

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N. BALAYOGI

+ WRIT PETITION No.42239 of 2017

% Date: 21-06-2018

Between:

Marakkagari Krishnappa
S/o. Late Akkulappa,
District Judge, (Retired)
P/o. D.No.6/537-19, Ram Nagar,
Anantapuram, Anantapuram District.

... Petitioner

Vs.

1. The State of Andhra Pradesh, rep. by the Secretary, Department of Law (L.A.& J), Secretariat, Velagapudi, Guntur, Guntur District.
2. The Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, rep. by the Registrar General, High Court Buildings, Hyderabad.
3. The Registrar (Vigilance), the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, Hyderabad.
4. The Accountant General, Amaravathi, Guntur District, Andhra Pradesh.

... Respondents.

! Counsel for the petitioner : Mr. M. Balakrishna

^ Counsel for respondent No.1 : G.P. for Law & Legislature (AP)

^ Counsel for respondent Nos.2 & 3 : Ms. V. Uma Devi S.C

^ Counsel for respondent No.4 : G.P. for Finance & Planning

< LIST:

> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.42239 of 2017

ORDER: (Per VRS,J.)

Aggrieved by two orders, one refusing to treat the period of suspension as on duty and another directing recovery of the increments paid during the period of suspension, the petitioner who retired from judicial service, has come up with the above writ petition.

2. Heard Mr. M. Balakrishna, learned counsel for the petitioner and Ms. V. Uma Devi, learned Standing Counsel for respondents 2 and 3.

3. The petitioner was placed under suspension by proceedings dated 27.08.2010 and two articles of charge were framed against the petitioner. These charges were (1) that while working as Principal Senior Civil Judge, Anantapuram, the petitioner appeared for LLM examinations-2010 conducted by Kakatiya University from 18.08.2010 to 24.08.2010 at the University Arts and Science College and was found to have been indulged in malpractice during the examination of Paper-IV on 24.08.2010; and (2) that the Board of Directors of the University having considered the entire material resolved to impose 'B' grade punishment upon the petitioner and cancelled the result of all the examinations.

4. As a matter of fact, six other judicial officers were also placed under suspension and disciplinary proceedings initiated against them on similar allegations and similar charges.

5. A common enquiry followed in which a learned Judge of this Court held the charges not proved.

6. But even before the conclusion of enquiry, the suspension of the petitioner was revoked and he was reinstated into service on 29.02.2013.

7. Eventually, the report of the enquiry officer was accepted and the proceedings were dropped on 11.11.2014.

8. The petitioner, thereafter, made two representations, on 01.12.2104 and 09.12.2014 seeking (1) permission to withdraw the difference of pay and allowances for the period of suspension from 28.08.2010 to 28.02.2013; and (2) supply of a copy of the enquiry report and copies of depositions of witnesses. He also sought a certificate for his attendance in connection with the departmental enquiry, so that he could claim T.A and D.A for his attendance for the departmental enquiry.

9. But by the proceedings dated 22.08.2016, the claims made by the petitioner were rejected, on the ground that in view of the nature of the allegations made, the High Court was of the opinion that the suspension of the officer was not wholly unjustified.

10. Subsequently by the proceedings dated 07.08.2017 issued by the Principal Accountant General, a recovery of a sum of Rs.5,72,775/- was also ordered to be made from the future pension, on the ground that the period of suspension did not qualify as service for the purpose of grant of increments. Therefore, challenging the order dated 22.08.2016 and the proceedings of the Principal Accountant General, dated 07.08.2017, the petitioner has come up with the above writ petition.

11. The contention of the learned counsel for the petitioner is that once the charges were held not proved in the departmental enquiry, the petitioner is entitled to have the benefit of treatment of the period of suspension as on duty. In any case, the refusal of the respondents to furnish copies of the enquiry report and the recovery of the amounts already paid, without even a notice or proceedings for recovery, is completely illegal.

12. The respondents have filed a counter affidavit contending that the claim of the petitioner was considered in the light of Fundamental Rule 54-B (3) and was rejected and that therefore the same was in order.

13. We have carefully considered the above submissions.

14. Sub-rule (3) of Fundamental Rule 54-B makes it incumbent upon the authority competent to order reinstatement, to order full pay and allowances for the period of suspension, if the competent authority was of the opinion that the suspension was wholly unjustified. Sub-rules (3) and (4) of Fundamental Rule 54-B read as follows:

54-B(3): 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 the communication in 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 only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.”

15. In *M. Gopalkrishna Naidu v. The State of M.P.*¹, the Supreme Court analyzed the scope of Fundamental Rule 54 (Central Rules), which are in *pari material* with Fundamental Rule 54-B of the A.P. Fundamental Rules. The Court pointed out in paragraph 6 of the report that the authority competent to pass an order should form an opinion as to whether the delinquent was fully exonerated or not and as to whether the suspension was wholly unjustified or not. In paragraph-7 of the report, it was indicated by the Supreme Court that the very nature of the function performed under Fundamental Rule 54, implies the duty to act judicially. Therefore, the Court pointed out in paragraphs-6 & 7 that an opportunity to show cause against the action, should be afforded.

16. In *B.D. Gupta v. State of Haryana*², another Bench of the Supreme Court followed the ratio laid down in *Gopalkrishna Naid* and held that an order passed under Fundamental Rule 54 should be after an objective consideration

¹ AIR 1968 SC 240

² AIR 1972 SC 2472

and assessment of all relevant facts and circumstances, and after giving the person concerned full opportunity to make out his own case about that order.

17. In *O.P. Gupta v. Union of India*³, the principles laid down in *Gopalkrishna Naidu* were reiterated and the Court pointed out in paragraph-17 that the competent authority should pass a specific order (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; (b) directing whether or not the said period shall be treated as a period spent on duty. In paragraph-18 the Court emphasized the need to hear the concerned Government servant under Fundamental Rule 54 before any prejudicial order was made. The decision in *B.D. Gupta* was also cited with approval in *O.P. Gupta*.

18. From the law laid down in the aforesaid decisions, it is clear that an order passed under sub-rule (3) of Fundamental Rule 54-B is an order vesting a person with civil consequences and that therefore any order prejudicial to that of the employee should be passed only after an opportunity of hearing and on an objective consideration of the material on record about the manner in which the charges were held not proved and about the justification for the suspension.

19. A careful look at the order dated 22.08.2016 would show that except stating that the suspension of the officer was not wholly unjustified, the order does not reflect the objective consideration of the material on record. The order is also vitiated in as much as no opportunity was given to the petitioner, as per the requirement of the decision of the Supreme Court cited supra.

20. If this is the fate of the order dated 22.08.2016, the subsequent order of the Principal Accountant General dated 07.08.2017 directing recovery of huge amounts, by treating the period as not qualifying service, was also without any notice to the petitioner. Therefore, both the orders are liable to be set aside.

21. Insofar as the second order is concerned, we do not know how a recovery could be ordered even after complying with the principles of natural

³ (1987) 4 SCC 328

justice. This is for the reason that the Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)*⁴ held that such a recovery is not possible where the employee was not at fault.

22. In view of the above, the writ petition is allowed and the impugned orders are set aside. It will be open to the respondents, to issue an appropriate notice under Fundamental Rule 54-B insofar as the treatment of the period of suspension is concerned with reference to the principles laid down in the aforesaid cases and pass an order after providing an opportunity to the petitioner. But insofar as the second order is concerned, no such action can be initiated. There shall be no order as to costs.

23. As a sequel, pending miscellaneous petitions, if any, shall stand closed.



JUSTICE V. RAMASUBRAMANIAN

JUSTICE N. BALAYOGI

21st June, 2018
Js.

⁴ (2015) 4 SCC 334

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.42239 of 2017

(Per VRS,J)



21st June, 2018

Js.