

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3861 of 2019

K.Subham

.. Appellant

Vs.

1. The Secretary
Department of School Education
Secretariat, Fort St. George
Chennai - 600 009.
2. The Director
Directorate of School Education
Chennai - 600 006.
3. The Joint Director (Service)
Department of School Education
Chennai - 600 006.
4. The Chief Education Officer
CEO Office
Erode District - 638 101.

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 23.7.2019 passed by the learned Single Judge in W.P.No.14303 of 2018.

Prayer in WP.No. 14303 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying for issue a Writ of Certiorarified Mandamus to calling for the records of the third respondent in Na.Ka.No.74922/C3/E3/2017 dated 26.12.2017, quash the same and consequentially, for a direction, directing the third respondent herein to pay full salary and other allowances for the period of suspension between 28.01.2014 and 10.02.2016 treating the period as spent on duty with 18% interest from the date of suspension till the date of payment with all other attendant benefits or any further orders may deem fit in the facts and circumstances the case and thus render justice.

For Appellant : Mr.S.Sathiaseelan
For Respondents : Mr.C.Munusamy
Special Government Pleader
(Education)

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

The contention raised in this appeal is that the learned Single Judge without appreciating the true import of Rule 54-B (1)(a) of the Fundamental Rules has denied the benefit as claimed by the appellant in respect of salary and other allowances for the period of suspension between 28.1.2014 and 10.2.2016.

2. The learned counsel for the appellant placed reliance on the decision of the Apex Court in the case of Vijay Kumar Agarwal v. Union of India, (2015) 17 SCC 625 and contended that if an order is not passed within a reasonable time, then the authority is denuded from proceeding to pass any order adverse to the employee. Paragraph (20) of the said decision, which is relevant, is gainfully extracted herein under:

"20. The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54-B[†] and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, the High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period 1-5-1988 to 13-5-1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its

own but to facilitate the petitioner's inter-cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of suspension was not in exercise of power to revoke the suspension on the ground that the petitioner was no longer required to be kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal."

3. The learned counsel for the State submits that keeping in view the nature of the punishment awarded, the award was justified in regularizing the leave without pay or allowances and consequently, the conclusion drawn by the learned Single Judge cannot be faulted with.

4. We have considered the submissions raised and in order to appreciate the controversy, it would be appropriate to extract Rule 54B(1) herein under:

"Rule 54-B- 1. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation or compulsory retirement while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty."

5. A perusal of the Rule would indicate that it mandates the passing of an order in respect of the salary and allowances admissible or otherwise during the period of suspension. Clause (b) of the said Rules separately mandates to pass an order with regard to a declaration about the period being spent on duty or otherwise. We find that the second part, namely, as contained in Clause (b), has been complied with, but there does not appear to be a speaking or a specific order with regard to the payment of salary and allowances as envisaged under Clause (a), extracted herein above. To that extent, the judgment of the learned Single Judge deserves to be modified.

6. We, accordingly, partly allow the appeal and direct the competent authority to pass a fresh order keeping in view the observations made herein above and after taking into

consideration the ratio of the judgment of the Apex Court that has been extracted by us in the present judgment, within a period of six weeks of the date of production of certified copy of the order before the said authority.

The writ appeal is partly allowed with the said directions.
No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sasi
To:

1. The Secretary
Department of School Education
Secretariat, Fort St. George
Chennai - 600 009.
2. The Director
Directorate of School Education
Chennai - 600 006.
3. The Joint Director (Service)
Department of School Education
Chennai - 600 006.
4. The Chief Education Officer
CEO Office
Erode District - 638 101.

+1cc to Mr.S.Sathiaseelan, Advocate, S.R.No. 95016
+1cc to the Government Pleader, S.R.No. 95542
+1cc to the Government Pleader, S.R.No. 96019

W.A.No.3861 of 2019

PM(CO)
GN(12/12/2019)

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