

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.8932 OF 2005

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of mandamus calling for the records relating to and connected with the orders dated 10.2.2005 passed by the 5th respondent in Memo No.SE/OP/CC/ADM/A-1/D.No.105/05, whereunder punishment of stoppage of two increments without cumulative effect was awarded while treating the suspension period 'as suspension', and to declare the same as illegal and arbitrary, and consequently, to direct the respondents to pay the salary to the petitioner for the period between 4.5.2001 to 1.6.2001 by considering the said period as in service, and to direct the respondents to consider the case of the petitioner for the seniority as lineman and to pay all the attendant and consequential benefits and arrears upto the date of payment.

2. Heard Sri B. Nalin Kumar, learned Counsel for the petitioner and Sri P. Laxma Reddy, learned Standing Counsel for A.P. TRANSCO.

3. The case of the petitioner is as follows:

The petitioner has been working as Assistant Lineman in Central Break-down Division. On 7.4.2001 the premises of one G. Mohan Reddy, who is a consumer of electricity was inspected, and it was found that the electricity meter and sealed wire were tampered and that there was theft of energy. In that connection, a crime was registered and the petitioner was shown as accused No.1 alleging that the petitioner along with the said consumer, cheated and caused damage, and in that crime, the petitioner was arrested and released on bail. On the said allegation, the 4th respondent suspended the petitioner and that the 1st respondent appointed

the 8th respondent as enquiry officer. Meanwhile, the petitioner was acquitted in the criminal case. After conducting the enquiry, the 8th respondent submitted a report exonerating the petitioner. However, the 6th respondent issued a show cause notice, for which, the petitioner submitted explanation on 11.2.2004. The respondents did not take any steps thereafter. Then, the petitioner filed W.P.No.13453 of 2004 seeking to direct the respondents to reinstate the petitioner into service with all consequential benefits. The said W.P.No.13453 of 2004 was disposed of by this Court directing the 6th respondent to pass appropriate orders in the enquiry pending against the petitioner. In pursuance of the directions of this Court, the 6th respondent issued a show cause notice, for which the petitioner submitted his explanation. The 6th respondent passed final order on 20.9.2004 awarding the punishment of stoppage of two increments with cumulative effect besides treating the period of suspension 'as suspension'. Aggrieved by the same, the petitioner filed appeal before the 5th respondent. The 5th respondent disposed of the appeal modifying the punishment of stoppage of two increments with cumulative effect to that of stoppage of two increments without cumulative effect. Challenging the order of the 5th respondent, the petitioner filed this writ petition.

4. The 6th respondent filed a counter-affidavit stating that the petitioner is a meter reader and since he had failed to do his duty properly, enquiry was conducted and punishment was imposed. It is stated that as per the standing orders, the promotions will be given only to the persons, who are not having any disciplinary cases and that the petitioner was awarded with punishment of stoppage of two annual increments without cumulative effect and therefore, his case for promotion was not considered. It is further stated that the salary for the period between 4.5.2001 to

1.6.2001 cannot be given since the petitioner was under police custody and under suspension and that there are no merits in this writ petition.

5. It has been submitted by the learned Counsel for the petitioner that the petitioner himself reported about the sluggishness of the meter to the concerned A.E., who recorded the same in meter reading book, but authorities erred in observing that the petitioner failed to record the sluggishness of the meter in register and that the impugned order was passed without application of mind and without examining the defence of the petitioner and that there is no sufficient evidence to establish the charges levelled against the petitioner. Further, it is submitted that the petitioner was acquitted in criminal case and that there is no justification in awarding punishment and that the order impugned affected his chance of promotion and therefore, the order impugned may be set aside.

6. Learned Standing Counsel for the respondents submits that in view of the gravity of the charges proved against the petitioner, the punishment was imposed and that the appellate authority after considering the evidence, reduced the punishment imposed by the 6th respondent, and since a lenient view was already taken by the appellate authority, no interference is called for from this Court.

7. I have considered rival submissions made by the parties. Perused the order dated 10.2.2005 passed by the appellate authority-5th respondent by duly modifying the punishment of stoppage of two increments with cumulative effect to that of stoppage of two increments without cumulative effect besides treating the period of suspension 'as suspension'.

8. The main grievance of the petitioner appears to be with regard to portion of the order of the appellate authority in treating the period of

suspension 'as suspension' and not treating the suspension period as on duty or as on leave to which he is entitled. The appellate authority has taken a lenient view by modifying the punishment of stoppage of two increments with cumulative effect to that of stoppage of two increments without cumulative effect. While holding so, the appellate authority held that the period of suspension be treated as suspension. The appellate authority failed to appreciate that whenever minor penalty was imposed normally suspension period should be treated as 'spent on duty or on leave to which the petitioner is entitled'. The order of the appellate authority in not treating the period of suspension as 'spent on duty' would amount to severe punishment. Normally, in case of minor penalties, suspension period should be treated as 'on duty'. In **A.V. Vinod Kumar Vs. The Executive Committee of the Central Ware Housing Corporation, New Delhi and another¹**, this Court while considering the similar issue observed as follows:

“Under those circumstances, I am of the opinion that treating the period of suspension as not on duty, while imposing a punishment of censure in the disciplinary proceedings, will lead to imposing a major punishment. As such, the action of the disciplinary authority in treating the period of suspension as not on duty is unreasonable and against good conscience. Therefore, that portion of the order dated 24-12-1991 treating the period of suspension (about 18 months) as not on duty, as confirmed by the appellate authority, is liable to be set aside and are accordingly, set aside. Now the Order dated 24-12-1991 as confirmed by the appellate authority on 3-8-1995 shall be read as "that the period of suspension will count as period spent on duty for all purposes including increments, seniority, promotion etc." However, the order denying payment of anything over and above the subsistence allowance granted for the period of suspension shall stand confirmed along with punishment of censure.”

¹ 2007(5) ALD 445

9. Following the dicta laid down in the above case, this Court is of the view that the portion of the order dated 10.2.2005 of the 5th respondent-appellate authority as to treating the period of suspension as suspension, only is liable to be set aside and accordingly, the same is set aside. The period of suspension of the petitioner herein should be treated as 'spent on duty'. Rest of the order of the appellate authority-5th respondent shall remain static.

10. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Dated: 4.1.2018
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(ABHINAND KUMAR SHAVILI, J)



THE HON'BLE Mr. ABHINAND KUMAR SHAVILI



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04.01.2018

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