

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) NO.444 OF 2017

ORDER:

This writ petition is filed seeking a direction to call for the records relating to and connected with the orders passed by the 3rd respondent – District Collector in issuing proceedings dated 04.08.2010, wherein the petitioner was warned to be more careful in future, and declare the same as arbitrary and illegal and to set aside the same and sought a consequential direction to direct the respondents to treat the suspension period from 28.06.2005 to 09.12.2009 as 'duty' as the respondents failed to discharge their statutory duties in not reviewing the suspension as provided under the Rules.

Heard Sri T.Vijay Hanuman Singh, counsel for the petitioner, and Government Pleader for Services-II.

It has been contended by the petitioner that while he was working as Panchayat Secretary, the respondents have placed him under suspension *vide* proceedings dated 28.06.2005 on the allegation that he has committed irregularities in implementing the NFFW programme. Thereafter, the disciplinary authority had conducted detailed enquiry and during pendency of the disciplinary proceedings, the petitioner was reinstated into service by revoking the suspension orders on 09.12.2009. Subsequently, a regular enquiry was conducted and the disciplinary authority i.e., District Collector issued proceedings, dated 04.08.2010, warning the petitioner to be more

careful in future service. The grievance of the petitioner is that warning is not one of the enumerated punishments under Rule 9 of the AP CS (CCA) Rules and on the ground of the punishment of warning, the respondents have not regulated the suspension period as 'spent on duty' nor released the increments during the suspension period. Challenging the action of the respondents in not regularising the suspension period as 'spent on duty' in terms of Fundamental Rule 54-B and not releasing the increments during the suspension period, the present writ petition is filed.

Counsel for the petitioner had contended that as per Rule 9 of the AP CS (CCA) Rules, warning is not a punishment and he has relied upon the judgment rendered by the Hon'ble Supreme Court in **Vijay Singh v. State of U.P**¹ and contended that the punishment which is enumerated in the statutory Rules alone can be imposed and the punishment outside the purview of the statutory Rules even if imposed, is nullity and cannot be enforced.

Counsel for the petitioner further contended that since warning is not one of the enumerated punishments in the Rules, the respondents cannot deny increments during the suspension period of the petitioner and also the respondents are bound to pass appropriate orders in terms of Fundamental Rule 54-B, but so far the respondents have not passed any orders treating the suspension period as 'spent on duty' and also not released the increments to which the petitioner is entitled. Counsel also contended that during pendency of this writ

¹ (2012) 5 SCC 242

petition, the petitioner has attained the age of superannuation during 2017, therefore appropriate orders be passed in the writ petition directing the disciplinary authority to pass orders regularising the suspension period as 'spent on duty' by treating that no punishment is imposed on the petitioner, as the so called punishment of warning imposed on the petitioner is not one of the enumerated punishments in the Rules, and to further direct the respondents to release the increments during the suspension period in accordance with law.

Government Pleader appearing for the respondents had contended that after imposing the punishment of warning, on the representation submitted by the petitioner, the District Collector has submitted proposals to the Government seeking clarification. When this Court specifically asked the Government Pleader as to under which provision the proposals are submitted to the Government seeking clarification, the Government Pleader could not mention the same. Government Pleader was insisting that let the Government pass orders on the proposals submitted by the District Collector seeking clarification for regularising the suspension period and also for granting increments during the suspension period.

Government Pleader has further contended that the Enquiry Officer who was appointed to inquire into the allegations levelled against the petitioner, has not fully exonerated the petitioner of the charge, and to some extent, the Enquiry Officer has held that the petitioner is partly responsible for the lapses.

This Court, having considered the submissions of learned counsel for respective parties, is of the considered view that the contentions of the Government Pleader are not in accordance with law, as on one hand he had contended that the disciplinary authority relied upon the findings of the Enquiry Officer that the petitioner was not fully exonerated of the charge, and on the other hand he had contended that the very same disciplinary authority has sought clarification from the Government recommending the case of the petitioner for regularising the suspension period and also for granting increments during the suspension period. If the Enquiry Officer has held the charge as partly proved, nothing prevented the disciplinary authority to impose any of the punishments enumerated in the Rules, but the disciplinary authority has strangely chosen to impose a different punishment which is not enumerated in the statutory Rules. Therefore, by following the law laid down by the Hon'ble Supreme Court in the case of **Vijay Singh** referred to above, this Court is of the considered view that the punishment imposed by the disciplinary authority is non est in the eye of law.

Accordingly, the writ petition is allowed and the impugned order dated 04.08.2010 passed by the 3rd respondent is set aside. The disciplinary authority is directed to regularise the suspension period as 'spent on duty' in terms of Fundamental Rule 54-B and also to consider the case of the petitioner for grant of increments during the suspension period and pass appropriate orders within a reasonable

period of time, preferably within 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

6th January, 2020
v v

