

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.30220 of 2018

ORDER:

This writ petition is filed seeking the following relief :-

“.... to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Certiorari, to call for the records relating to issuance of the impugned notices vide Rc.No.AM/ 76/ 2012 dated 31/ 07/ 2018, 02/ 08/ 2018, 09/ 08/ 2018 and 20/ 08/ 2018 of the 3rd respondent, declare the same as illegal, arbitrary, as the same are issued by the incompetent authority and further inaction on the part of the 4th respondent in taking steps admitting and giving posting orders to the petitioner under the guise of the impugned notices of the 3rd respondent as also illegal, arbitrary, set aside the notices dated 31/ 07/ 2018, 02/ 08/ 2018, 09/ 08/ 2018 and 20/ 08/ 2018 of the 3rd respondent and consequently direct the 4th respondent to admit and give posting orders to the petitioner from the date on which he reported to duty with effect from 14/ 06/ 2015 with all consequential benefits immediately”.

Heard Mr.K.Ram Reddy, learned counsel for petitioner and the learned Government Pleader for Services-II.

It has been contended by the petitioner that he was appointed as a Junior Assistant on compassionate grounds during October, 1985. While discharging his duties, as the petitioner suffered severe upper respiratory infection during March, 2012, he has applied for medical leave initially for two months and it was extended from time to time. He further contended that after recovering from the respiratory infection, he has reported to duty on 14.06.2015, but he was not admitted to duty. A charge memo was issued on 02.12.2012. After conducting enquiry, basing on the enquiry report, dated 10.02.2017, the disciplinary authority has issued proceedings holding that the petitioner is deemed to have been resigned from Government service with effect from 01.08.2012

and the same has been confirmed by the appellate authority vide proceedings dated 31.08.2017. Challenging the same, the petitioner filed W.P.No.30960 of 2017 and this Court vide order dated 06.07.2018 allowed the writ petition with the following observations:-

“For the aforesaid reasons, the order of the disciplinary authority is not sustainable in law. Accordingly, the order impugned is set aside and the Writ Petition is allowed.

However, it is made clear that it is open to the disciplinary authority to act as warranted by law, from the stage of receiving of report of enquiry officer and by observing the procedure contemplated by the CCA Rules. This order shall be complied, and appropriate action shall be taken within a period of six (6) weeks from the date of receipt of copy of this order”.

The petitioner further contended that instead of reinstating the petitioner into service, the respondents have issued show-cause notices dated 31.07.2018, 02.08.2018, 09.08.2018 and 20.08.2018. Challenging the said show-cause notices, the present writ petition is filed.

On 27.08.2018, this Court while admitting the writ petition passed the following interim order in I.A.No.1 of 2018.

“Having regard to the facts of this case and in view of the earlier orders of this Court in W.P.No.30960 of 2017 dated 6.7.2018, respondents are directed to treat the petitioner under suspension from this date.

Learned counsel for petitioner submitted that petitioner may be given one week time to submit his explanation.

Having regard to the submissions, respondents are directed to grant one week time from today to petitioner to file explanation. If such explanation is filed within time granted, the competent authority shall consider the same on

its merits pass orders by assigning due reasons in support of the decision.”

The petitioner further contended that pursuant to the above interim order, the petitioner has submitted explanation to the show-cause notices and the respondents, after considering the explanation submitted by the petitioner, passed orders of removal vide proceedings dated 24.10.2018.

Learned counsel for petitioner contended that when the order of the appellate authority passed on 31.08.2017 is set aside, in all fairness, the respondents ought to have reinstated the petitioner into service and from the date of reporting to duty on 14.06.2015 till passing of removal order on 24.10.2018, the said interregnum period should have been treated as deemed suspension of the petitioner and ought to have paid subsistence allowance. Learned counsel further contended that since the respondents have not treated the petitioner on duty from 14.06.2015 i.e., the date on which the petitioner has reported to duty till passing of removal order on 24.10.2018, appropriate orders be passed directing the respondents to treat the above said period as deemed suspension and to pay subsistence allowance for the said suspension period.

Learned counsel for petitioner relied upon a judgment rendered by the Hon'ble Supreme Court in *UCO BANK AND OTHERS Vs. RAJENDRA SHANKER SHUKLA*¹, wherein the Hon'ble Supreme Court held that whenever an employee is placed under suspension, the employee is entitled for subsistence allowance and without paying subsistence allowance, it would be unreasonable to expect such employee to participate in the departmental enquiry.

¹ (2018) 2 Supreme Court Cases (L&S) 625

This Court, having considered the rival submissions, is of the considered view that there cannot be any dispute with regard to the above proposition of law as set out by the Hon'ble Supreme Court. But, in the instant case, the petitioner is challenging the show-cause notices issued by the respondents. The petitioner has submitted an explanation to the said show-cause notices. The respondents have considered the explanation submitted by the petitioner and passed the order of removal on 24.10.2018. Therefore, this Court cannot give a direction to treat the period from 14.06.2015 till the order of removal i.e., 24.10.2018 as deemed suspension, as such a relief was not sought by the petitioner in the main writ petition. Apart from that, as far as the show-cause notices are concerned, the petitioner has submitted explanation pursuant to the interlocutory order passed by this Court. Thereafter, the respondents have passed the order of removal. When the respondents have passed order of removal vide proceedings dated 24.10.2018, the question of granting second limb of relief as sought in the writ petition to admit the petitioner into service and give posting orders also would not arise. Therefore, this Court is of the considered view that the cause in the writ petition has worked out with the passing of removal order by the respondents and does not survive for adjudication.

The writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 08-03-2019

Prv

