dated 27-08-2002. The Government of A.P. in its Memo No.25833/Vig.II(2)/2009-1, after careful examination of the entire matter has observed that the first respondent has claimed Rs.12,154/- by producing fake railway tickets and further the irregular claim of LTC amount was recovered in lumpsum from him and also forfeit his right for availment of LTC for the rest of his service, which attracts punishment both under APTA Rules, 1996 and APCS (CCA) Rules, 1991 vide Collector's proceedings No.B2/3402/2000, dated 02-08-2000. Therefore, the first respondent does not fully exonerated from the charge, the question of regularising the suspension period as on duty does not arise and the request of the first respondent was rejected and treated the suspension period as on duty and the order was communicated to the first respondent vide in CCLA's Ref.No.VS.I(4)/2620/2002, dated 28-09-2010.

14. The learned counsel for the petitioners contended that the petitioners placed the first respondent under suspension on 02-07-2000 on certain irregularities like claming an amount of Rs.12,154/- towards LTC by producing fake railway tickets. A Departmental Enquiry was conducted and though the first four charges were not proved, the charge with regard to claim of LTC and producing fake railway tickets was proved for which, he was awarded punishment of stoppage of one annual grade increment with cumulative effect and the suspension was treated as similarly situated 78 employees were let off and the period of suspension

was treated as not on duty. The petitioners further submitted that Sub rule 3 of FR 54-B provides that where the competent authority is of the opinion that the suspension was wholly unjustified an employee would be paid full pay and allowances to which he would have been entitled and he has not been suspended. The first petitioner who is the competent authority had rightly taken the view that the suspension cannot be regarded as wholly unjustified therefore, the orders passed by the Tribunal should be set aside.

15. On the other hand, the first respondent contended that the Tribunal, after going through the documentary evidence and having considered the facts under which the first respondent was kept under suspension, subsequently, the petitioners revoked the orders and that the suspension of the first respondent was wholly unjustified and had the first petitioner took the erroneous view in the order dated 24-07-2009 during the period was not on duty.

> Sub Rule (3) of FR 54-B vests power on the first petitioner to order reinstatement to firm an opinion whether the suspension of Government servant was wholly unjustified and if, in its opinion, the suspension of the first respondent is wholly unjustified, the Government servant will be paid full pay and allowances which he would have been entitled, had he not been suspended.
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> The proviso to Sub-rule (3) of FR 54-B, however, the competent authority states 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, other than the government servant shall be paid for

a period of such delay only on such amount of such pay and allowances as it may determine. In other wards, even where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant shall not be entitled to the whole pay and allowance, but may be paid such pay and allowances as may be determined by the competent authority. Such power is vested with the competent authority with a view to ensure that the discipline in administration is not undermined and public interest is not jeopardise and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings, he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of each case.

16. Admittedly, the first respondent by producing fake railway tickets and drawn an amount of Rs.12,154/-, subsequently remitted the same when the audit party pointed out on 12-09-1999.

17. The Tribunal, having considered, set aside the proceedings of the Government during the period of suspension as not on duty and further find that since the penalty is set aside, it follows that the applicant is not under cloud, the suspension itself is unjustified. The circumstances and findings of the Tribunal goes to suggest that the first petitioner, while inflecting the punishment to the first respondent, the first petitioner has taken duel yardstick in the case of 78 employees against whom the similar charge was framed were let off, but however, the first respondent was

victimized by issuing punishment of one annual grade increment with cumulative effect. The Government, having considered that fact, has set aside the punishment against the first respondent vide memo dated 22-10-2007. The said memo did not speak anything which was mentioned in the impugned order dated 24-07-2009 which clearly established that the Government has include the case so as to deny the legitimate claim of the first respondent for treating the suspension period as on duty. The impugned action of the petitioners in not treating the suspension period as on duty though the punishment imposed on the first respondent was set aside by the Government is a clear unjustified act. When the punishment is set aside the competent authority as on duty to release the increments and other benefits by duly regularising the suspension period as on duty in terms of FR 54-A (3) & 54-B(3) of the Fundamental Rules.

18. Accordingly, the award of the Tribunal dated 28-08-2014 passed by the A.P. Administrative Tribunal at Hyderabad in O.A.No.5167 of 2014 is legal, valid and do not suffer with any legal infirmities.

19. In the aforesaid circumstances, we are of the view that the first petitioner vested with the power under FR 54-B (3) and 54-A (3) to order that the first respondent will be paid the full pay and allowances for the period of suspension was wholly unjustified.

20. In the result, the writ petition is dismissed with costs while confirming the order of the Tribunal in O.A.No.5167 of 2014 dated 28-08-2014 holding that the impugned proceedings No.25833/Vig.II(2)/2009-1, dated 24-07-2009 and the consequential proceedings of CCLA's Ref.No.VS.I(4)/2620/2002,

dated 28-09-2010 are set aside with a direction to the respondents to treat the period of suspension of the applicant from 02-07-2000 to 02-09-2001 as 'on duty' with all consequential benefits including pay and allowances, increments and revised pay scales and other attendant benefits and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order as the first respondent has already retired from service.

21. Pending miscellaneous petitions, if any, shall stand dismissed in the light of this final order.

SANJAY KUMAR, J

N. BALAYOGI, J

Date:02.06.2017
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