THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.(TR) No.5220 of 2017

ORDER:

This Writ Petition is being disposed of at the admission stage with the consent of both the parties.

This Writ Petition is filed for the following relief:

> "………call for the records relating to and connected with the impugned proceedings L.Dis.No.347/Appeal.2/2013 dated 28.05.2014 on the file of the 2nd respondent and Proceeding No.L&0/B7/586/1999-14, dated 13.06.2014 on the file of 3rd respondent rejected the case of the Applicant for regularization of suspension period w.e.f. 17.7.1995 to 13.10.1995 as on duty is illegal, arbitrary and also contrary to the judgment in W.P.No.35783/2007 dt.21.06.2017 and consequently direct the respondents to regularize the suspension period w.e.f. 17.7.1995 to 13.10.1995 as on duty or as pr his eligible lave and accordingly release the benefits….."

Heard the learned counsel for the petitioner and the learned Government Pleader for respondents (Home).

It has been contended by the petitioner that while he was working as a Head Constable at Special Branch City, Hyderabad, the disciplinary authority vide proceedings dated 14.07.1995 suspended the petitioner on certain allegations and after detailed enquiry, the disciplinary authority had imposed a punishment of Censure. However, the period of suspension from 17.07.1995 to 13.10.1995 was treated as 'not on duty' vide order dated 17.11.2003. Petitioner further contends that aggrieved by the said order, he preferred an appeal before the

2nd respondent on 22.05.2013 and the 2nd respondent vide order dated 28.05.2014 rejected the appeal stating that the period of suspension from 17.07.1995 to 13.10.1995 cannot be treated as 'on duty' and the said order was communicated to him by the 3rd respondent vide memo dated 13.06.2014.

Learned counsel for the petitioner submits that when once the disciplinary authority had imposed a minor penalty of censure, in all fairness, the disciplinary authority ought to have treated the period of suspension from 17.07.1995 to 13.10.1995 as 'on duty'. Learned counsel further contends that similar issue was adjudicated by this Court in W.P.No.35783 of 2007 dt.21.06.2007, wherein it was held as follows:

> "...........I am of the opinion that treating the period of suspension as not on duty, while imposing a punishment of censure in the disciplinary proceedings, will lead to imposing a major punishment. As such, the action of the disciplinary authority in treating the period of suspension as not on duty is unreasonable and against the good conscience. Therefore, that portion of the order dated 24-12-1991 treating the period of suspension (about 18 months) as not on duty, as confirmed by the appellate authority, is liable to be set aside and are accordingly, set aside. Now, the Order dated 24-12-1991 as confirmed by the appellate authority on 3-8-1995 shall be read as "that the period of suspension will count as period spent on duty for all purposes including increments, seniority, promotion etc." However, the order denying payment of anything over and above the subsistence allowance granted for the period of suspension shall stand confirmed along with punishment of censure."

He further contends that in view of the above said order, the impugned orders passed by the appellate authority and disciplinary authority dt.28.05.2014 and 13.06.2014 respectively are liable to be set aside and the respondents be directed to treat the suspension period from 17.07.1995 to 13.10.1995 as 'on duty'.

Learned Government Pleader appearing for the respondents has not disputed the proposition laid down by this Court in W.P.No.35783 of 2007 dt.21.06.2007.

This Court, having regard to the rival submissions made by the parties, is of the considered view that when once the disciplinary authority has imposed a minor penalty of censure, the respondents ought to have treated the suspension period from 17.07.1995 to 13.10.1995 as 'on duty' by following the order passed by this Court in W.P.No.35783 of 2007.

Therefore, the impugned orders passed by the appellate authority and disciplinary authority dt.28.05.2014 and 13.06.2014 respectively are set aside and the respondents are directed to treat the suspension period from 17.07.1995 to 13.10.1995 as 'on duty' with all consequential benefits.

With the above observations, writ petition is allowed. No costs. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

05.07.2019
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