

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.8313 of 2019

ORDER

This writ petition is filed seeking the following relief:

“...to issue a writ order or direction more particularly one in the nature of Writ of Mandamus to declare the proceedings issued by the 2nd respondent in Rc.No.A1/1348/2017-17, dated 30.03.2017 wherein regularizing the suspension period from 11.10.2006 to 05.06.2008 as eligible leave and consequential rejection orders issued by the 1st respondent in Memo No.7023/VC/2/2017-3, dated 23-03-2019 though the charges were dropped against the petitioner is highly illegal, arbitrary, unconstitutional and set aside the same with a consequential direction to the respondents to regularize the suspension period from 11-10-2006 to 05.06.2008 as on duty and pay the pension and other retirement benefits with admissible interest including EL, HPL, Gratuity and two annual grade increments and six years increments with all consequential benefits and pass such other order or orders may deem fit and proper in the circumstances of the case.”

Heard Sri A.Ravinder, learned counsel appearing for the petitioner and learned Government Pleader for Services-II appearing for the respondents.

It is the case of the petitioner that initially, he was appointed as a Junior Assistant in the year 1986. After rendering considerable length of service, he was promoted as Senior Assistant in the year 2006. While working as Junior

Assistant, he was placed under suspension *vide* proceedings dated 5.10.2006 on the ground that he has misappropriated the Government funds during his tenure 2002-2003 and 2004-2005. Pursuant to the same, the petitioner submitted a representation to the respondents. But, without considering the same, an Enquiry Officer was appointed. The Enquiry Officer, after conducting a detailed enquiry, submitted his report stating that the charges levelled against the petitioner were not proved. Based on the Enquiry Officer's report, the 2nd respondent dropped the charges against the petitioner. Thereafter, the petitioner submitted a representation for regularization of the suspension period i.e., from 11.10.2006 to 05.06.2008 as 'on duty'. But, the 2nd respondent instead of regularizing the suspension period as 'on duty', regularized the said period as eligible leave *vide* proceedings dated 30.03.2017. Aggrieved by the same, the petitioner submitted a representation to the 1st respondent. The 1st respondent *vide* proceedings dated 23.03.2019 rejected the case of the petitioner holding that the order passed by the 2nd respondent holds good. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that when once the disciplinary authority has dropped the charges levelled against the petitioner after conducting a detailed enquiry, the 2nd respondent ought to have treated the suspension period as “spent on duty” and ought to have granted all the benefits to which he is eligible; that in stead of treating the suspension period as “spent on duty”, the 2nd respondent treated the suspension period as leave; and that the impugned Memo dated 23.03.2019 issued by the 1st respondent is liable to be set aside as it is contrary to the Rules.

Learned Government Pleader appearing for the respondents submits that in all, four charges were levelled against the petitioner; that when once the Enquiry Officer held that the 4th charge was proved, the 2nd respondent was justified in not treating the suspension period as “spent on duty”; and that the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel on either side, is of the view that when once the disciplinary authority has dropped the charges against the petitioner based on the Enquiry Officer’s report,

the 2nd respondent was not right in holding that the petitioner was not fully exonerated of the 4th charge. Whenever the charges are dropped against an employee, the entire suspension period has to be treated as “spent on duty”. Therefore, the impugned order dated 30-03-2017 passed by the 2nd respondent declining to regularize the suspension period from 11.10.2006 to 05.06.2008 as “spent on duty” is liable to be set aside.

Accordingly, the Writ Petition is allowed. The impugned order dated 30.03.2017 passed by the 2nd respondent and the consequential rejection order dated 23.03.2019 passed by the 1st respondent are set aside. The respondents are directed to treat the suspension period from 11.10.2006 to 05.06.2008 as ‘spent on duty’ and release all the consequential benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

No costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

11th June, 2019
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