

(2024) 10 TEL CK 1191
In the Telangana High Court
Case No : Writ Petition No.8698 Of 2024

A. Neeraja

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 16-10-2024

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Bharatiya Nyaya Sanhita, 2023 — Section 316(2), 318(4)

Citation : (2024) 10 TEL CK 1191

Hon'ble Judges : Moushumi Battacharya, J;B.R.Madhusudhan Rao, J

Bench : Division Bench

Advocate : Bandlapelli Naresh, Swaroop Oorilla

Final Decision : Dismissed

Judgement

Sujoy Paul, J

1. Sri K. Sudhakar Reddy, learned counsel, appeared for the petitioner and Sri Harender Pershad, learned Senior Counsel representing Sri A. Naren Rudra, learned counsel, appeared for the respondent.

2. With the consent finally heard.

3. This petition filed under Article 226 of the Constitution challenges the order dated 20.10.2023 whereby the respondent-High Court has rejected the representation of the petitioner claiming that period of suspension shall be treated as spent on duty with full pay and allowances.

4. Briefly stated, the petitioner was served with a charge sheet dated 14.08.2019. The petitioner submitted her written submissions on 30.09.2019. The petitioner was placed under suspension on 31.10.2019. The enquiry report was submitted on 06.04.2022. After obtaining petitioner's response to enquiry officer's report, the punishment order dated 25.08.2022 was passed whereby the petitioner's suspension was also revoked and a minor penalty of "stoppage of one

increment without cumulative effect for a period of one year” was inflicted on her. The petitioner, in furtherance of this order, was re-instated and resumed back. Since the Department did not pass any order regularizing the period of suspension, the petitioner preferred a representation which was rejected by the impugned order.

5. Learned counsel for the petitioner submits that while re-instating the petitioner as per FR-54B(5) of Fundamental Rules, the competent authority was under a statutory obligation to take a decision regarding the suspension period. Since no decision was taken, the petitioner preferred the aforesaid representation, which was erroneously rejected. The two-fold submission of learned counsel for the petitioner is that in view of judgment of Supreme Court in *Vijay Kumar Agarwal v. Union of India*(2015) 17 SCC 625, when a minor penalty is imposed and the Department has not taken decision regarding grant of pay and allowances for the period of suspension, the authorities are denuded from passing such an order and inevitable consequence of the same is grant of full salary for the period of suspension. The second submission is based on the decision of this Court in *A. Shiva Kumar Lal v. State of Telangana W.P.No.6405 of 2019* whereby, in a case where major penalty disciplinary proceedings ended with a minor penalty, the period of suspension was directed to be treated on duty with full pay and allowances. Per contra, learned Senior Counsel for the respondent-High Court supported the impugned order. He further submits that the petition is opposed mainly on twin grounds. Firstly, the petitioner has accepted the part of the order dated 25.08.2022 whereby, she was directed to be re-instated. She did not promptly challenge the inaction of respondent in not passing an order relating to period of suspension. For this purpose, reliance is placed on the decision of the Jharkhand High Court in *Bharat Coking Coal Limited and others v. Indrasani Devi*2020 SCC OnLine Jhar 1706. Secondly, in view of judgment of the Supreme Court in *Sanat Kumar Dwivedi v. Dhar Jila Sahakari Bhoomi Vikas Bank Mary Adit*(2001) 9 SCC 402

6. , the petitioner once accepted the re-instatement order, cannot be permitted to claim wages as an afterthought.

7. Learned counsel for the parties confined their arguments to the extent indicated above.

8. The admitted facts are that a major penalty charge sheet ended with a minor punishment. As per FR-54B(5) of Fundamental Rules, the competent authority was under an obligation to take a decision regarding suspension period as per the parameters laid down in sub-rule (5) of FR-54B. Admittedly, the competent authority did not take any decision while passing the punishment order or immediately thereafter. In a case of this nature, where it was imperative for the competent authority to take a decision as per the statute, the judgment of the Supreme Court in *Bharat Coking Coal Limited* (supra), cannot be pressed into service. For the same reason, the judgment of *Sanat Kumar Dwivedi* (supra), cannot be applied. In *Sanat Kumar Dwivedi* (supra), the petitioner therein was

terminated from service and claimed back wages after getting re-instated. In that case, there was no statutory provision which makes it obligatory for the employer to take a decision regarding the back wages. In this peculiar backdrop, the Supreme Court decided the matter regarding claim of back wages against the employee. The said case cannot be made applicable in the instant case.

9. In *Vijay Kumar Agarwal* (supra), the Supreme Court held as under:

"20. The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or non est. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54-B [Ed.: Rule 5-B of the All India Services (Discipline and Appeal) Rules, 1969 is in pari materia with Fundamental Rule 54-B. See *Vijay Kumar Aggrawal v. Union of India*, 2010 SCC OnLine Del 4416, para 25.] and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, the High Court held that the petitioner was entitled to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period 1-5-1988 to 13-5-1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court.

22. When the order of suspension is revoked and the suspended employee is asked to join the duty, he is required to do so. How the period of suspension is to be treated is another aspect. At the most, such an employee would be entitled to full salary during the suspension period if no order is passed as to how the suspension period would be governed."

(emphasis supplied)

10. Apart from this, the Madhya Pradesh High Court in *Y.S. Sachan v. State of Madhya Pradesh* 2003 SCC OnLine MP 432, held as under:

"8. So far as the salary for the period of suspension is concerned, the petitioner should be paid full salary. A minor penalty has been imposed upon the petitioner. The punishment is so light and therefore the petitioner could not be saddled with the heavier penalty of depriving him the salary for the suspension period. This part of the impugned order is not a speaking order. No reasons have been assigned for depriving the petitioner of his salary for the suspension period. The Government of India has issued a circular, dated 3 December, 1985, stating therein that where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor

penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under Fundamental Rule 54-B. The guidelines issued by the Central Government for its employees is just and reasonable and it should be followed by the State Government and its instrumentality. The Jabalpur Development Authority is also such instrumentality and it will also be governed by such interpretation of rule 54-B of the Fundamental Rules.

9. The petition is partly allowed. It is dismissed against that part of the impugned order by which the penalty of withholding of one increment has been imposed upon the petitioner. The respondents are directed to pay full salary of the petitioner for the suspension period within two months.”

(emphasis supplied)

11. The Division Bench of Madhya Pradesh High Court in *State of Madhya Pradesh v. Shailendra* 2011 ILR MP 2315 followed the said view taken in *Y.S. Sachan* (supra). Similar view is taken by this Court in *A. Shiva Kumar Lal* (supra).

12. In this view of the matter, we are inclined to allow the petition and set aside the impugned order. Accordingly, the impugned order dated 20.10.2023 is set aside. The respondent shall treat the period of suspension of petitioner as spent on duty and grant her pay and allowances within ninety (90) days from the date of production of certified copy of this order.

13. The Writ Petition is allowed. No costs.

Interlocutory applications, if any pending, shall also stand closed.