

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SMT JUSTICE G. ANUPAMA CHAKRAVARTHY

W.P No.18651 of 2008

ORDER: (Per the Hon'ble Sri Justice Abhinand Kumar Shavili)

1. When the matter is taken up for hearing the learned Government pleader appearing for the petitioners has contended that the respondents were dismissed from services vide proceedings dated 31.01.1989. Aggrieved by the said orders of dismissal, the respondents have filed RP No.4053/1989 with M.A.No.570/1997, before the Andhra Pradesh Administrative Tribunal in O.A.No.949 of 2004 and the Tribunal vide orders dated 18.11.1997 allowed the same and set aside the orders of dismissal on the ground that the enquiry officer's report was not furnished to the respondents and in pursuance of the orders passed by the Tribunal in RP No. 4053 of 1989, respondents were reinstated into the services. However,

out of employment period was not treated as “on duty” and it was treated as deemed suspension as per Rules. The Government Pleader for the petitioners has further contended that afterwards, regular enquiry was conducted and again the employees were dismissed vide orders dated 17.04.1998 and now the only issue is whether the period from 31.10.1989 to 17.04.1998 is to be treated as deemed suspension or not?.

2. Further, the respondents were paid subsistence allowance but the respondents have filed OA No.949/2004 contending that the respondents are entitled for 75% of subsistence allowance in the prolonged suspension period and the tribunal vide orders dated 22.03.2006 was pleased to allow the OA No.949/2004 directing the petitioners to pay subsistence allowance at the rate of 75%.
3. The learned counsel for the petitioners has contended that the period from 31.10.1989 to 17.04.1998 is only to be

treated as deemed suspension and the respondents would not be entitled for any enhanced subsistence allowance. Therefore, the Tribunal erred in allowing the OA. Therefore, appropriate orders be passed in the writ petition by setting aside the orders in O.A.No.949/2004 dated 22.03.2006.

4. The learned counsel appearing for the respondents contended that as per the rule, if the suspension is continued about 6 months, then the petitioners are bound to pay the enhanced subsistence allowance of 75% from the date of first dismissal to the date of second dismissal. The period is deemed suspension which would enable to seek 75% of subsistence allowance and the Tribunal was justified on allowing the OA.
5. This court having considered the rival submissions made by the parties, is of the considered view that admittedly, the employee was kept under suspension. Since it is deemed suspension, he is entitled to the subsistence

allowance @ 75% as per the Rules and the Tribunal was justified in allowing the OA. Hence, the writ petition is liable to be dismissed.

6. Accordingly the writ petition is dismissed. No order as to costs.
7. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

G.ANUPAMA CHAKRAVARTHI, J

01.08.2022

bv/ksl