

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

Writ Petition No.12212 of 2018

Between:

The State of A.P., and another

..... Petitioners

And

V. Krishna Murthy

.....Respondent

ORDER PRONOUNCED ON: 13.06.2018

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

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

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
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Writ Petition No.12212 of 2018

DATE: 13.06.2018

Between:

The State of A.P., and another

..... Petitioners

And

V. Krishna Murthy

.....Respondent

For Petitioners : Govt. Pleader for Services, AP

For Respondent : Sri K. Ramasubba Rao

< Gist:

> Head Note:

? CITATIONS:

¹ (2011) 8 SCC 155

² 1995 II AD Delhi 466

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.12212 of 2018

ORDER: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present petition, petitioners have assailed order dated 24.07.2017 passed in O.A.No.3866 of 2016 by the A.P. Administrative Tribunal, Hyderabad, whereby the application filed by the respondent herein under Section 19 of the Administrative Tribunals Act, 1985 has been allowed.

2. Brief facts of the case are that the respondent is a retired Principal of a Junior College in East Godavari District. While he was working as Junior Lecturer and as Principal on full additional charge, he was involved in a criminal case in Crime No.62/2000 under Sections 420, 417 and 471 IPC, as he had issued bogus study certificates to some students in order to enable them to get RTC bus-passes. In view of the above crime, respondent was placed under suspension by proceedings dated 10.08.2000 and subsequently disciplinary proceedings were initiated. In the meanwhile, in the criminal case was taken cognizance of vide C.C.No.1039/2000, the respondent was acquitted by judgment dated 11.07.2003 by the JFCM, Tiruvuru, Krishna District. Subsequently, in pursuance of the disciplinary proceedings initiated against the respondent, he was imposed a punishment of stoppage of two increments without cumulative effect vide proceedings dated 17.05.2004. Thereafter, the respondent retired from service on 30.06.2007. After his retirement, the 2nd petitioner issued proceedings dated 05.05.2009, treating the period of suspension of the respondent from 15.08.2000 till the

date of reinstatement, i.e. 11.07.2004 as earned leave, half pay leave and extraordinary leave. The said punishment was challenged before the Tribunal in O.A.No.2824 of 2006, which was dismissed by order dated 20.10.2009.

3. Being aggrieved, respondent challenged the said proceedings before the Tribunal on the ground that petitioners herein ought to have considered his case under F.R.54-B (5).

4. The case of the petitioners herein is that the respondent was awarded punishment of stoppage of two annual increments without cumulative effect after due enquiry vide proceedings dated 17.05.2004 and on the same day, vide another proceedings, the suspension of the respondent was revoked and consequently he joined service on 11.07.2004; the respondent filed appeal before the Government on 03.12.2004 questioning the suspension and also seeking regularization of the period of suspension as on duty, however, the Government rejected his case by Memo dated 23.10.2007 on the ground that it is filed with delay and that it is time-barred. Subsequently, the period of suspension of the respondent was treated as follows in three different spells:

- | | |
|--------------------|---|
| “i. Earned leave | : 13 days from 15.08.2000 to 27.08.2000 |
| ii. Half pay leave | : 168 days from 28.08.2000 to 11.02.2001 |
| iii. EOL | : 246 days from 12.02.2001 to 11.07.2004” |

5. Learned Govt. Pleader for Services appearing on behalf of the petitioners submits that after the reinstatement of the delinquent officer, the Government is competent to pass order treating his suspension period as on duty or without duty or as earned leave, half pay leave or EOL; accordingly, vide proceedings dated 05.05.2009, the period from

15.08.2000 to 11.07.2004 has been treated by the petitioners as mentioned above.

6. To strengthen her argument, learned Govt. Pleader for the petitioners relied on a decision of the Supreme Court in *Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao*¹.

7. The issue before this Court is whether the respondent is entitled for pay and allowances during the period of his suspension, i.e. from 15.08.2000 to 11.07.2004 or not.

8. It is not in dispute that respondent was placed under suspension by proceedings dated 10.08.2000 on the ground that a crime was registered against him on the allegation that he had issued bogus study certificates for enabling the students to obtain bus-passes from APSRTC Depot, Tiruvuru, Krishna District. The respondent was under judicial custody for about two days. Therefore, keeping those facts in mind, the order of suspension was issued by the 2nd petitioner. The order further states that the respondent will be under suspension pending enquiry until conclusion of disciplinary proceedings relating to the charge. The petitioners, in fact, issued a charge memo to the respondent and conducted an enquiry which ultimately ended in imposition of punishment on 17.05.2004 of stoppage of two annual grade increments without cumulative effect. While issuing the said order of punishment, respondent was also reinstated into service on the ground that he was acquitted in the criminal case by judgment dated 11.07.2003. By virtue of the said proceedings, respondent was imposed the punishment of stoppage of two annual grade increments without cumulative effect and at

¹ (2011) 8 SCC 155

the same time, reinstated into service. As per the Service Rules governing disciplinary proceedings i.e. APCS (CCA) Rules, 1991, the punishment of stoppage of two increments without cumulative effect is a minor punishment.

9. With regard to the claim of the respondent to treat the period of suspension for pay and allowances, it is apposite to refer F.R.54-B, which reads as under:

“(1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement 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 re-instatement 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 re-instatement 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 19 [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 20 [amount (not being the whole)] of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(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 F.R.53”.

10. Sub-rule (1) of Rule 54-B shows that when a Government servant who is under suspension is reinstated, the authority competent, shall consider and make an order regarding pay and allowances to be paid to which he would have been entitled, had he not been suspended. The respondent has been issued the order of reinstatement, but there is no order as to how the period of suspension is to be treated, viz. whether it is to be treated as on duty or not. The respondent was allowed to retire on 30.06.2007 and thereafter proceedings dated 05.05.2009 were issued as discussed above.

11. When similar issue came for consideration before the Delhi High Court in *Hira Lal v. DDA and others*² a learned single Judge of the Delhi High Court held as under:

“Thus according to sub-rule (1) of Fr 54B a duty is cast on 'the competent authority ordering reinstatement to apply its mind and make a specific order regarding the pay and allowances to be paid to the Government servant for the period intervening between the dates of his suspension and reinstatement. The- order regarding pay and allowances is a consequential order which is to be passed on the reinstatement of a Government servant. The requirement of passing such an order is couched in mandatory terms, which is indicated by the use of the word "shall" in sub-rule (1) of Rule 54B. Though the sub rule makes no express mention of the time imperative within which an order is to be made, the requirement for making such an order, however, is clearly indicated from its tenor, which shows that it should be made on reinstatement of a government servant. The decision regarding reinstatement of a government servant and the decision to pay or not to pay his full pay and allowances for the period he remained under suspension are parts of the same integrated process. In any event the gap between the two decisions should not be unreasonably long.

In the present case the suspension of the petitioner was revoked and he was reinstated on July 25, 1989 without prejudice to the contemplated disciplinary enquiry against him but no order with regard to payment to him of pay and allowances for the period of his suspension was passed until February 26, 1991, when his representation for payment of the full pay and allowances for the said period was rejected. It should be clearly understood that sub-rule (1) of Fr 54B does not permit such a long and inordinate delay in passing the order relating to payment of pay and allowances to the Government servant, who is reinstated on revocation of his suspension. If such an obligation is not imposed, the question of

² 1995 IIAD Delhi 466

payment of pay and allowances for -the period during which the Government servant was kept under suspension will remain in limbo and orders in this respect may not be passed for a considerable long period of time. Such a situation must be avoided. It has already been noticed that the petitioner was suspended on September 1, 1984 in anticipation of disciplinary enquiry against him, and when his suspension was revoked after five years in 1989 till .then even a charge sheet had not been served on him, which ultimately came to be served only on April 9, 1990.”

12. In addition to the above, the Supreme Court in an unreported judgment in *Vijay Kumar Agarwal v. Union of India and another*, held as under:

“The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54B and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the Government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period May 01, 1988 to May 13, 1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its own but to facilitate petitioner's inter- cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of

suspension was not in exercise of power to revoke the suspension on the ground that the petitioner was no longer required to kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal.

According to us, the aforesaid approach of the High Court, under the given circumstances, is without blemish. The High Court has relied upon certain judgments of this Court including the decision in the case of Basant Ram Jaiswal v. Area Manager (North) MTNL Bombay[1] which held that in such a situation, the competent authority cannot exercise the power under FR 54B.”

13. In view of the law laid down as discussed above, the 2nd petitioner has no authority to pass orders treating the period of suspension mentioned above after inordinate delay of five years after revocation of the order of suspension. We note, proceedings dated 05.05.2009 is stated to have been passed under F.R.54-B (7), however, in the said proceedings, order under sub-rule (7) has not been passed stating that the period of suspension was not spent on duty. The proceedings dated 05.05.2009 has been issued mechanically on the ground that on the appeal of the respondent dated 03.12.2004 for dropping the punishment awarded by the CIE and regularization of suspension period, Government vide proceedings dated 23.10.2007 dismissed the appeal as time-barred and instructed the Commissioner of Intermediate Education to issue orders regularizing the period under suspension as per provision of F.R.54-B (7). However, while passing the said order, petitioners have not applied their mind and there is no mention as to whether the period of 1427 days is to be treated as on duty or not. Though they were supposed to pass an order under sub-rule (7) as stated above, the same has not been done. The learned Tribunal has observed that while reinstating the respondent on 17.05.2004, the

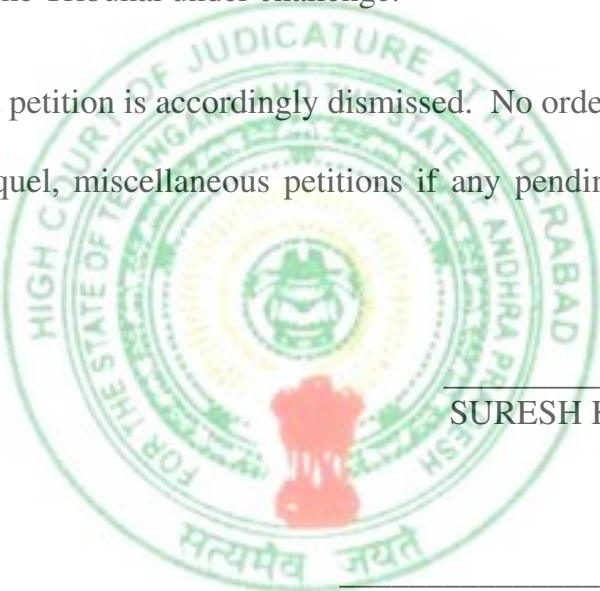
petitioners should have recorded whether the suspension period is to be treated as on duty or not, however, petitioners issued proceedings dated 05.05.2009 belatedly, while allowing the respondent to retire on 30.06.2007.

14. In view of the above, the decision relied on by the learned Govt. Pleader for the petitioners (1 supra) is of no avail to the case of the petitioners.

15. For the foregoing reasons, we do not find any illegality or perversity in the order of the Tribunal under challenge.

16. The writ petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the petition stand closed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

June 13, 2018

MRR

Note: L.R. Copy be marked
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