
(1999) 03 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 133 of 1999

Badal Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Citation : (1999) 1 GLT 489

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : P.K. Biswas, for the Appellant; U.B. Saha, for the Respondent

Judgement

N.S. Singh, J.—Upon hearing Mr. P.K. Biswas, learned Counsel for the Petitioner and also Mr. U.B. Saha, learned Govt. Advocate for the State-Respondents, I hereby propose to dispose of this writ petition with the following short judgment and order:

2. Office order dated 20.3.1998 as in Annexure-6 to the writ petition issued by the Director of Food & Civil Supplies, Tripura refusing the extension of any financial benefit to the writ Petitioner, Sri Badal Chandra Debnath, peon more than he has already been paid as subsistence allowance for his suspension for the period from 12.4.1996 to 19.9.1997, and thus denying the claim of the writ Petitioner for his full pay and allowances during the period of suspension is the subject matter under challenge in this writ petition.

3. At the very outset, Mr. Biswas, learned Counsel for the Petitioner submits that the case of the writ Petitioner is covered up by F.R. 54(2) and as such, the authority had lost the sight of this F.R. 54(2) while issuing the impugned order of 20.3.1998, thus depriving the legitimate right of the writ Petitioner, and the authority concerned ought to have afforded the full pay and allowances to the writ Petitioner during the period of his suspension as he was acquitted from the criminal charges, and there is no departmental proceeding as against him except the fact that a departmental proceeding as against him was contemplated under

the related order of 12.4.1996 as in Annexure-1 to the writ petition. However, by virtue of another office order of 8.9.97, his suspension order was duly revoked by the competent authority and he was given posting in the office of Sub-Divisional Officer, Longtharai Valley, Dhalai District as inflected in the document marked as Annexure-3 to the writ Petitioner.

4. In my considered view, the submission of Mr. Biswas holds a little water inasmuch as the case of the Petitioner shall not be covered up by FR 54(2) but his case shall be covered up by F.R. 54 (B). For just determination of the real points in controversy between the parties, the provision of F.R. 54(2) and F.R. 54(B) are very much important and relevant and, as such, the same are quoted below:

F.R. 54(2)

Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provision of Sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of 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 of which the communication in 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, subject to the provisions of Sub-rule (7), be paid for the period of such delay, only such (amount (not being the whole)) of such pay and allowances as it may determine.

F.R. 54-B

(1) When a Government servant who has been suspended is reinstated (or would have been so reinstated but for his retirement (including premature retirement) while under suspension,) the authority competent to order reinstatement shall consider and make a specific order:

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or (the date of his retirement (including premature retirement)) as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the

date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(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 the communication in 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.

(4) In a case falling under Sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

5. It is an admitted position that the Petitioner was acquitted from the criminal charges and the suspension order was revoked by the competent authority under related order mentioned above. But by virtue of the impugned order of 20.3.1998 (Annexure-6), the writ Petitioner is not entitled to anything more than what he has already been paid as subsistence allowance for his suspension period from 12.4.1996 to 19.9.1997.

6. Now, this Court is to see and examine as to whether the impugned order suffers from infirmity or illegality or irregularity or, whether this impugned order had deprived of the legitimate right of the writ Petitioner or not? On bare perusal of the provision of F.R. 54-B, it has been seen that when a Government servant who has been suspended is reinstated, the authority competent to order reinstatement shall consider and make a specific order, namely,

(1) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement;

(2) whether or not the said period shall be treated as a period spent on duty;

(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, and the said payment of allowances under Sub-rule (2), Sub-rule (3) or under Sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

7. In the instant case, the writ Petitioner did not challenge the validity of the suspension order of 8.9.1997 as in Annexure-3 to the writ petition and simply he sought for benefit of full pay and allowances during the period of suspension. There is no material on record for establishing the fact that the suspension order issued as against the present writ Petitioner was wholly unjustified, It is made clear that only when the suspension as against the Petitioner was wholly unjustified, then the Petitioner may be given/paid full pay and allowances for the period which he spent during the suspension. It is the wisdom and under the domain of the competent authority to make specific order regarding the pay and allowances to be paid to the Govt. servant for the period of suspension and ending with reinstatement, and whether the said period shall be treated as a period spent on duty or not; or whether suspension was unjustified or not. In the instant case, the Respondent concerned/competent authority duly examined the representation as well as the case of the writ Petitioner and opined that there was no merit to extend any financial benefit to the writ Petitioner more than he has already been paid that is the subsistence allowance, and apart from it, the competent authority opined that the period of suspension will be treated as on duty for the purpose of leave and pension only. In any considered view, the Petitioner should be well satisfied with the impugned order of 20.3.1998 as in Annexure-6 to the writ petition.

8. For the reasons, observations and direction made above, this writ petition is devoid of merit and accordingly, it is dismissed. No cost.