

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**W.P.No.20026 OF 2002**

**ORDER**

**This writ petition is filed seeking the following relief:**

“...to issue a writ, order or direction especially one in the nature of writ of Mandamus declaring the Memo No.DS(HRD)/A-II/1163/2001, dt. 11.4.2002 rejecting the case of the petitioner for payment of full back wages for the period from 23.03.1996 to 4.8.2000 and the order of the Superintending Engineer in Memo No.SE/NLG/Admn/JAO/2167/2001, dt. 24.08.2001, as illegal and arbitrary and further declare that petitioner is entitled to be paid full back wages for the above said period from 23.3.1996 to 4.8.2000 and pass such order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri M.Surender Rao, learned counsel appearing for the petitioners and Sri R.Vinod Reddy, learned Standing Counsel appearing for the respondents.

During pendency of the writ petition, the petitioner had died and his son, who is his legal representative, was brought on record.

It is the case of the petitioner that initially, he joined in the service of A.P.State Electricity Board on 5.6.1984 and he was discharging his duties as such. While so, his brother-in-law had given a complaint against him stating that the petitioner is responsible for abetment of suicide by his wife. Based on the said complaint, he was arrested on 23.3.1996 and

detained for more than 48 hours. Hence, the respondent-authorities placed him under suspension vide proceedings dated 24.6.1996. Thereafter, charge memo dated 30.03.1996 was issued to him framing two Articles of Charges. Challenging the suspension order dated 24.6.1996, the petitioner filed W.P.No.785 of 1997 and the same was disposed of on 9.2.1997 directing the respondents to complete the enquiry within two months the date of passing that order. When the respondents have not completed the enquiry within the stipulated period, the petitioner filed C.C.No.649 of 1997 and the same was closed. Thereafter, the respondents have issued a Memo on 2.8.1997 imposing the punishment of stoppage of two increments with cumulative effect besides treating the period of unauthorized absence from 1.10.1995 to 22.02.1996 as “dies-non” and it was specifically mentioned that the suspension order would continue till the criminal case pending against him is finalized. Challenging the same, the petitioner filed W.P.No.20752 of 1998. This Court *vide* order dated 1.9.1997 dismissed the same by observing that if any inordinate delay in the disposal of the criminal case takes place, the disciplinary authority shall review the suspension of the petitioner periodically, atleast once in a year. The criminal case registered against the petitioner was numbered as S.C.No.209 of 1997 before the Principal Sessions Judge, Nalgonda and the same was allowed and the punishment of

imprisonment for life was imposed against the petitioner. Challenging the same, the petitioner preferred Criminal Appeal No.651 of 1999 before this Court. This Court *vide* order dated 5.7.2000 set aside the conviction and sentence recorded against the petitioner. Thereafter, the petitioner was reinstated into service on 25.05.2001. However, the pay and allowances during the suspension period was limited on the ground that subsistence allowance was already paid to him. Thereafter, the petitioner preferred an appeal before the 1<sup>st</sup> respondent and the same was rejected *vide* order dated 11.4.2002.

The principal contention raised by the petitioner is that he was placed under suspension based on the criminal case filed against him and that when once this Court set aside the conviction and sentence recorded against him, in all fairness, the respondents ought to have regularized the period of suspension by treating the same 'as spent on duty' or atleast treating the said period as 'leave' to which he is entitled to, but the respondents treated the suspension period as "*dies non*".

Learned counsel appearing for the petitioner submits that the Superintending Engineer, who is the disciplinary authority, has treated the period of suspension as period spent on duty, however, while doing so, the pay and allowances during the suspension period was limited on the ground that

subsistence allowance was already paid to him. When once the disciplinary authority has treated the period of suspension as spent on duty, it cannot turn around and contend that the suspension period is limited only for the pay and allowance as the subsistence allowance was already withdrawn by him. The disciplinary authority ought to have passed order to the effect that the petitioner is entitled to the full pay and allowances during the suspension period or treat the said suspension period as 'leave' to which the petitioner is entitled to. But the Superintending Engineer on the one hand treated the suspension period as spent on duty and on the other limited the pay and allowances as subsistence allowance was already withdrawn by him.

Learned Standing Counsel appearing for the respondents contends that since the petitioner was unauthorizedly absent from his duties, the respondents have rightly treated the suspension period as "dies non" and limited the pay and allowances to which he is entitled to as he had already withdrawn the subsistence allowance and that no illegality has been committed by the respondents, and that there are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that when the suspension period is treated as 'spent on duty', the

respondents ought to have regularized the said period by paying the pay and allowances and the respondents can confine the pay and allowance only to the subsistence allowance already paid provided the delay is attributable to the petitioner, but such instance is not there in the instant case.

Therefore, the respondents are directed to regularize the suspension period of the petitioner as spent on duty as was done by the disciplinary authority *vide* proceedings dated 25.5.2001 and pay the balance pay and allowances for the suspension period which the petitioner is entitled to, in accordance with rules.

Accordingly, the Writ Petition is disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE ABHINAND KUMAR SHAVILI

31<sup>st</sup> October, 2018  
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