

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4864 OF 2016

ORDER:

1. This writ petition is filed challenging the action of the respondents in treating the period of dismissal with effect from 16.9.2009 till the date of joining as dies non besides treating the period of suspension as 'not spent on duty' while setting aside the order of dismissal.

2. The learned Counsel for the petitioner submits that the disciplinary authority imposed punishment of dismissal vide order dated 23.6.2009, against which, the petitioner preferred appeal to the appellate authority and that the appellate authority vide order dated 8.10.2010 was pleased to examine the case of the petitioner, to take a lenient view and set aside the order of dismissal of the petitioner from service while directing to reinstate the petitioner into service, on the ground that no opportunity was given to the petitioner to examine the witnesses in the enquiry, however, while setting aside the order of dismissal and directing to reinstate the petitioner into service, the appellate authority has erroneously treated the period of dismissal i.e., from 16.9.2009 till the date of joining as dies non besides treating the period of suspension from 19.2.2005 to 4.8.2007 as 'not spent on duty'. Challenging the same, the present writ petition is filed.

3. The learned Counsel for the petitioner contends that similar issue fell for consideration before the authorities in respect of one G. Raj Kumar and the respondents herein treated the period of suspension in respect of the said individual as period spent on duty, but when it came to the case of the petitioner, the respondents have treated differently. He further contends that when once the appellate authority has come to a conclusion that no opportunity was given to the petitioner to examine the witnesses, in all fairness the appellate authority should have treated the period of suspension as spent on duty and the period from the date of dismissal till date of joining as spent on duty instead of dies non, and therefore, appropriate orders may be passed by directing the respondents to treat the period of suspension as spent on duty and to treat the period from the date of dismissal till the date of joining as spent on duty with all consequential benefits.

4. The learned Standing Counsel for the respondents submits that a lenient view was taken by the appellate authority and major penalty of dismissal was set aside and the petitioner was directed to be reinstated into service and the out of employment period was rightly treated as dies non and therefore, the question of interference by this court would not arise and the writ petition is liable to be dismissed.

5. This Court having considered the rival submissions made by the parties is of the view that when once the appellate authority has given a finding that no opportunity was given to the petitioner to examine all the witnesses in the enquiry, in all fairness, the appellate authority ought to have treated the out of employment period as spent on duty. Therefore, this writ petition can be disposed of directing the petitioner to submit a fresh representation to the respondents bringing to the notice of the authorities concerned that one G. Raj Kumar was extended the benefit of treating the suspension period as spent on duty.

6. Accordingly, the Writ Petition is disposed of directing the petitioner to submit a fresh representation to the respondents bringing to the notice of the authorities concerned that one Raj Kumar was extended the benefit of treating the suspension period as spent on duty. On such representation being received, the respondents shall consider the same and pass appropriate orders in accordance with law, without being influenced by its earlier orders dated 8.10.2010, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 28.12.2018
Nn.

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