

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16313 of 2017

ORDER: (*Per VRS,J*)

The Greater Hyderabad Municipal Corporation, Hyderabad, has come up with the above writ petition challenging an order of the Andhra Pradesh Administrative Tribunal, (for short 'Tribunal) setting aside a proposed recovery of subsistence allowance paid to the respondent over a period of 11 (eleven) years.

2. Heard Mr.N.Ashok Kumar, learned counsel for the appellant.

3. It appears that the second respondent before this Court was implicated in a criminal case. Therefore, he was placed under suspension on 28.08.2000. The suspension prolonged for an unduly long period of 11 years upto 04.11.2011.

4. Eventually, the second respondent also retired from service on 31.05.2012. But, subsequently, he was also acquitted in the criminal case.

5. After three years of the second respondent's retirement from service, the Deputy Commissioner of the Corporation issued a memo dated 12.12.2015, seeking to recover a sum of Rs.8,28,305/- representing the subsistence allowance paid to the second respondent during the period of suspension from 28.08.2000 upto 04.11.2011. This memo was set aside by the Tribunal on an Application filed by the second respondent.

Aggrieved by the said order, the Corporation has come up with the above writ petition.

6. The sheet-anchor of the case of the petitioner-Corporation is that under Fundamental Rule 54B(7), a person who was not exonerated of the charges, is not entitled to have the period of suspension treated as 'on duty'.

7. But, the Corporation has completely overlooked the fact that treating the period of suspension, one way or the other, stands on a completely different footing from the entitlement of a suspended employee to subsistence allowance. Subsistence allowance paid to an employee can never be recovered, even if disciplinary proceedings end in extreme penalty. Therefore, the memo set aside by the Tribunal was completely contrary to law and the Tribunal was right in allowing the Application.

8. Hence, the Writ Petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

7th November, 2017
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