

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No. 32940 OF 2017

DATED 03RD OCTOBER, 2017

Between:

Tanguturu Mohammed ... Petitioner

AND

The State of Andhra Pradesh,
Rep. by its Special Secretary to Government,
Revenue (Vigilance – II) Department,
4th Block, Ground Floor, Room No. 134,
A.P. Secretariat Office, Velagapudi,
Guntur District, A.P., and others ... Respondents

Counsel for the petitioner : Sri D.A.Premchand

Counsel for the respondents : G.P. for Services (A.P.)

THE COURT MADE THE FOLLOWING

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

While the petitioner was working as Senior Assistant in the office of Sub-Registrar, Duvvur, Kadapa District, the Anti Corruption Bureau trapped him on 28-04-2008 on the allegation that he demanded and accepted bribe of Rs.1,000/- for doing an official favour by releasing original document which was registered at the office of Sub Registrar, Duvvur, on 10-04-2008. In contemplation of departmental proceedings, the petitioner was placed under suspension on 29-04-2008. Simultaneously, the petitioner was prosecuted based on the trap. However, the suspension was revoked on 24-06-2009 pending the criminal trial. By judgment dated 05-11-2012 in C.C.No. 3 of 2009, the Special Judge for SPE & ACB Cases, Nellore (for short, 'the criminal Court'), acquitted the petitioner of the charge of demand, acceptance and receipt of Rs.1,000/- in cash for delivering Ex.P5 sale deed to P.W.1. The criminal Court however held that the prosecution was able to prove the charge that official favour in relation to Ex.P5 sale deed pertaining to P.W.1 was pending with the petitioner. The petitioner was found not guilty on the ground that he along with accused No. 2, Junior Assistant, were entitled to benefit of doubt. The petitioner retired from service on attaining the age of superannuation on 31-12-2012. Thereafter, he made representations on 05-06-2014 and 23-06-2014 requesting to issue necessary orders for payment of retirement benefits and arrears. Respondent No. 2 issued order *vide* G.O.Rt.No. 693 dated 11-07-2014 dropping further action. On 25-11-2014, the petitioner made another representation requesting to treat his suspension period as 'on duty'. However, respondent No. 1 by G.O.Rt.No. 1288 dated 18-12-2015 decided to treat the suspension period of the petitioner 'as not on duty' as per Rule 54-B (7) of the Andhra Pradesh Fundamental Rules and Subsidiary Rules (for short, "the Fundamental Rules"). Feeling aggrieved by the

said order, the petitioner filed O.A.No. 4081 of 2016 before the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'). By the impugned order, the Tribunal while dismissing the O.A. however observed that the petitioner is entitled to continuity of service.

2. At the hearing, learned counsel for the petitioner submitted that before issuing G.O.Rt.No. 1288 dated 18-12-2015, respondent No. 1 has not given the petitioner an opportunity of personal hearing. He has further submitted that having allowed the judgment of the criminal Court in C.C.No. 3 of 2009 to become final, respondent No. 1 ought not to have denied the petitioner, the benefit of regularizing his suspension period by treating the same as on duty and giving all consequential benefits to the petitioner. Learned Government Pleader for Services (A.P.) has opposed the above submissions.

3. We have carefully considered the respective submissions of learned counsel for both parties and perused the record.

4. As regards the first submission of learned counsel for the petitioner, the Fundamental Rules *per se* do not envisage an inquiry with regard to the decision to be taken under Fundamental Rules 54-B (3), (5) and (7). A perusal of the decision impugned before the Tribunal shows that the same was taken by respondent No. 1 on the representation of the petitioner. Unless the provisions envisaged inquiry, it is not obligatory for the competent authority to hold an inquiry. It is not the pleaded case of the petitioner that while making a representation, he has at least asked for an opportunity of personal hearing. Therefore, we do not find any merit in the submission of learned counsel for the petitioner that the order of respondent No. 1 is in violation of principles of natural justice. On the contrary, respondent No. 1 has passed a speaking order,

wherein it has considered the case law in support of its conclusion that the petitioner is not entitled to treat the suspension period as on duty.

5. With respect to the second submission of learned counsel for the petitioner, under sub-rule (3) of Rule 54-B of the Fundamental Rules, 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. Under sub-rule (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 Rule 53. Under sub-rule (7), in a case falling under sub-rule (5), the period of suspension shall not be treated as a period on duty.

6. A careful reading of the relevant sub-rules of Rule 54-B of Fundamental Rules as discussed above would show that a Government Servant would be entitled to full pay and allowances only if the competent authority is of the opinion that the suspension was wholly unjustified. Admittedly, the petitioner was subjected to trap by the Anti Corruption Bureau. Therefore, as on the date of passing of the suspension, the allegation against him was serious which warranted his suspension. Merely based on the subsequent event of his acquittal in the criminal case, the petitioner cannot plead that his initial suspension was wholly unjustified. Moreover, the petitioner's acquittal was not honourable as the criminal Court has extended benefit of doubt while acquitting him. Therefore, on the facts of the case, denial of monetary benefits to the petitioner during suspension period is in conformity with the settled legal position.

However, the petitioner was given a partial relief by the Tribunal by holding that he is entitled to continuity of service.

7. In the aforementioned facts of the case, we do not find any merit in this Writ Petition and the same is accordingly dismissed.

8. As a sequel to dismissal of the Writ Petition, W.P.M.P.Nos. 40984 and 40985 of 2017 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J.

K.VIJAYA LAKSHMI, J.

Date: 03-10-2017.
JSK

