

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SMT. JUSTICE ANIS**

WRIT PETITION No. 32849 OF 2013

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ORDER: (Per the Hon'ble Sri Justice K.C.Bhanu)

1. This Writ Petition is filed challenging the order, dated 05.02.2013, in O.A.No.6622 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, whereunder and whereby the petitioners/respondents are directed to treat the period of suspension of the 1st respondent/applicant from 21.08.2009 to 02.09.2009 as on duty, with all consequential benefits and they were further directed to release increments of the 1st respondent by passing necessary orders within a period of six weeks from the date of the impugned order.

2. The learned Government Pleader for Services-I appearing for the petitioners contended that unless it is shown that the period of detention is wholly unjustified, the 1st respondent is not entitled to treat his suspension period as 'spent on duty', and hence, he prays to allow the Writ Petition.

3. On the other hand, the learned counsel for the 1st respondent contended that as no departmental proceedings were initiated and the 1st respondent was

acquitted in the criminal case, the period of suspension can be treated as period 'spent on duty'

4. The short point that arises for consideration is whether the period of suspension of the 1st respondent from 21.08.2009 to 02.09.2009 can be treated as period 'spent on duty' with all consequential benefits.

5. The factual matrix is not in dispute. The 1st respondent was suspended as he involved in a criminal case registered for the offence punishable under Section 498-A of the Indian Penal Code, 1860 and under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

6. The Andhra Pradesh Fundamental Rules govern the issue involved. Rule 54-B(3) reads as follows:

“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.”

7. As a matter of fact, Rule 54(2) has no application to the present case because no departmental proceedings were initiated against the 1st respondent, no enquiry was conducted and he was reinstated after acquittal in the criminal case. Therefore, the relevant Rule for deciding

whether the suspension period has to be treated as 'spent on duty' or not, is sub-rule (3) of Rule 54-B. After considering the relevant material on record, the competent authority treated the suspension period as a leave applicable to the 1st respondent.

8. It is not the case of the 1st respondent that suspension pending enquiry is wholly unjustified. Therefore, in such circumstances, in the absence of any material to show that the suspension is wholly unjustified to treat the suspension period as leave, cannot be shown to be improper and the Tribunal ought not to have interfered with the same. Therefore, without adverting to the issue involved, the impugned order has been passed by the Tribunal and that order runs contrary to Rule 54-B(3) of the Fundamental Rules.

9. In that view of the matter, the Writ Petition is allowed by setting aside the impugned order. No order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

(K.C. BHANU, J)

(ANIS, J)

04.02.2014

Anr

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