
(2016) 03 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3598 of 2016

The State of Telangana

APPELLANT

Vs

C. Krishna Reddy

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Citation : (2017) 3 ALT 166 : (2016) 5 AndhLD 409

Hon'ble Judges : C.V. Nagarjuna Reddy and M. Seetharama Murthi, JJ.

Bench : Division Bench

Advocate : Government Pleader for Services (TS), for the Petitioners; Mr. P. Ganga Rami Reddy, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

C.V. Nagarjuna Reddy, J.—The short issue that needs to be considered by this Court in this writ petition is whether respondent No.1 is entitled to salary and other pay and allowances during his suspension period from 16.03.2007 to 01.09.2008 and also whether he is entitled for his suspension period to be treated as ?on leave? or as ?on duty?.

2. Respondent No. 1, who faced disciplinary proceedings, suffered penalty of reversion from the cadre of Principal to that of Junior Lecturer in Zoology, by petitioner No.2?s proceedings, dated 28.08.2008. Feeling aggrieved by the said proceedings, respondent No.1 has filed an appeal before petitioner No.1. On considering his appeal along with the appeals of similarly placed persons, petitioner No.1 issued G.O.Rt. No. 534, Higher Education (IE.I) Department, dated 28.07.2010, whereby the penalty imposed on respondent No.1 and three others was reduced to that of stoppage of two annual grade increments, without cumulative effect, which is a minor penalty. Before the said order was passed, respondent No.1 approached petitioner No.2, by way of a representation, for regulating his suspension period, by sanctioning eligible leave of 536 days, for the period from 16.03.2007 to 01.09.2008. After examining the said representation, petitioner No.2 passed an order, dated 18.03.2010, accepting the

aforesaid request and sanctioned half pay leave. Following the subsequent order in G.O.Rt. No. 534, dated 28.07.2010, passed in appeal, by petitioner No.1, respondent No.1 made a representation, dated 05.01.2011, to the said petitioner, with a request to waive the punishment already reduced and also treat the periods of suspension as 'on duty'. By memo, dated 18.08.2011, petitioner No.1 rejected this request. Assailing this memo, respondent No.1 filed O.A. No. 7621 of 2012 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal')—respondent No.2. He has also sought for a consequential direction to the petitioners to treat the suspension period from 16.03.2007 to 01.09.2008 as 'on duty' and pay salary, allowances and other consequential benefits during that period. By the impugned order, dated 27.01.2015, this O.A. was allowed by the Tribunal, based on its earlier order, dated 02.09.2014, in O.A.No.9314 of 2012 and a direction was issued to the petitioners to treat the aforementioned period as 'on duty' with salary and other consequential benefits. Feeling aggrieved by this order, the State of Telangana and the Commissioner of Intermediate Education (TS) filed this writ petition.

3. At the hearing, the learned Government Pleader for Services (TS) appearing for the petitioners has submitted that the Tribunal has committed an error in allowing O.A. No. 7621 of 2012 filed by respondent No.1, without noticing G.O.Ms. No. 214, Finance & Planning (FW.FR.II) Department, dated 22.12.2007, under which, the proviso to Sub-Rule (5) of F.R.54-B of the Andhra Pradesh Fundamental Rules (for short 'the Rules') is deleted. He has placed before the Court, a copy of the said G.O.

4. Mr. P. Ganga Rami Reddy, learned counsel for respondent No.1, while not disputing the above position in law, however, has submitted that in view of the fact that the appellate authority has converted major penalty into minor penalty after petitioner No.2 passed order, dated 27.01.2015, impugned in the O.A., it is appropriate that petitioner No.2 reconsiders the entire case and passes a fresh order.

5. We have carefully considered the respective submissions of the learned counsel for the parties.

6. Under proviso to Sub-Rule (5) of F.R.54-B of the Rules, as it existed earlier, in cases, where major penalty was finally converted into one of minor penalty, the suspension period can be said to be wholly unjustified and such employee should be paid full pay and allowances for the period of suspension, by passing an appropriate order. This proviso was deleted by the erstwhile State of Andhra Pradesh, by G.O.Ms.No.214, dated 22.12.2007. Evidently, the Tribunal has not noticed this change in Rule position and proceeded on the premise that in a case of minor penalty, the employer has no option other than treating the period of suspension as 'on duty' and consequently, the employee is entitled to payment of full pay and allowances. With the deletion of proviso to Sub-Rule (5) of F.R.54-B of the Rules, both the minor and major penalties are equated and power is vested in the disciplinary authority to order payment of full pay and allowances,

only if he is satisfied that suspension of employee was wholly unjustified. Similarly, under F.R.54-B (1)(b) of the Rules, on reinstatement of an employee, the competent authority shall consider whether or not the suspension period shall be treated as a period spent on duty. No doubt, in his order, dated 18.03.2010, petitioner No.2 has accepted the request of respondent No.1 and directed that the period of his suspension shall be regulated by sanctioning half pay leave. This order was, however, passed at a stage when respondent No.1 has suffered a major penalty, which was subject matter of an appeal. Further, petitioner No.2 has not taken any decision regarding his satisfaction under Sub-Rule (3) of F.R.54-B of the Rules, whether suspension of respondent No.1 was wholly unjustified or not. Considering the subsequent event of petitioner No.1 converting the major penalty into a minor one, this Court is of the opinion that this is a fit case, where petitioner No.2 reconsiders the whole aspect, both with regard to the entitlement of respondent No.1 to be treated as being 'on duty' during his suspension period under F.R.54-B (1)(b) and also whether he is entitled to full pay and allowances under Sub-Rule (3) of F.R.54-B of the Rules.

7. Accordingly, the impugned order, dated 27.01.2015, in O.A.No.7621 of 2012 of the Tribunal is set aside. Petitioner No.2 is directed to reconsider the whole issue as observed above and pass a fresh order within a period of three months from the date of receipt of a copy of this order.

8. Subject to the above directions, the Writ Petition is allowed.

9. As a sequel to allowing the writ petition, W.P.M.P.No.4598 of 2016 filed by the petitioners for interim relief shall stand disposed of as infructuous.