HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION NO: 34469 OF 2017

Between:

M.Balaram, S/o Chinnappa, aged about 65 years, Occ Senior Checking Inspector (Retired), O/o Assistant Supply Officer, Circle-VIII, Hyderabad. R/o H.No.8-3-231/A/52/1, Sri Krishna Nagar, Yousufguda, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary to Government, Consumer Affairs, Food and Civil Supplies Department, Telangana State Secretariat, Hyderabad.
2. The Commissioner of Civil Supplies, Government of Telangana, Hyderabad.
3. The Chief Rationing Officer, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declare the Memo No.128/CS-II-Vig/2014 Dated 29-05-2017 issued by the 1st respondent as illegal, arbitrary, violation of Art.14 of the Constitution of India and contrary to FR.54 (B)(3) and to set aside the same and consequently direct the respondents to treat the suspension period from 16-12-1993 to 06-02-1997 and dismissal period from 20-08-2005 to 31-08-2009 as on duty in terms of FR.54 (B)(3) and pay the incidental and consequential benefits such as arrears of salary, and revision of pay scales.

Counsel for the Petitioner: SRI M.R.TAGORE
Counsel for the Respondents: GP FOR SERVICES-I
The Court made the following: ORDER

That Rule Nisi has made Absolute as above witness

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.34469 OF 2017

ORDER:

This writ petition is filed seeking the following relief:

> *"to issue a Writ, Order or Directions more particularly, one in the nature of Writ of Mandamus declare the Memo No.128/CS-II-Vig/2014 Dated 29.05.2017 issued by the 1st respondent as illegal, arbitrary, violation of Art.14 Constitution of India and contrary to FR.54(B)(3) and to set aside the same and consequently direct the respondents to treat the suspension period from 16.12.1993 to 06.02.1997 and dismissal period from 20.08.2015 to 31.08.2009 as on duty in terms of FR.54 (B) (3) and pay the incidental and consequential benefits such as arrears of salary, and revision of pay scales and to pass such other order or orders as it may deem fit and proper in the circumstances of the case".*

2. Heard Mr. M.R. Tagore, learned counsel for petitioner, and learned Government Pleader for Services – I for respondents.

3. Brief facts:

Petitioner, while discharging services as Senior Checking Inspector in Circle-IX, Hyderabad, was trapped and caught red-handed for accepting illegal gratification by ACB Officials. Petitioner was placed under suspension on 16.12.1993. Sanction was accorded for prosecution *vide* G.O.Ms.No.342, dated 11.08.1994. Petitioner was reinstated into service on 25.01.1997.

4. Principal Special Judge for Special Police Establishment and Anti Corruption Bureau Cases, Hyderabad, *vide* judgment dated 30.06.2005 convicted the petitioner. Petitioner was dismissed from service *vide* proceedings dated 20.08.2005. A Criminal Appeal No.1090 of 2005 was preferred, appeal was allowed on 25.07.2012. G.O.Rt.No.39 was issued on 29.03.2014 stating that suspension period and period under dismissal till his retirement be treated as not on duty as per Fundamental Rule 54 (B) (7).

5. Challenging the said G.O., petitioner filed O.A.No.5814 of 2014 before the Andhra Pradesh Administrative Tribunal. By order dated 11.08.2016, Tribunal allowed the O.A., setting aside the G.O., and remanded the matter with a direction, that request of petitioner for treating the period of suspension/ dismissal as on duty keeping in view the order passed in the case of similarly situated person Mr. K. Francis, Junior Assistant in the office of A.S.O. Pursuant to the order of Tribunal, Memo No.128, dated 29.05.2017, was issued. In the memo, it was stated that period of suspension/dismissal to be considered as on duty was rejected and it was further stated that case of Mr. K. Francis was totally different to that of the petitioner's case. The present writ petition is filed challenging the memo dated 29.05.2017.

6. Learned counsel for petitioner submitted that memo dated 29.05.2017 is not valid one. That in a similar case, Mr. K. Francis was reinstated, the suspension period of Mr. K. Fransis was termed as wholly unjustified and the period from 03.01.1992 to 05.03.2002 was regularized as on duty under Fundamental Rule 52 (2) (3) for all purposes. On the basis of the G.O. issued in favour of Mr. K. Francis, it is contended that petitioner in the present case was also acquitted in a criminal appeal filed against the order of conviction and hence there cannot be a different yardstick for treating the petitioner on a different footing. That K. Francis was also acquitted in criminal case. That a case filed under the Prevention of Corruption Act and a case filed under 498-A of IPC though stand on a different footing, it is the outcome which is to be considered.

7. Learned counsel for the petitioner submitted that memo dated 29.05.2017 is not in accordance with Fundamental Rule 54 (B). That the authority has not justified the act by proper reasoning and the same is a mechanical order/proceeding. It is further submitted that the order is bad in law for non-application of mind and except stating that case of petitioner is different from that of K. Francis, no other reasoning is given in order dated 29.05.2017.

8. Learned counsel appearing on behalf of respondents has supported the memo dated 29.05.2017. It is submitted that the memo was issued as per the law laid down in ***The Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao***[1]. That, the order of rejection of representation of petitioner to treat the period of suspension/dismissal as not on duty is valid. That in the case of K. Francis, it was a case under Dowry Prohibition Act and that the case of petitioner is under Prevention of Corruption Act (trapped by ACB officials). It is contended that the authority was right in holding that the case of Mr. K. Francis was different from the case of petitioner.

9. Learned counsel for petitioner further contends that in Ramlal's case, the Hon'ble Apex Court has held that the nomenclature of acquittal in a criminal case does not in any way has impact on the outcome of criminal case.

10. Heard learned counsels, perused the record and considered the rival submissions.

11. Petitioner while working as Senior Checking Inspector was trapped by ACB officials and was suspended on 16.12.1993, reinstated into service on 25.01.1997. The Special Judge for ACB

[1] Civil Appeal No.6014 of 2011 (Arising out of S.L.P. (C) No.22723 of 2010)

cases, by judgment, dated 30.06.2005 convicted the petitioner. Aggrieved, petitioner filed a criminal appeal and the High Court of Andhra Pradesh by order dated 25.07.2012 has set aside the judgment of ACB Court and acquitted the petitioner on the ground of benefit of doubt.

12. In memo dated 29.05.2017, it was stated that the period from 16.12.1993 to 06.02.1997 and the period from 20.08.2005 to 31.08.2009 was held to be not on duty in terms of Fundamental Rule 54 (B) (3). The relevant portion of the memo is as follows:

> "11. In this regard it is informed that:
>
> "since in the instant case the individual was acquitted on **benefit of doubt**, there is no provision to treat the suspension period as "on duty" under FR-54-B(3) and (4). Hence, the action taken in the GO. Rt.No.39, dated 29-3-2014 holds good."
>
> 12. Accordingly, Government have issued orders vide Memo. No. 128/CS- II-Vig./2014, dt.3-9-2014 rejecting his request to treat the suspension/dismissal period as "on duty" as the individual is acquitted on "benefit of doubt".
>
> 13. Aggrieved by the above orders, Sri M. Balaram, Senior Checking Inspector (Retd.) has filed OA No.5814/14 in APAT. The APAT in its interim orders dated 25-9-2014 have directed the respondents to file counter.
>
> 14. Sri M. Balaram, Senior Checking Inspector (Retd.) in his representation dated 24-08-2016 has submitted that Hon'ble Tribunal have passed the judgement dt. 11-8-2016 in OA.No.5814/2014 by setting aside the GO.Rt.No.39, CAF&CS (VS) Dept., dt.29-3-2014 and Govt. Memo.No.128/CS- setting aside the II-Vig/2014, dt.3-9-2014 with a direction to the respondents to consider the request of the applicant for treating the period of

suspension/dismissal period as on duty keeping in view of the orders passed in GO.Ms.No.8, CAF&CS (VS) Dept., dt.10-4-2013. He has requested the Govt. to pass appropriate orders as directed by the Hon'ble Tribunal in O.A.No.5814/2014, dated 11-8-2016.

15. In this regard it is informed that it is not a clear direction to treat the period as on duty. The Tribunal has remanded the matter to pass fresh order. The instant case is totally different from the case of Mr.K. Francis which is a case booked under dowry prohibition Act, whereas in the instant case, it is booked under prevention of corruption Act and trap by ACB.

16. In this regard it is further informed that in GHMC Vs M.Prabhakar Rao case, the Supreme court (2011) (8) 155 held as follows:

> "Sub-rule(3) of FR 54.B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension, if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the material before it, such opinion of the competent authority would not be interfered with by the Tribunal or the Court".

17. Keeping in view of the orders of Hon'ble Tribunal in OA.No.5814/2014, dt.11-8-2016, Government after careful examination, hereby reject the representation of Sri M. Balaram, Senior Checking Inspector (Retd.) for treating the period of suspension/dismissal period as on duty keeping in view of the orders passed in GO.Ms.No.8, CAF&CS (VS) Dept., dt.10-4-2013 as the instant case is totally different from the case of Mr.K. Francis which is a case booked under dowry prohibition Act, whereas the instant case is a case booked under prevention of corruption Act and trap by ACB."

13. On a perusal of the memo, it is observed that except extracting a paragraph from the Apex Court's judgment in ***M. Prabhakar Rao*** (1 supra), the competent authority has not visited the aspect, whether suspension period of the employee was justified or not. A portion of paragraph No.11 of the Apex Court's judgment is extracted, no reasoning is forthcoming by the competent authority, whether suspension is justified or not. Sub-Rule (3) of F.R. 54-B is as follows:

> "(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:
>
> Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation [within sixty days from the date on which communication to this regard is served on him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay [only such amount (not being the whole) of such pay and allowances as it may determine]."

14. The Apex Court in ***M. Prabhakar Rao*** (1 supra) at paragraph No.9 held as follows:

> "9. The rationale, on which sub-rule (3) of F.R. 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent

authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained clear and lucid language by a three-Judge Bench of this Court in Union of India & Ors. v. K. Jankiraman & Ors. [(1991) 4 SCC 109]. At page 121 in Para 26 P.B. Sawant, J, writing the judgment for the Court in the aforesaid case further observed:

> "26. ..... However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests....."

It will be clear from what this Court has held in Union of India & Ors. v. K.V. Jankiraman & Ors. (supra) that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which deserves it. In the aforesaid case, this Court has also held that this power is vested in the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardized and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision

has to be taken by the competent authority on the facts and circumstances of each case."

15. The decision whether an employee is entitled to any salary during the period of suspension/dismissal is to be made by the competent authority in the facts and circumstances of case. Authority has to conclude whether there is any justification for treating the period of suspension/dismissal of the employee. This aspect of the rule has been totally lost sight of by the competent authority. Except stating in the final paragraph of the memo that the case of the petitioner stands on a different footing to that of K. Francis, nothing else is forthcoming for rejection of petitioner's case.

16. It is trite law that rejection order on the ground of applicability or non applicability, consideration or non-consideration, justification or non-justification under Fundamental Rule – 54 (B) (3) has to be a reasoned order. No reasons are forthcoming for rejecting the case of the petitioner. The memo dated 29.05.2017 is not in accordance with the Fundamental Rule 54 (B) (3). It is liable to be set aside and is accordingly set aside.

17. This Court is of the opinion that the competent authority be directed to pass orders afresh in terms of Fundamental Rule 54

(B) (3) and also the law laid down in ***M. Prabhakar Rao*** (1 supra). The competent authority shall pass orders within a period of two (2) months from the date of receipt of a copy of this order.

18. For the reasons aforesaid, writ petition stands allowed. Needless to state, petitioner is permitted to raise all the grounds by way of a representation. Competent authority to afford an opportunity to the petitioner to present his case. No orders as to costs.

Miscellaneous applications pending, if any, shall stand closed.

The Hon'ble SRI ALOK ARADHE, The Chief Justice on this Friday, the Twenty Ninth Day of November, Two Thousand and Twenty Four.

SD/-P. CH. NAGABHUSHAMBA
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary to Government, Consumer Affairs, Food and Civil Supplies Department, Telangana State Secretariat, Hyderabad, State of Telangana.
2. The Commissioner of Civil Supplies, Government of, Telangana, Hyderabad.
3. The Chief Rationing Officer, Hyderabad.
4. One CC to SRI M.R.TAGORE, Advocate [OPUC]
5. Two CCs to GP FOR SERVICES-I, High Court for the State of Telangana at Hyderabad [OUT]
6. Two CD Copies

BSR
BS

HIGH COURT

DATED:29/11/2024

ORDER

WP.No.34469 of 2017



ALLOWING THE WRIT PETITION,

WITHOUT COSTS

(9) Copies

1/5/25