
(2008) 07 MP CK 0025
In the Madhya Pradesh High Court

P.G. Kshatriya

APPELLANT

Vs

The State of M.P. and Another

RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 302, 320

Citation : (2009) ILR (MP) 10 : (2008) 5 MPHT 82

Hon'ble Judges : A.K. Patnaik, C.J;S.S. Kemkar, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.—This is an appeal against the order dated 28-9-2005 passed by the learned Single Judge dismissing the Writ Petition No. 11567/2003 filed by the appellant.

2. The facts briefly are that the appellant filed an Original Application, O.A. No. 1784/1997, before the Madhya Pradesh State Administrative Tribunal, Jabalpur, (for short "the Tribunal") constituted under the Administrative Tribunals Act, 1985. In the O.A., the case of the appellant was that while he was working as a Tehsildar, Maihar in Satna District, he had recovered a fine amount imposed u/s 248 of the Madhya Pradesh Land Revenue Code, 1959 and had entered such amount in the money receipt book as well as in cash book but the fine amount was seized as a bribe by the Officers of the Madhya Pradesh Lokayukt on 19-12-1985. Thereafter, a criminal case was instituted against him and he was placed under suspension. After investigation, charge-sheet was filed and he was tried by the Special Judge, Satna, and acquitted by order dated 30-1-1995. An appeal was filed by the Lokayukt but was dismissed by order dated 18-10-1995 of the High Court. During pendency of the criminal case, the appellant retired from the service on 30-6-1991. By order dated 5-7-1996 the Commissioner, Jabalpur, treated the period of suspension of the appellant from 28-3-1988 to 30-6-1991 as on duty under Fundamental Rule 54 for all purposes and he was paid arrears of salary for the aforesaid period. Thereafter by an application dated 28-11-1996 to the Revenue Secretary, Government of Madhya Pradesh, the

appellant claimed legal expenses of Rs. 16,116.50 paise and travelling expenses of Rs. 14,106.00 paise, totalling of Rs. 30,222.50 paise, for defending himself in a criminal case and requested the Government to reimburse the amount of Rs. 30,222.50 paise but the amount was not paid to the appellant. The appellant accordingly prayed that an order be passed by the Tribunal directing the respondents to pay the amount of Rs. 30,222.50 paise and to pay 18% compound interest on the amount till the date of actual payment and to further pay Rs. 1,000/- as cost of proceedings and to also pay damages of Rs. 50,000/- per annum or Rs. 6,35,000/- in lump sum.

3. Thereafter the Madhya Pradesh State Administrative Tribunal was abolished and the O.A. was transferred to the High Court and renumbered as Writ Petition No. 11567/2003 and heard by a learned Single Judge of the High Court. Before the learned Single Judge, the appellant relied on a circular dated 5-4-1961 of the General Administration Department, Government of Madhya Pradesh, and a circular dated 31-1-1964 of the Finance Department, Government of Madhya Pradesh. But in the impugned order dated 28-9-2005, the learned Single Judge held that these circulars of the State Government are not applicable to a Government servant who is prosecuted in a criminal case and is acquitted and in any case whether the amount was paid to the lawyer by the appellant for his defence was a disputed question of fact and the High Court while exercising jurisdiction under Article 226 of the Constitution cannot decide this question and hence the appellant may claim the amount by filing a civil suit and if such a suit is filed the same will be decided in accordance with law. Regarding the claim of Rs. 50,000/- per annum or Rs. 6,35,000/- in lump sum towards damages on account of wrongful or malicious prosecution, the learned Single Judge held in the impugned order that as the claim for damages is disputed by the respondents, the appellant may file a civil suit for realization of such damages, if so advised, and if such a suit is filed, the same may be decided on its merits in accordance with law and such claim for damages based on disputed questions of fact is not within the scope of writ petition under Article 226 of the Constitution of India even if his fundamental right under Article 21 of the Constitution of India has been violated.

4. At the hearing of the appeal, the appellant who appeared in person submitted that he was entitled to legal expenses and travelling expenses amounting to Rs. 30,222.50 paise for defending himself in the criminal case instituted by the State as per the circular dated 5-4-1961 of the General Administration Department of the State Government and the circular dated 31-1-1964 of the Finance Department of the State Government and as per the provisions of Article 320(3) (d) of the Constitution of India and the learned Single Judge ought not to have dismissed the claim of Rs. 30,222.50 paise towards the legal expenses and travelling expenses on the ground that the amounts being disputed should be claimed by the appellant in a civil suit and the High Court cannot consider the claim under Article 226 of the Constitution. The appellant cited a Division Bench decision of the Assam High Court in *Mir Samsul Hussain Vs. Union of India* (UOI)

and Others, .

5. We find a lot of force in this submission of the appellant. In *Samul Hussain v. Union of India* (supra), Samul Hussain was initially appointed as a clerk in the Postal Department but thereafter appointed as Town Inspector for Gauhati Town. He was prosecuted for having illegally withdrawn Rs. 714/- and for attempt to cheat the department by presenting another bill for a sum of Rs. 1250.80 and pending disposal of these prosecutions he was suspended on 3-4-1951, but eventually acquitted of the charges on 8-9-1953 and reinstated in service. In a writ petition filed under Article 226 of the Constitution, he contended inter alia that he should be allowed the expenses which he had incurred in connection with his defence in the criminal prosecution. The Assam High Court found that the Postal Department had rejected his claim simply on the ground that the reimbursement of the expenses incurred by him in connection with his defence was not admissible under the Rules. The Assam High Court held that while dealing with the question, attention was not drawn to Article 320 of the Constitution and particularly Clause (3) of Article 320 of the Constitution which requires consultation of the Public Service Commission on any claim by or in respect of a person who is serving or has served under the Government in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty, should be paid out of the consolidated fund of the State. The Assam High Court disposed of the writ petition with a direction that if Samul Hussain makes a proper application to the authorities concerned they will fully consider the matter and if they refer the matter for consideration of the Public Service Commission, in that case the Commission would decide whether or not in the circumstances, the petitioner would be entitled to reimbursement of the amount claimed.

6. The case of the appellant before us is that he had incurred legal expenses of Rs. 16,116.50 paise for defending himself in a criminal case instituted against him by the State Government for recovering fine amount u/s 248 of the Madhya Pradesh Land Revenue Code, 1959, in discharge of his duty as Tehsildar, Maihar, which was seized as a bribe and the criminal case has ended in acquittal and his claim for reimbursement of such legal expenses was covered by the circular dated 5-4-1961 of the General Administration Department of the State Government. Paragraph 2(a) of the Circular dated 5-4-1961 is extracted hereinbelow:

Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant: Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings end in favour of the Government servant, Government will be prepared to entertain his claim for reimbursement of the costs incurred by him

for his defence. If Government are satisfied from the facts and circumstances of the case, that the Government servant was subjected to the strain of the proceedings without proper justification they may pay to him the whole or any reasonable proportion of the expenses incurred by him for his defence.

It will be clear from the aforesaid Paragraph 2 (a) of the Circular dated 5-4-1961 that if a criminal case instituted against the Government servant by the State in respect of the matters arising out of or connected with his official duties or his official position ends in favour of the Government servant, the Government will entertain his claim for reimbursement of the costs incurred by him for his defence and if the Government is satisfied from the facts and circumstances that the Government servant was subjected to the strain of the proceedings without proper justification then the Government may pay him all or any reasonable proportion of the expenses incurred by him for his defence.

7. The case of the appellant is also that he had travelled for his appearance in Court in the criminal case and his claim for reimbursement of expenses on such travel amounting to Rs. 14,106.00 was covered by the Circular dated 31-1-1964 of the Finance Department of the State Government. The relevant portion of the circular dated 31-1-1964 relating to the travelling allowance for Government servants undertaking journeys for appearing before police officers for investigation or for appearing in a Court of law is quoted herein below:

1. The State Government have had under consideration the question whether and if so, at what rates, T.A. should be allowed to Government servants in the following two types of cases,-

(i) where a Government servant, whether he is under suspension or not, performs journeys to attend Police/Special Police Establishment Enquiry in connection with a case in which he is suspected to be involved.

(ii) where a Government servant undertakes journeys during suspension for appearing in a Court of law, as an accused and is later on acquitted by the Court and reinstated in service or would have been reinstated in service but for death or his having attained the age of compulsory retirement or being allowed to retire voluntarily.

2. As regards case of the first type, it has been decided that T.A. as for a journey on tour may be allowed to a Government servant for such journeys provided that they are performed under the direction of or with the approval of the Head of Office in which he is for the time being employed or was employed before suspension.

3. As regards cases of the second type, it has been decided that T.A. as for journey on tour, based on the grade to which the Government servant belonged before suspension, may be reimbursed by the administrative department concerned, provided the legal expenses incurred by him in defending such proceedings are reimbursed to him, in full or in part under Article 320(3)(d) of

the Constitution. In cases where the journeys were performed by the Government servant by rail in a class lower than the class which he was entitled before suspension, the fares of the class actually used, in addition to his other entitlements of T.A. as on tour, may be paid.

It will be clear from Para 3 of the circular quoted above that in the second type of cases where a Government servant undertakes journeys during suspension for appearing in a Court of law, as an accused and is later on acquitted by the Court and would have been reinstated in service but for having attained the age of retirement. T.A. for a journey on tour based on the grade to which the Government servant belonged before suspension, may be reimbursed by the administrative department concerned provided the legal expenses incurred by him in defending such proceedings are reimbursed to him in full or in part under Article 302(3)(d) of the Constitution.

8. In our considered opinion, therefore, the view taken by the learned Single Judge in the impugned order that the circular dated 5-4-1961 of the General Administration Department of the State Government and the circular dated 31-1-1964 of the Finance Department of the State Government are prima facie not applicable to the case of the appellant is incorrect. The two circulars dated 5-4-1961 and 31-1-1964 are clearly applicable to the case of the appellant as a criminal case instituted against him by the State in respect of matters arising out of or connected with his official duties or his official position as Tehsildar, Maihar, ended in his favour and the Government must therefore consider his claim for reimbursement of costs of Rs. 16,116.50 paise for his defence and if the Government is satisfied from the facts and circumstances of the case that the appellant was subjected to strain of the proceedings without proper justification, the Government may pay to him the whole or any reasonable proportion of the expenses incurred by the appellant. Further if the Government reimburses the whole or proportion of the legal expenses incurred by the appellant for defending himself in a criminal case, the Government must consider reimbursing the travelling allowance for undertaking journey during suspension for appearing in the Court in a criminal case in accordance with the circular dated 31-1-1994. From the Return and Additional Return filed by the respondents in the O.A., it appears that instead of considering the claim of the appellant for reimbursement of the legal expenses and travelling expenses, the State Government has taken a view that the two circulars are not applicable to a Government servant who is prosecuted for offences, particularly offences under the Prevention of Corruption Act. Appropriate writ or directions will therefore have to be issued under Article 226 of the Constitution to the respondents to consider the claim for reimbursement of the expenses of Rs. 30,222.50 paise to the appellant.

9. Regarding the claim for damages of Rs. 50,000/- per annum or Rs. 6,35,000/- in lump sum malicious prosecution, however, the remedy for the appellant is a civil suit against the respondents in which the ingredients of malicious prosecution and the quantum of damages are factually established by evidence.

The High Court in exercise of power under Article 226 of the Constitution can only grant compensation for breach of fundamental right under Article 21 of the Constitution, which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The criminal proceedings instituted against the appellant obviously was in accordance with the Prevention of Corruption Act and the Criminal Procedure Code and in case the appellant was arrested and tried, the same was in accordance with the procedure established by law. There is, thus, no violation of the right of the appellant under Article 21 of the Constitution and therefore, the High Court cannot in exercise of its power under Article 226 of the Constitution, award compensation to the appellant. The learned Single Judge was right in holding that the appellant, if so advised, may file a civil suit for damages of Rs. 50,000/- per annum or Rs. 6,35,000/- in lump sum towards damages for malicious prosecution.

In the result, this appeal is partly allowed and the respondents are directed to consider the claim for reimbursement of legal expenses and travelling expenses incurred by the appellant in defending himself in the criminal case before the Court and undertaking journeys to the Court while he was under suspension, totalling to Rs. 30,222.50 paise in accordance with the circular dated 5-4-1961 of the General Administration Department of the State Government and the circular dated 31-1-1964 of the Finance Department of the State Government and take decision within a period of two months from the date of receipt of the certified copy of the order. No costs.