

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.10138 OF 2002

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the 2nd respondent in denying the back wages by treating the period from the date of dismissal i.e., 3.1.2000 till the date of reinstatement i.e., 9.4.2001 as dies non, vide proceedings dated 12.3.2001 and the consequential order passed by the 1st respondent vide proceedings dated 13.4.2001, as illegal and arbitrary, and consequently, to direct the respondents to pay full back wages to the petitioner for the period from the date of dismissal to the date of reinstatement by treating the same as on duty for all purposes.

2. Heard Sri J.M. Naidu, learned Counsel for the petitioner and Sri K. Lakshman, Assistant Solicitor General for the respondents.

3. It is the case of the petitioner that he was appointed as a constable on 30.5.1994. While he was discharging his duties, he had to undergo major surgery during July 1998, and after recovery from the illness, he reported to duty. But the respondents have alleged that the petitioner had remained absent unauthorizedly and therefore, the disciplinary authority initiated proceedings against the petitioner. After conducting

enquiry, the disciplinary authority imposed punishment of dismissal vide order dated 3.1.2000. Thereafter, the petitioner preferred appeal. As the appellate authority has not decided the said appeal, the petitioner submitted a reminder to the appellate authority on 22.1.2001. When the appellate authority was not disposing of the appeal preferred by the petitioner, the petitioner filed W.P. No.2930 of 2001 before this Court. This Court disposed of the said writ petition on 2.2.2001 directing the 2nd respondent to dispose of the appeal. Thereafter, the appellate authority vide order dated 12.3.2001 allowed the appeal preferred by the petitioner and set aside the order of dismissal imposed by the disciplinary authority. However, while granting consequential relief, the appellate authority erroneously treated the period from the date of dismissal till the date of reinstatement as dies non. Challenging the same, the present writ petition is filed.

4. The learned Counsel for the petitioner contended that after looking into the entire material on record, the appellate authority has specifically held that the petitioner was hospitalized due to ill health and that the absence of the petitioner was due to unavoidable circumstances owing to his ill health and therefore, he cannot be found fault and that the punishment of dismissal is shockingly disproportionate. He further contended that the entire period of suspension was

treated as spent on duty, however, the intervening period from the date of dismissal till the date of reinstatement was erroneously treated as dies non, that too, without giving any opportunity to the petitioner. He further contended that the writ petition be allowed and the respondents may be directed to treat the intervening period from the date of dismissal till the date of reinstatement as on duty and the petitioner be paid full salary and other benefits.

5. The learned Assistant Solicitor General contended that the appellate authority took a lenient view and interfered with the punishment of dismissal on humanitarian grounds and therefore, no interference is called for and that there are no merits in the writ petition.

6. This Court having considered the rival submissions made by the parties is of the view that the appellate authority ought not to have treated the period from the date of dismissal till the date of reinstatement as dies non, that too, without giving any opportunity to the petitioner. More so, when the appellate authority found that it is not the fault of the petitioner for the absence, it should not have treated the above period as dies non. Therefore, the order of the appellate authority dated 12.3.2001, only to the extent of treating the intervening period from the date of dismissal till the date of reinstatement as dies non is set aside. Rest of the order of the appellate authority

shall remain. The matter is remanded to the appellate authority for fresh consideration as to the period from the date of dismissal till the date of reinstatement and pass orders in accordance with the rules, after giving an opportunity to the petitioner, within a period of eight weeks, from the date of receipt of a copy of this order. It is needless to say that the petitioner is also permitted to submit a fresh representation before the appellate authority.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated: 13.11.2018.
Nn.

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