

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 22497 of 2018

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the order dated 22.11.2016 in O.A.No. 4001 of 2014 passed by the A.P. Administrative Tribunal, Hyderabad whereby the application filed by the respondent under Section 19 of the Administrative Tribunals Act, 1985, has been allowed.

While the respondent was working as School Assistant (social studies) in Nellore District, the 1st petitioner issued Proceedings dated 21.10.2011 placing him under suspension. These proceedings were issued based on news item, dated 19.10.2011 published in local editions of "Sakshi" and "Andhra Jyothi" alleging that the respondent was sexually harassing girl students. Subsequently, i.e. after 1 year 12 days, the respondent was reinstated into service vide Proceedings No.11161/ A4/ 2011, dated 31.10.2012 of the 1st petitioner, and accordingly, the respondent joined duty on 02.11.2012. However, by virtue of the proceedings dated 11.04.2014, the 1st petitioner treated the period of suspension from 21.10.2011 to 02.11.2012 as "Not on duty" on the analogy of "No work No Pay".

Being aggrieved by the Proceedings dated 11.04.2014, the respondent filed O.A.No. 4001 of 2014, and the Tribunal, after considering rival contentions of the parties, allowed the O.A. by observing as under:

“In view of the above facts and circumstances, I am of the considered view that rejecting the claim of the applicant to treat the suspension period as “No Work No Pay” is highly unjust and does not with any justifiable reasons. In the background of the above narrated facts and circumstances, which went in favour of the applicant ultimately, I am of the considered view that the period of suspension of the applicant has to be treated as “on duty”. However, this Court also cannot lose sight of the fact that acquittal of the applicant is not an honourable acquittal, but acquittal on benefit of doubt. The above issue gains importance in coming to the conclusion and granting relief to the applicant only notionally, but not monetarily. Therefore, I hold that the applicant is entitled to treating the period of suspension as “on duty”, however, he is entitled to only notional benefits for the said period including notional pay fixations. He is entitled to monetary benefits only from today.”

The learned Government Pleader for Services (A.P.) appearing on behalf of the petitioners submits that on the allegation of sexual harassment of girl students, Crime No. 379 of 2012 was registered against the respondent for the offences punishable under Sections 354, 509 and 506 IPC and he was shown as accused No.2. However, vide judgment, dated 15.07.2013, the respondent was acquitted of the charged offences on benefit of doubt.

The learned Government Pleader further submits that the petitioners, by virtue of the proceedings dated

31.10.2012, while reinstating the respondent, have taken decision under Rule 54-B of the A.P. Fundamental Rules that his period shall not be treated as “on duty”, therefore, the respondent is not entitled to any benefit for the period of suspension. Accordingly, based on the analogy of “No Work No Pay”, the petitioners have rightly taken decision, but the learned Tribunal has failed to consider the facts and erroneously allowed the O.A. filed by the respondent.

The fact remains that the respondent was suspended from service vide order dated 21.10.2011 based on registration of Crime No. 379 of 2012 against him. Thereafter, he was reinstated into service vide order dated 31.10.2012 during pendency of the criminal case. Thereafter, the respondent was acquitted of the charged offences by the Court of Sessions, Kovur, vide its judgment dated 15.07.2013. It is not in dispute that the petitioners have not conducted departmental enquiry to this effect, however Three Member Committee was constituted against the respondent, but the Committee exonerated the respondent vide order dated 01.08.2012, based on which, the petitioners reinstated the respondent into service.

As per Rule 54-B(3) of the A.P. Fundamental Rules, 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:

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 reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation [within sixty days from the date on which communication to this regard is served on 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 of such pay and allowances as it may determine].

In the present case, admittedly, the respondent was not terminated from service, however he was kept under suspension and subsequently reinstated vide order dated 31.10.2012. Moreover, the respondent was found not guilty and was exonerated by the Three Men Committee.

We note that before the order dated 31.10.2012 was passed, his services for the period from 21.10.2011 to 02.11.2012 were treated as "Not On Duty". However, before issuance of the order dated 31.10.2012, admittedly, no notice was served on the respondent as to why that period shall not to be treated as 'Not On Duty'. We further note that the order dated 31.10.2012 is based on the analogy "No work No Pay", but the learned Tribunal held that the respondent is entitled to be treated as "On Duty" during the period of suspension, however, he is entitled to only notional benefit for that period including notional pay fixation. Thus, the

learned Tribunal has not passed the order contrary to the legal position relied upon by the petitioners that the respondent is entitled to monetary benefit. Admittedly, the Tribunal has not granted any monetary benefit to the respondent but only granted notional benefit for the period from 21.10.2011 to 02.11.2012.

In view of the facts recorded above, we find no ground to interfere with the impugned order of the Tribunal.

Hence, the writ petition is devoid of merit and the same is accordingly dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

03.07.2018

SURESH KUMAR KAIT, J

bcj

ABHINAND KUMAR SHAVILI, J