

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Writ Petition No.16817 of 2015

Between:

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
School Education Department,
Secretariat, Hyderabad.
and 4 others.

... Petitioners

and

D.Rajakullayappa
and another.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 05.12.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
AND

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! Counsel for Petitioners : Government Pleader for Services-I(AP)

^ Counsel for Respondent No.1: Sri A. Surya Rao.

< Gist:

> Head Note:

? Cases referred:

1) (2009) 11 SCC 683

2) (2011) 8 SCC 155

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.16817 of 2015

ORDER: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The challenge in this writ petition at the instance of petitioners, is the order dated 11.03.2014 in O.A.No.5778 of 2012 passed by learned Andhra Pradesh Administrative Tribunal, Hyderabad (for short “the Tribunal”) whereby and whereunder the Tribunal allowed the O.A. directing the respondents to treat the period of suspension of the applicant from 29.05.2009 to 02.11.2011 as on duty with all consequential benefits and also release the increments by passing necessary orders within six weeks from the date of the order.

2) While ordering notice before admission, this Court granted interim stay of all further proceedings in C.A.No.1432 of 2014.

3) The 1st respondent herein filed O.A.No.5778 of 2012. His case is that he has been working as Telugu Pandit Grade—II. He received suspension orders from the 4th and 5th respondents/petitioner Nos.4 and 5 herein on the ground he was involved in a criminal case. Immediately he approached higher authorities by way of appeal but in vain. Thereafter, he filed O.A.No.8065 of 2011. The Tribunal vide its order dated 29.09.2011 allowed the said OA by setting aside the suspension order dated 20.08.2009 and directed the respondents to

reinstate him into service. Pursuant to the said direction, the 4th respondent reinstated him into service by his order dated 31.10.2011. However, the respondent authorities have not taken any action for payment of salary for the suspension period i.e. from 29.05.2009 to 02.11.2011 and his representation dated 08.06.2012 did not yield any fruitful result. Therefore, he filed O.A.No.5778 of 2012 seeking a direction to the respondents to treat his suspension period i.e. from 29.05.2009 to 02.11.2011 as on duty and regulate his pay and allowances. The Tribunal allowed the said O.A. following the orders passed in O.A.No.6622 of 2012 dated 05.02.2013 and directed the respondents to treat the period of suspension as on duty with all consequential benefits.

4) Aggrieved, the petitioners filed the present writ petition contending that 1st respondent was involved in a criminal case in Cr.No.50 of 2009 under Sections 498A, 384, 323, 506 IPC and Sections 3 and 4 of Dowry Prohibition Act r/w Section 3 of Cr.P.C. before the Judicial Magistrate of First Class, Adoni. Basing on the report of SI of Police, Adoni, Town Police Station III, the DEO, Kurnool placed him under suspension w.e.f. 29.05.2009 under Rule 8(1) of APCS (CCA) Rules. Then, the applicant approached the Tribunal and filed O.A.No.8065 of 2011 seeking to suspend the proceedings of DEO. The Tribunal vide its order dated 29.09.2011 allowed the OA. Pursuant to the same, the DEO, Kurnool reinstated him into service. Whiles, the 1st respondent/applicant made an

application for payment of salary for the suspension period and he also filed O.A.No.5778 of 2012 seeking a direction to the respondents to consider his representation dated 08.06.2012 for release of salary for the suspension period. The Tribunal without proper appreciation of facts allowed the O.A. and in view of provision under FR 54 (5) of A.P. Fundamental Rules and as per Government Memo No. 2801/PE.Vig.I (2)/2010 dated 19.11.2010 the applicant is not entitled for treatment of suspension period as duty.

5) Heard arguments of learned Government Pleader for Services-I (AP) and Sri A.Surya Rao, learned counsel for 1st respondent.

6) Learned Government Pleader would argue that the Tribunal allowed O.A.No.5778/2012 on the observation that the said O.A is covered by the orders earlier passed by the Tribunal in O.A.No.6622/2012 dated 05.02.2013. No doubt, O.A.No.6622/2012 which was factually similar to the present O.A, was allowed by the Tribunal following the ratio laid down in O.A.No.1891/2007 and batch. The ratio in the said batch was to the effect that when the applicant was suspended for involvement in the criminal case and when the criminal case was ended in acquittal, he is entitled for treatment of period of absence as on duty and also entitled for full pay and allowance. However, against the order in O.A.No.6622/2012, the Government have filed W.P.No.32849/2013 and the said Writ Petition was allowed by a Division Bench of this Court on 04.02.2014 by setting aside the order in O.A.No.6622/2012. Therefore, the order in

O.A.No.5778/2012 dated 11.03.2014 relying upon the ratio in O.A.No.6622/2012 is untenable.

7) Per contra, learned counsel for 1st respondent would argue that since the criminal case filed under Section 498-A IPC against the 1st respondent was ended in compromise before the Lok Adalat, his suspension period shall be treated as on duty and he will be entitled to all the service benefits. He placed reliance on the decision reported in *Sharada Singh vs. State of U.P and others*¹.

8) The point for determination is:

“Whether there are merits in the Writ Petition to allow?”

9) **POINT:** Admittedly, the 1st respondent is working as Telugu Pandit Gr.II, MPUP School, Yapadinne village, Dhone Mandal, Kurnool district. Following a criminal case i.e, CC No.706/2009 filed by his wife under Section 498-A, 323, 506 IPC, he was remanded to judicial custody from 29.05.2009 to 02.06.2009 and because of his arrest, he was placed under suspension w.e.f. 29.05.2009. The 1st respondent was acquitted of the said criminal case due to settlement before the Lok Adalat on 24.09.2011. Earlier, the 1st respondent filed O.A.No.8065/2011 challenging his suspension. The said O.A was allowed on 29.05.2011 with a direction to the respondents to reinstate him into the service. Thereafter, he was reinstated into service. Later he filed O.A.No.5778/2012 since the authorities have not treated his

¹ (2009) 11 SCC 683

suspension period as on duty. The said O.A. was allowed on 11.03.2014 following the ratio in O.A.No.6622/2012.

10) Now the contention of learned Government Pleader is that the order in O.A.No.6622/2012 was since set aside in Writ Petition No.32849/2013, the Tribunal ought not to have relied upon O.A.No.6622/2012. A perusal of the order dated 04.02.2014 in W.P.No.32849/2013 would show that the Division Bench of this Court observed that FR 54-B(3) but not FR 54(2) of Andhra Pradesh Fundamental Rules would apply, as per which, 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. The D.B further observed, however, there was no material to show that suspension was wholly unjustified and therefore, the Tribunal ought not to have interfered with the **order** of the competent authority. The Division Bench ultimately allowed the Writ Petition by setting aside the order impugned in O.A.No.6622/2012. Since the order in O.A.No.5778/2012 was subsequent to the order in W.P.No.32849 of 2013, the ratio in O.A.No.6622/2012 was no more available to the Tribunal. It appears, the D.B order was not placed before the Tribunal while passing the order in O.A.No.5778/2012. Therefore, the impugned order in O.A.No.5778/2012 is not maintainable.

11) Be that as it may, we consider it apposite to verify whether petitioners' refusal to consider the period of suspension as on duty and

non-payment of pay and allowances, which is the grievance of the 1st respondent/applicant in O.A.No.5778/2012, is legally valid or not. The 4th petitioner in his proceedings in R.C.No.4060/C10/09 dated 25.09.2014, rejected the representation of the 1st respondent to treat his suspension period as on duty in the light of FR 54(5) of A.P Fundamental Rules. We are afraid, it is FR 54-B which is applicable to the instant case but not FR 54 or 54-A. It must be noted that the three rules i.e. FRs 54, 54-A, 54-B govern the following three different situations:

- (1) where reinstatement takes place consequent on the setting aside of **dismissal or removal or compulsory retirement** by the Government itself in appeal or review (FR 54);
- (2) where reinstatement takes place as a consequence of the **dismissal or removal or compulsory retirement** being set aside by a Court of Law (FR 54-A); and
- (3) where a **suspended** employee (who has not been dismissed, removed or compulsorily retired) has been reinstated to duty (FR 54-B).

In the instant case, admittedly suspension was revoked and 1st respondent was reinstated into service as per the order dated 29.09.2011 in O.A.No.8065 of 2011. Then regarding the treatment of his absence period, the competent authority shall consider his case in terms of FR 54-B but not FR 54. FR 54-B reads thus:

FR 54-B: (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement while under suspension; the authority competent to order reinstatement shall consider and make specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) 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:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant, it may, after giving him an opportunity to make his representation [within 60 days from the date on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay

only such [amount (not being the whole)] of such pay and allowances as it may determine.

(4) xx xx

(5) xx xx

(6) xx xx

(7) xx xx

(8) xx xx

(9) xx xx

Interpreting FR 54-B (3), the Apex Court in ***Greater Hyderabad Municipal Corporation v. M.Prabhakar Rao***², observed thus:

“Para 15: Sub-rule (3) of FR 54-B does not state that in case of acquittal in criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of FR 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of FR 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before it, such opinion of the competent authority would not be interfered with by the Tribunal or the Court.”

² (2011) 8 SCC 155

12) In view of the above ratio, the competent authority shall, in terms of FR 54-B (3), form an opinion as to whether the suspension of the 1st respondent was wholly unjustified or not. Unfortunately, such an order, on merits, was not passed. On the other hand, the 4th petitioner in his proceedings in R.C.No.4060/C10/09 dated 25.09.2014, rejected the request of the 1st respondent to treat the suspension period as on duty in terms of FR 54(5) on the ground that the 1st respondent was involved in a private criminal case for dowry harassment for which the department was not responsible and during the period of suspension, the applicant has not attended any official work for regularizing the suspension period as on duty. However, as stated earlier, the 4th petitioner has not discussed in the order as to whether or not his suspension on account of 1st respondent's involvement in a private case which has nothing to do with his discharging of public duties, was wholly justified or unjustified. In that view, the order of the 4th petitioner is not maintainable in the light of ratio in *M.Prabhakar Rao's* case (2 supra). Consequently, the decision in *Sharada Singh's* case (1 supra) has no application. Therefore, we consider it apposite to direct the 4th petitioner to pass an appropriate order on merits.

13) In the result, this Writ Petition is allowed by setting aside the order dated 11.03.2014 in O.A.No.5778 of 2012 with a direction to the 4th petitioner to pass a reasoned order on merits in terms of FR 54-B (3) of A.P. Fundamental Rules stating whether or not the

suspension of 1st respondent was wholly unjustified within four (4) weeks from the date of receipt of copy of this order. However, such an order shall be passed after giving an opportunity to the 1st respondent to make a submission as to how his suspension was wholly unjustified. We make it clear that the order to be passed by the 4th petitioner is subject to the result of departmental enquiry, if any. No costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

U.DURGA PRASAD RAO, J

Dt: 05.12.2017
Murthy/scs

