

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.41242 OF 2018

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 declaring the action of the 1st respondent in treating the suspension period from 28.09.2001 to 22.03.2004 and the dismissal period from 07.03.2007 to 10.1.2008 and from 11.01.2011 to 12.03.2015 *vide* G.O.Rt.No.146, Municipal Administration & Urban Development (Vig.I) (i) Department, dated 9.3.2017 as illegal, arbitrary, discriminatory and contrary to F.R 54-A(3) consequently direct the respondents to treat the suspension period from 28.09.2001 to 22.3.2004 and the dismissal period from 07.03.2007 to 10.01.2008 and from 11.01.2011 to 12.03.2015 as on duty with full pay and allowances and to pass such other order or orders as it may deem fit and proper in the circumstances of the case.”

Heard Sri M.V.Rama Rao, 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 Tracer in the year 1988 and thereafter, promoted as Town Planning & Building Overseer in the year 1998. While so, he was placed under suspension *vide* proceedings dated 28.09.2001 on the premise of registration of ACB case against him. Thereafter, the said suspension order was

revoked and he was reinstated into service *vide* proceedings dated 17.03.2004. Subsequently, the Additional Special Judge for SPE & ACB Cases, Hyderabad, *vide* C.C.No.15 of 2002, dated 19.02.2007 found the petitioner guilty of the charges and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, in default, to suffer simple imprisonment for 6 months. Questioning the same, the petitioner had filed Criminal Appeal No.255 of 2007 before this Court. This Court *vide* Crl.A.M.P.No.326 of 2007 dated 1.3.2007 suspended the sentence. Based on the conviction recorded against the petitioner, the 2nd respondent dismissed him from service *vide* proceedings dated 7.3.2007. When the respondents are not setting aside the dismissal order, and not reinstating the petitioner into service, he approached the A.P. Administrative Tribunal by filing O.A.No.1443 of 2007. The Tribunal *vide* order 19.09.2007 allowed the said OA, directed the respondents therein to reinstate the petitioner into service. In pursuance thereof, the petitioner was reinstated into service *vide* proceedings dated 11.01.2008. Aggrieved by the order of the Tribunal, the respondents therein filed W.P.No.26965 of 2007. This Court *vide* order dated 17.11.2009 allowed the said writ

petition. When the said writ petition was allowed, the respondents have once again dismissed the petitioner from service on 12.1.2011. Thereafter, the petitioner was acquitted in CrI.A.No.255 of 2007 *vide* judgment dated 5.12.2013. Consequent upon his acquittal, once again he was reinstated into service *vide* proceedings dated 13.03.2015.

The grievance of the petitioner is that he submitted a representation dated 14.05.2015 to the respondents to treat the suspension period and also the dismissal period as 'spent on duty' on his acquittal in Criminal Appeal, but the respondents *vide* G.O.Rt.No.146, dated 9.3.2017 treated the suspension period from 28.09.2001 to 22.03.2004 and the dismissal period from 7.3.2007 to 10.01.2008 and from 11.01.2011 to 12.3.2015 as "not on duty".

Learned counsel appearing for the petitioner submits that without assigning any reasons and without passing any speaking order, the respondents have rejected the case of the petitioner and treated the suspension period and dismissal period as "not on duty"; that as per F.R.54-A(3), the petitioner is entitled for counting the suspension period and dismissal period with full pay and allowances; that the respondents before passing any orders under F.R.54-A(3), must give an opportunity to the petitioner; that in the instant case, no

opportunity was given to the petitioner before passing final order; that in identical circumstances, the respondents have treated the suspension period and also the dismissal period as “spent on duty” in the case of one P.Ramanjul Reddy, *vide* G.O.Rt.No.1132, dated 18-07-2013; that the respondents have also extended the said benefit to one M.Jagan Mohan Reddy *vide* G.O.Ms.No.26, dated 18.09.2014; and that the said benefit as was extended to the said P.Ramanjul Reddy and M.Jagan Mohan Reddy, be extended to the petitioner also.

Learned Government Pleader appearing for the respondents submits that when the petitioner himself involved in a criminal case and was convicted, he was dismissed from service; that consequent upon his acquittal in criminal case, his case was considered and he was reinstated into service; that the respondents have considered and rightly rejected his case and hence the question of treating the suspension period and dismissal period as ‘spent on duty’ does not arise.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the respondents have passed the impugned rejection order without assigning any reasons. The respondents have not considered the case of the petitioner under F.R.54-A(3). Therefore, the impugned rejection order is liable to be set

aside only on the ground that it is not a speaking order and the said order was passed without following F.R.54-A(3).

Accordingly, the Writ Petition is allowed and the impugned G.O.Rt.No.146, dated 9.3.2017 is set aside. It is needless to state that the respondents shall pass a speaking order by following F.R.54-A(3), after giving an opportunity to the petitioner, within a period of two months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

1st March, 2019
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