

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.7285 of 2011

ORDER:

This writ petition is filed seeking Mandamus, by calling for the records relating to and connected with proceedings Memo No.DEE/O/MCL/Adm/JAO/U1/D.No.1255/06 dated 22.02.2006, declare the action of the respondents in treating the entire period of dismissal from service as 'on leave', i.e. from 16.07.2002 to 15.04.2005 as arbitrary, illegal, violative of Article 14 of the Constitution of India and also contrary to the judgment of this Court in W.P.No.14702 of 2002 dated 18.03.2005 and consequently direct the respondents to treat the entire period as compulsory wait and grant all consequential benefits including arrears of salary and all other service benefits.

2. Heard Sri Pratap Narayan Sanghi, learned counsel for the petitioner and Sri N. Siva Reddy, learned standing counsel for the respondents.

3. It is the case of the petitioner that he was initially recruited as Casual Labourer on 01.07.1979, thereafter appointed as a Helper on regular basis with effect from 23.11.1983. He was promoted as Assistant Lineman in May, 1986, Lineman in August, 1989 and Line Inspector in February, 2001. It is stated that petitioner was elected as President of Telugu Nadu Vidyut Karmika Sangam during the year 1994 and in relation to the Union activities, it was alleged that he had used some defamatory language and accordingly some persons have lodged criminal case against the petitioner for using defamatory language. Petitioner was

tried by the competent criminal Court and he was convicted on the charge of defamation on 28.07.2000. Aggrieved by the same, he preferred appeal before the Sessions Court and the Sessions Court acquitted him honourably, by absolving him from the said charge vide order dated 11.08.2000. It is stated that respondents herein dismissed the petitioner from service vide proceedings dated 16.07.2002 on the ground that he was convicted by criminal Court. Thereafter, petitioner filed appeal before the appellate authority and the same was rejected. Petitioner filed W.P.No.14702 of 2002 before this Court challenging the order of dismissal and this Court allowed the said writ petition on 18.03.2005 by setting aside the order of dismissal; in pursuance of the order of this Court, petitioner was reinstated into service on 15.04.2005.

4. The principal grievance of the petitioner is that the period from 16.07.2002 to 15.04.2005 was treated as 'earned leave' in spite of the fact that the writ petition filed by him was allowed by setting aside the order of dismissal.

5. Learned counsel for the petitioner submits that as per FR 54-A (3) of the Fundamental Rules, if the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he

would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. He further submits that petitioner was dismissed from service only on the ground of conviction in a criminal case based on a memo dated 26.11.2001, whereas the said memo clearly specifies that persons who are convicted only on the charges of corruption and moral turpitude are to be dismissed from service, but the case on hand is not a case of corruption nor it involves moral turpitude. Petitioner was initially convicted for the offence dealing with defamation and the said conviction was set aside by the Sessions Court and he was given clean acquittal, however, the authorities, instead of treating the entire period from the date of dismissal till reinstatement, as 'on duty', have erroneously treated the same as 'earned leave'.

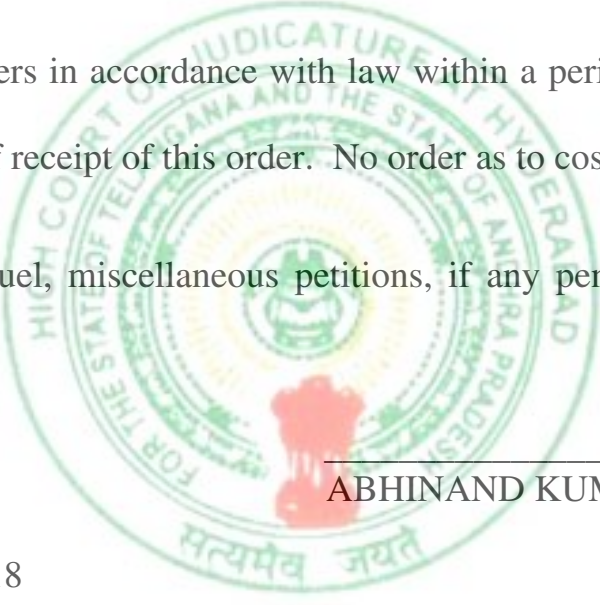
6. Learned standing counsel for the respondents submits that as per the Regulations of the respondents, petitioner is not entitled for arrears of salary and other consequential benefits; as per memo dated 14.05.1990, petitioner is not entitled for any benefits and as per the said memo, the period from the date of dismissal to the date of reinstatement should be treated as dies non, there are no merits and the writ petition is liable to be dismissed.

7. This Court, having considered the rival contentions of the learned counsel for the parties, is of the considered view that the petitioner has submitted representation to the respondents on 09.08.2006 requesting the respondents to reckon the period of dismissal, i.e., from 16.07.2002 to

15.04.2005 as 'on duty' with all benefits including payment of salary for the said period and this Court vide order dated 28.03.2011 granted interim direction to consider the said representation dated 09.08.2006 and pass appropriate orders. But, so far, respondents have not passed any orders on the said representation.

8. In that view of the matter, this writ petition is disposed of directing the respondents to consider the representation of the petitioner dated 09.08.2006, submitted to the respondents, to reckon the period of dismissal, i.e., from 16.07.2002 to 15.04.2005 as 'on duty' and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of this order. No order as to costs.

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



ABHINAND KUMAR SHAVILI, J

October 22, 2018
MRR