
(1997) 09 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 933 of 1997

Chairman, ONGC and Others

APPELLANT

Vs

R.R. Naidu

RESPONDENT

Date of Decision : 03-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Pay and Allowances Regulations, 1972 — Regulation 14, 14(3), 24

Citation : (1997) 6 ALD 358 : (1997) 6 ALT 394

Hon'ble Judges : P.S. Mishra, C.J.; P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; N. Ram Mohan Rao, for Ravi Shankar Jandhyala, for the Respondent

Judgement

P.S. Mishra, C.J.—The instant appeal by the management under Clause 15 of the Letters Patent is directed against the judgment in the petition under Article 226 of the Constitution of India. Undisputed facts are as follows:

Writ petitioner - respondent has been employed as Senior Driller by the appellants herein when he was subjected to a criminal charge and convicted for the offences under Sections 120-B and 409 I.P.C. and Section 5(2) of the Prevention of Corruption Act by the Court of Special Judge at Gauhati. On his conviction, he was first put under suspension, vide order, dated 3-5-1982 and dismissed from service, vide the office order, dated 6-6-1983. Writ Petitioner - respondent, however, preferred appeal against his conviction before the High Court of Gauhati at Assam. He also preferred a writ petition before this Court against the order of dismissal from service. The appeal against conviction in Gauhati Court, however, ended in the order setting aside the conviction by the Special Judge. The writ petition, however, was dismissed at the relevant time stating, inter alia, that if the conviction was set aside by the appellate Court and the writ petitioner - respondent was acquitted, he would be reinstated in service and in case of any modification by the appellate Court, the competent authority

would review the matter in the light of the judgment of the Court. After acquittal, the writ petitioner - respondent has since been reinstated by the appellants, vide proceeding, dated 28-4-1993 as Senior Driller (re-designated as Executive Engineer (Drilling)). Writ Petitioner - respondent laid claim for full pay and allowances in terms of the Regulations applicable to his cadre for the period from the date of suspension till reinstatement. Since the organisation has not taken any action, writ petitioner - respondent has moved this Court for a declaration that he is entitled to consequential benefits of the reinstatement into service. Learned single Judge has, however, noted as follows:

"Subsequently, it appears that provisionally a sum of Rs. 1,32,287 /- was paid to the petitioner towards the arrears of pay and allowances after statutory deductions for the period between 3-5-1982 to 30-4-1993. Thereafter, however, by proceedings dated 3-5-1995, the competent authority directed that the period of suspension and dismissal of the petitioner from 3-5-1982 to 9-5-1993 be treated as period not spent on duty and that the petitioner is not entitled to any backwages for the period of his suspension and dismissal."

Learned single Judge has dealt with relevant provisions of the Rules and finally allowed the writ petition in part and gave directions that the appellants would pass appropriate orders specifying the amount payable to the writ petitioner - respondent in terms of sub-regulation 3(c) of Regulation 14 of the Pay and Allowances Regulations, 1972.

2. While the instant appeal has been filed by the management, the writ petitioner-respondent in the instant appeal has filed an appeal, which is numbered as Writ Appeal No. 971 of 1997.

4. In course of the hearing of the instant appeal since we have heard both parties in all aspects of the matter, the order in the instant appeal shall also be effective in Writ Appeal No. 971 of 1997.

5. There is no dispute, however, to the fact that sub-regulation (3) of Regulation 14 provides as follows :

"(3)(a): When an employee, who had been dismissed, removed, compulsorily retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific order :-

(i) regarding the pay and allowances to be paid to the employee for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation, as the case may be, and

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

(b) Where the authority mentioned in clause (a) above is of the opinion that the employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the employee shall be given the full pay and allowances to

which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(c) In other cases, the employee shall be given such proportion of such pay and allowances as such competent authority may specify in this behalf:

Provided that the payment of allowance under clause (b) or clause (c) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence grant admissible under these regulations.

(d) In a case falling under clause (b), the period of absence from duty shall be treated as a period spent on duty for all purposes.

(e) In a case falling under clause (c), the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose."

5. Our attention has been drawn also to Regulation 24, which deals with termination of service, which, in relevant parts, reads as follows:

24. Termination of Service :

(1).....

(2) (a) Where a notice is given by the appointing authority terminating the services of a temporary employee or where the services of any such employee are terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Commission or any other authority specified by the Commission in this behalf may, of its own motion or otherwise re-open the case, and after calling for the records of the case and after making such inquiry as it deems fit :-

(i) confirm the action taken by the appointing authority;

(ii) withdraw the notice;

(iii) reinstate the employee in service; or

(iv) make such other order in the case as it may consider proper:

....."

6. Both sides have maintained before us the two extreme views - (1) once a dismissed employee is reinstated, as a matter of course he is entitled to all consequential benefits including the backwages, and (2) when a dismissed employee is reinstated, the question of backwages arise only if the order of dismissal was a result of a disciplinary proceeding and the disciplinary action was found to be unsustainable in law and it is held that the employee was unlawfully prevented from discharging duties.

7. There is no need to cite various authorities except to refer to two judgments upon which our attention has been drawn by the learned Counsel for the appellants. In *Ranchhodji Chaturji Thakore v. The Superintendent Engineer, Gujarat Electricity Board* 1997 (1) SC 152 the Supreme Court dealt with the case of an employee who was convicted by the Sessions Judge and sentenced to undergo imprisonment for life. He was dismissed from service. His appeal against conviction was allowed and he was acquitted of the charges. In the writ petition challenging the order of dismissal, which was pending until the order of acquittal was passed, the Court directed for reinstatement with continuity of service and denied backwages. His appeal under Clause 15 of the Letters Patent against the said judgment, failed. He went before the Supreme Court and the Supreme Court has observed:

"It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of backwages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of backwages."

8. In the other judgment in *Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others*, , the Supreme Court considered the case of a person who was placed under suspension and was paid subsistence allowance pending criminal trial. After his acquittal, he was reinstated but consequential benefits were not given to him. With reference to Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1991, the Supreme Court has pointed out that the rule gives a discretion to the disciplinary authority and the appellant is not entitled to consequential benefits on his reinstatement after acquittal.

9. In cases of imposition of punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/ statutory provisions governing such enquiries, when reinstatement is ordered backwages are not granted as a matter of course by the Court in a proceeding under Article 226 of the Constitution of India. Still, reasons for the same are not far to seek. The Court is inadequately informed and it does not have the mechanism to know whether a certain employee, who was removed from service, when reinstated, should be given backwages must depend upon informations as to how the employee concerned was placed during the period after removal from service and

until he is reinstated. If he was gainfully employed elsewhere, it is obvious, he cannot claim backwages for the said period. There may be other circumstances as one indicated by the Supreme Court in its judgment in the case of Krishnakant Raghunath Bibhavnekar v. State of Maharashtra (2 supra) and in Ranchhodji Chaturji Thakorevs. The Superintendent Engineer, Gujarat Electricity Board (1 supra) that by his conduct the employee charged of a heinous criminal offence disintitled himself of being continued in service and so he was removed from service when he was convicted by the Court and thus when reinstated after all, it was he who had disabled himself from rendering service on account of conviction and incarceration in jail and he should not be given the benefit of backwages.

10. Rule 14, however, aforementioned is similar to the rule which fell for consideration before the Supreme Court in Krishnakant's case (2 supra) and says, when a dismissed employee is reinstated, the competent authority is required to make a specific order regarding the pay and allowances to be paid to the employee for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be, and whether or not the said period shall be treated as period spent on duty, and further, where the authority is of the opinion that the employee has been fully exonerated or, in the case of suspension, that it was while unjustified, the employee would be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

11. Thus from the facts above what transpires is that while deciding upon reinstatement of a dismissed employee, the competent authority has to decide whether the period of suspension and after dismissal until reinstatement would be treated as period spent on duty and once such a decision is taken, to decide upon whether the reinstatement is occasioned because the employee concerned has been fully exonerated or because the suspension was wholly unjustified, in that case he would be given the full pay, otherwise it would be decided what would be the quantum of backwages and other allowances. According to the writ petitioner - respondent, the ad hoc payment of Rs. 1,32,287/-was made only because the period of suspension until dismissed from service and the period after dismissal until reinstated, was, in the opinion of the competent authority, the period spent on duty. Learned Counsel for the appellants, however, has urged that the provisional payment was not as a consequence of the decision in terms of the aforementioned rule, but a decision in this behalf was taken when it is decided that the said period could not be treated as period spent on duty. Learned Counsel for the appellants has also drawn our attention to Rule 24 aforequoted, but it seems under a clear misconception, as the said rule is attracted only in the case of termination of service of a temporary employee, who is later reinstated.

12. Having considered the facts of the case in the light of the principles of law aforementioned, we are of the definite view that - (1) A decision has to be taken

by the employer even in the case of dismissal on the ground of conviction by the trial Court, which order of dismissal is recalled and the employee is reinstated after he is acquitted of the offence by the appellate Court. Rule 14 aforequoted has made no distinction between an order of dismissal in a disciplinary proceeding and an order of dismissal which is recorded as a consequence of conviction by a criminal Court; (2) It is in the discretion of the employer to decide, depending upon the nature of the offence and the order of the Court which has acquitted the employee of the criminal charge, whether the period of suspension until dismissal from service and the period from dismissal until reinstatement would be treated as period on duty, if so, what would be the quantum of backwages payable in terms of the principles of law aforementioned; and (3) Once, however, it is decided that the period shall be treated as on duty, the employee shall be entitled to backwages and the decision as to the quantum of backwages would depend as the rules aforementioned have envisaged.

13. This Court shall be reluctant, however, and shall ordinarily not decide upon the issue whether the period should be treated on duty or should not be treated on duty and if treated on duty, what would be the modality of payment of backwages. The Court, as we have observed earlier, is not adequately equipped to decide upon such a question. Adverting to the facts of the case it appears the appellant has not been clear in its stand on the question whether the period of absence from duty, either on account of suspension or on account of dismissal from service, would be treated on duty or not. At one stage a provisional payment is made, at the other stage an order is issued saying the said period is not treated on duty. Thus there would be no backwages paid. Any decision in terms of the rule aforequoted has to be taken keeping in view the principles aforementioned and decision making should be clear and fair so that the concerned employee is informed why he is not given the backwages, although reinstated in service. Impugned order has made no reference to any reason whatsoever to deny to the writ petitioner - respondent the benefit of the backwages. We are inclined for the said reason to modify the impugned direction and order as follows :

14. The appellant shall decide on the question whether the period of absence from duty, for the reasons aforementioned, of the writ petitioner-respondent shall be treated on duty and any backwages would be paid to him. While deciding to do so, the appellant shall take into account various principles as indicated above and consider - whether the acquittal has completely exonerated the writ petitioner-respondent of the charges, in the sense that it was a mistake that he was prosecuted and convicted by the trial Court, that during the period of absence from duty he was not gainfully employed and that there are other reasons to deny to him backwages. Accordingly the writ petition is ordered as above and the appeal is disposed of.