

(2015) 02 RAJ CK 0258
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6643 of 2009

Rampal

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Arms Act, 1959 — Section 25, 29, 3, 7

Citation : (2015) 145 FLR 412 : (2015) LLR 599

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Avinash Acharya, for the Appellant; M.S. Godara, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.

1. Heard learned Counsel for the parties.

By way of the instant writ petition, the petitioner seeks a direction to the respondent-Rajasthan State Road Transport Corporation (RSRTC) for payment of his dues during the period of his suspension i.e. 7.12.1993 to 28.2.2002.

Facts in brief are that the petitioner, a conductor in RSRTC, was found involved in a criminal case under sections 3/25, 7/25 and 29 of the Arms Act. He was placed under suspension vide order Annex. 1 dated 7.12.1993. He approached this Court against the said order, prolonged suspension and against the nonpayment of subsistence allowance by filing a writ petition No. 2799/2001. The writ petition was allowed by order Annex. 2 dated 27.2.2002 and the respondents were directed to mark the presence of the petitioner in the attendance register and to make payment of subsistence allowance to him. The stance of the RSRTC in the said writ petition was that the petitioner did not mark his attendance at the headquarters in pursuance of his suspension order. However, it is not disputed that neither any notice was given to the petitioner for the so-called unauthorized

absence nor any disciplinary action was taken against him for the alleged misconduct. Thereafter, a significant development cropped up inasmuch as, the criminal case registered against the petitioner being Sessions Case No. 143/03 resulted into his acquittal by judgment dated 8.12.2005 (Annex. 9) and in pursuance thereof, the petitioner's suspension was revoked.

2. Learned Counsel for the petitioner submits that if at all any amount of subsistence allowance was to be withheld, then as per the clarification issued by the State Government to Rule 53 of the Rajasthan Service Rules, such an action was only permissible after holding an enquiry under the C.C.A. Rules, 1958. He further contends that as per Clause 35(d) of the Standing Orders of the Corporation, upon the conclusion of the enquiry or criminal proceedings, when a workman is not found guilty of the charge, it is deemed that he was on duty during the period of suspension and is entitled to receive the same wages as he would have received had he not been suspended after deducting subsistence allowance paid to him for such period. He submits that now in view of the subsequent developments, the petitioner having been acquitted in the criminal case on the basis whereof, he was placed under suspension, he is entitled to receive full wages for the period between 7.12.1993 to 28.2.2002, during which he was placed under suspension, as he was not even paid any subsistence allowance during the said period which is evident from the order Annex. 8. He, therefore, prays that the writ petition deserves to be accepted.

3. Per contra, learned Counsel appearing for the respondents vehemently opposes the submissions advanced by the petitioner's Counsel and urges that the specific stance of RSRTC in the earlier writ petition preferred by the petitioner was that the petitioner did not mark his presence as per directions pursuant to his suspension order and, therefore, he is not entitled to any subsistence allowance or salary for the said period. However, he fairly concedes that no departmental enquiry, as proposed under the clarification to Rule 53 of the R.S.R. was instituted against the petitioner for his alleged unauthorized absence.

4. It is also relevant to mention here that even in the order Annex. 8 dated 9.5.2002, whereby the petitioner was deprived of the subsistence allowance, it is not reflected that the petitioner was given any notice of absence from duty during the said period.

5. In this view of uncontroverted facts noted above and in view of the language of Clause 35(d) of the Standing Orders of RSRTC, the petitioner is entitled to receive full salary and emoluments for the period during which he was placed under suspension.

6. Resultantly, the instant writ petition deserves to be and is hereby allowed and the respondents are directed to make complete payment of salary as per Clause 35(d) of the Standing Orders of RSRTC along with interest at the rate of 6% p.a. No order as to cost.