

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.1082 OF 2018

ORDER:

This writ petition is filed seeking the following relief:

“..to issue a writ, order or direction especially one in the nature of writ of mandamus declaring that

(a) Memo No.440-P/Ser.II/A2/2014, dated: 4.10.2016 of the 1st respondent, which was communicated to the petitioner by order in C.No.1047/A4/2016-D.O.No.741/2016, dated: 4.11.2016 of 4th respondent are illegal, arbitrary and discriminatory, violating Article 14,16, 21 & 300(A) of the Constitution of India.

(b) further declare that petitioner is entitled to get the period from 21.12.2006 to 16.11.2015 be treated as duty and also get the period from 25.4.1997 to 21.12.2006 regularised.

(c) declare that the proceedings issued by the 2nd respondent in Memorandum in Rc.No.447/E3/2015, dated: 18.12.2017 as illegal and arbitrary by further declaring the petitioner is entitled for assigning for notional seniority in the cadre of R.I by treating the above period as duty.

(d) and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard learned counsel for the parties.

It has been contended by the petitioner that he was working as Reserve Inspector with the respondents and he was placed under suspension from 25.04.1997 on the alleged ground that he was involved in a criminal case registered in Crime No.392 of 1996 for the offence punishable under Section 307 read with 34 IPC. Later on, the

offence was altered to that of 302 IPC. Thereafter, the disciplinary authority also initiated disciplinary proceedings for the alleged involvement of the petitioner in a criminal case. After conducting regular enquiry, the petitioner was dismissed from service for the proven charge in the enquiry vide orders dated 01.12.2006.

The petitioner further submitted that aggrieved by the orders of dismissal, he has preferred appeal and the appellate authority has rejected the appeal vide orders dated 17.04.2008. Thereafter, the petitioner filed revision before the revisional authority and the same was rejected. Later on, the petitioner has challenged the orders of dismissal by filing O.A.No.5299 of 2009 before the then Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal'). The Tribunal allowed the O.A vide orders dated 05.11.2012 by setting aside the orders of dismissal with a specific direction to reinstate the petitioner into service with all consequential benefits. Aggrieved by the orders of the Tribunal, the State has preferred a writ petition being W.P.No.21939 of 2013 before this Court, and this Court dismissed the said writ petition vide orders dated 25.06.2015 confirming the orders of the Tribunal. In pursuance of the orders passed by the Tribunal and also this Court in W.P.No.21939 of 2013, the petitioner was reinstated into service vide orders dated 13.10.2015.

The grievance of the petitioner is that he has submitted a representation to the respondents to regularise out of employment

period, but the respondents have mechanically rejected his case vide orders dated 04.10.2016.

Learned for the petitioner submitted that the petitioner was tried by the competent Sessions Court in S.C.No.284 of 2002 and after conducting trial, the petitioner was acquitted of the said criminal charge vide judgment dated 23.06.2006. Learned counsel for the petitioner also submitted that the petitioner is entitled for regularisation of out of employment period i.e., from the date of suspension till he was reinstated into service, and also as per Fundamental Rule 54-A (3), the petitioner is entitled for all consequential benefits and out of employment period of the petitioner should be treated as 'spent on duty'. Learned counsel further submitted that in the instant case, Fundamental Rule 54-A (3) is applicable and it reads as under:

"If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

But, the respondents have rejected the case of the petitioner vide orders dated 04.10.2016 by quoting wrong provision of Fundamental

Rule 54 (5), which has no application in this case. Therefore, counsel for the petitioner contended that the impugned orders passed by the respondents are liable to be set aside and the respondents be directed to regularise out of employment period of the petitioner in terms of Fundamental Rule 54-A (3) and pass appropriate orders in accordance with law.

Learned Government Pleader appearing for the respondents had contended that liberty was given to the respondents by the Tribunal as well as this Court in W.P.No.21939 of 2013 to pass appropriate orders in accordance with law, and the respondents have therefore considered the case of the petitioner in terms of Fundamental Rule 54 (5) and rejected the same.

This Court, having considered the rival submissions of learned counsel on either side, is of the considered view that admittedly the respondents have rejected the case of the petitioner by applying Fundamental Rule 54 (5), which has no application in the instant case. Since the orders of dismissal were set aside by the Tribunal, which were confirmed by this Court in W.P.No.21939 of 2013, the case of the petitioner deserves to be considered in terms of Fundamental Rule 54-A (3), but the respondents have rejected the case of the petitioner by quoting wrong provision. Therefore, the impugned orders are liable to be set aside.

Accordingly, the writ petition is allowed and the impugned orders are set aside. The respondents are directed to consider the case

of the petitioner for treating out of employment period as 'spent on duty' in tune with Fundamental Rule 54-A (3) and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

06th November, 2019
v v

