

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

W.P. No. 41436 of 2017

ORDER:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the order dated 19.09.2016 in O.A.No. 7805 of 2013 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.

The brief facts of the case are that the respondent, while working as School Assistant (Biological Science) in Government High School, Rayachoti was placed under suspension by the District Educational Officer vide Proceedings dated 08.12.2011 on the allegation that he misbehaved with a girl student of 10th Class during the excursion conducted from 30.11.2011 to 03.12.2011. When the matter was referred to the District Collector, Kadapa, a charge memo was issued to the respondent framing the following charge:

“That the said Sri S.Khaja Mohiddin, S.A.BS(under suspension), Government High School (DIET), Rayachoti, Y.S.R. District, misbehaved with Miss S.Samshad, X class A Section, student of that institution, in the class room and also during excursion held by the school from 30.11.2011 to 03.12.2011.

Thus, the government servant has therefore rendered himself liable for departmental action.”

As per the enquiry report of the Revenue Divisional Officer, the allegation levelled against the respondent was totally proved as false. However, the petitioners, instead of treating the period of suspension for seven months i.e. from 08.12.2011 to 15.06.2012 as 'on duty' have treated it as '*dies non*'.

The Tribunal, after considering the rival contentions of the parties, has allowed the application by setting aside the orders of treating the suspension period as '*dies non*'.

The learned Government Pleader for Services (A.P.) appearing on behalf of the petitioners, submits that the Tribunal failed to see the Memo No.2801/PE.vig.I(2)/2010, dated 19.11.2010 issued by the Government informing the Commissioner of School Education, Hyderabad about regularization of suspension when an employee was under suspension / out of office for his involvement in a private criminal / civil case, whereby observed as follows:

In all cases where the Government Employee was under suspension/ out of office for the involvement in a private criminal / civil case consequent on his reinstatement and joining into service the intervening period between the date of suspension and the date of joining must be treated as not duty, since the Government is not responsible for his being out of office and he himself is solely responsible for this and he is not entitled to any monitory benefit for this period since the principle "No Work No Pay" is applicable to such cases, irrespective whether they are acquitted in the private Criminal / Civil case. However, an amount of subsistence the competent authority may have to

decide whether the period of suspension is wholly justified or unjustified. If the competent authority decides that the suspension shall be regularized as not duty, for all purposes and the pay and allowances for that period should be limited to subsistence allowances already paid. However, if the employee so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government Servant as per provisions under FR 54 – B(7) further if the competent authority decides that the period of suspension may be regularized as on duty in terms of 54-B(3) but in any case the pay and allowances payable to the Government servant for the period of suspension must be limited to the subsistence already paid under FR 53 in terms of FR 54-B(5) as amended in G.O.Ms.No. 30 Finance (FR-II) Dept. dated 15.02.2007.”

The learned Government Pleader further submits that the Tribunal ought to have appreciated that speaking order was issued to the respondent vide proceedings dated 09.11.2016 of the District Educational Officer stating that the case of the respondent for treating the suspension as ‘on duty’ for the period from 08.12.2011 to 15.06.2012 is not feasible. He further submits that as per the rule position, the respondent is not entitled to be treated as ‘on duty’ for the suspension period from 08.12.2011 to 15.06.2012 since the principal of “No Work No Pay” is applicable in the present case.

It is not in dispute that the respondent was placed under suspension on the allegation of misbehaviour, and in the departmental enquiry it is proved that allegation is totally

false and due to *mala fide* intention of some persons, the allegation was made against the respondent, and the Enquiry Report discloses that persons including the class students, teachers and the mother of the girl victim have deposed in favour of the respondent, and hence, he was reinstated into service.

It is also undisputed that the only charge framed against the respondent is that he misbehaved with Miss S.Samshad, a student of 10th class and the basis of the charge is a representation dated nil made by the students of 10th class through Mandal Educational Officer, Rayachoti, but in the detailed enquiry, it came to light that the very charge was false and it is emanated at the instance of some unknown persons and the respondent's conduct, all through, is found to be good and the charge is held as 'not proved'.

As per Rule 54-B (3) of the A.P. Fundamental Rules, the District Educational Officer, who is the competent authority, while ordering reinstatement of the respondent, ought to have followed provisions of Rule 54-B(3). However, the competent authority, instead of applying his mind to the circumstances, referred the matter to the Commissioner of School Education, who, in turn, directed the District Educational Officer to follow the Circular Memo dated 05.12.2008 issued by the Government which is not placed before the Tribunal.

The fact remains that the rules are clear that executive instructions cannot override the Fundamental Rules and Rule 54-B(3) is governing the situation. As could be seen from the impugned proceedings, it is clear that the 3rd petitioner – District Educational Officer has not followed Rule 54-B(3) but has been influenced by the instructions issued by the Commissioner to treat the period of suspension as '*dies non*'.

It is not the case of the petitioners that they dissented with the enquiry report and punishment imposed on the respondent. The enquiry report has been accepted, and thereafter, the respondent was reinstated into service on 15.06.2012. Thus, the observation that the period of suspension of the respondent as '*dies non*' is contrary to Rule 54-B(3) of the A.P. Fundamental Rules which is not illegal and arbitrary, as such, the Tribunal has rightly set aside the proceedings of the petitioners - Government.

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.

04.07.2018

SURESH KUMAR KAIT, J

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ABHINAND KUMAR SHAVILI, J