
(2007) 04 MAD CK 0234

In the Madras High Court

Case No : Writ Petition No. 32046 of 2001

Union of India (UOI)

APPELLANT

Vs

R.P. Ramesh Murugan and Central Administrative Tribunal

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 380, 457

Citation : (2007) 04 MAD CK 0234

Hon'ble Judges : S. Palanivelu, J; Dharmarao Eliphe, J

Bench : Division Bench

Advocate : M. Vinayagamurthy, for the Appellant; V. Parthiban, for Paul and Paul, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—Aggrieved by the order of the Central Administrative Tribunal, Madras Bench in O.A. No. 591 of 2004, quashing the order dated 19.04.2004 and directing the respondent's Management to treat the period of suspension during which the applicant was under suspension, as spent on duty, leaving the matter regarding the pay and allowances to the discretion of the Management, this writ petition has been preferred by the Management/petitioners herein.

2. Factual matrix of the matter is as under:

The first respondent herein is working as labourer (unskilled) in the second petitioner factory. During 1997, since he involved in a criminal Case, on 03.03.1997, he was placed under Suspension, further ordering that he is deemed to have been suspended with effect from the date of detention i.e. from 17.2.1997 on the ground that he was detained in police custody for more than 48 hours in respect of criminal cases. After suspension, as the 1st respondent/workman was involved in four more criminal cases, his suspension was continued by virtue of the order of the Management dated 20.09.1999 until further orders, till termination of all criminal cases or any departmental proceedings that may be

initiated.

3. As the first respondent was acquitted in all the Criminal Cases, the suspension was revoked by memos of an order dated 05.03.2002 with the immediate effect and the workman was directed to report for duty immediately. On 30.09.2002, the writ petitioners/Management issued a show cause notice stating that since the first respondent/workman was acquitted in all Criminal Cases on benefit of doubt alone, which cannot be regarded as honourable acquittal, the Deemed Suspension was wholly justified and the period of suspension from 17.02.1997 to 05.03.2002 cannot be treated as period "spent on duty". Therefore, the workman was required to make representation on that proposal within 15 days from the date of receipt of the said proceedings.

4. On 12.10.2002, the first respondent/workman submitted his representation contending that the Deemed Suspension was passed on 05.03.2002 unconditionally and hence he is entitled for full back wages during the period of Deemed Suspension since he was found not guilty by Criminal Courts, and in pursuance of the acquittal judgments rendered by the Criminal Courts, the decision of the Management was unjustified. He has reiterated his request, in the said representation, requesting the Management to treat the period of suspension as "spent on duty".

5. Since there was no consideration of his representation by the petitioners/Management, the first respondent/workman forwarded reminders on 09.07.2003 and 24.09.2003. On 19.04.2004, the writ petitioner issued impugned order, rejecting the request of the first respondent and informing that the period of suspension from 17.02.1997 to 05.03.2002 will not be treated as "spent on duty" for any purposes and he was not eligible for any pay and allowances other than subsistence allowance already drawn by him for the said period. The request of the 1st respondent/workman was turned down by the petitioner/Management on the ground that the first respondent was acquitted in criminal cases granting benefit of doubt, which is not a hounourable acquittal by Criminal Court.

6. The Central Administrative Tribunal, Madras Bench allowed the Original Application filed by the first respondent quashing the impugned order aforementioned, against which the present writ petition came to be filed.

7. There were as many as five criminal cases registered against the first respondent under various Sections of I.P.C. The particulars of the said cases are as follows:

Sl. No. Calendar Case No. Decision of Criminal Court 1 314/1997 Prosecution side has failed to prove the case against the accused beyond all reasonable doubts and thereby giving benefit of doubt, the accused Shri Ramesh Murugan is acquitted u/s 379 IPC. 2 315/1997 Prosecution side has failed to prove the case against the accused beyond all reasonable doubts and thereby giving benefit of doubt, the accused Shri Ramesh Murugan is acquitted u/s 379 IPC. 3

61/97 Prosecution side has failed to prove the case against the accused beyond all reasonable doubts and thereby giving benefit of doubt, the accused Shri Ramesh Murugan is acquitted u/s 379 IPC. 4 108/1998 Prosecution side has failed to prove the case against the accused beyond all reasonable doubts and thereby giving benefit of doubt, the accused Shri Ramesh Murugan is acquitted under Sections 457 and 380 IPC. 5 109/1998 Prosecution side has failed to prove the case against the accused beyond all reasonable doubts and thereby giving benefit of doubt, the accused Shri Ramesh Murugan is acquitted under Sections 457 and 380 IPC.

8. The learned Counsel for the first respondent has drawn the attention of this Court to the provisions of Fundamental Rules governing the service of the Government employees. F.R.54-B(1) deals with the procedure to be followed by the competent authority upon reinstatement of any suspended employee which reads thus:

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 nor 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) omitted)

(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 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 attributed 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.

9. The Tribunal considered the above said rules and came to the conclusion that the first respondent will not be entitled for full pay and allowances according to

those rules. The Tribunal has referred FR-54-A in its order, which provides that when dismissal or removal order of any employee is set aside by the Court on merits of the case, the Government servant becomes entitled to pay and allowances and for treating the said period as duty for all purposes. But F.R.54-A has no application in the case of the first respondent.

10. The Tribunal referred Administrative Instructions No. 1(D) contained in the Ministry of Finance O.M. No. 15(8)-E.IV/57 dated 28.03.1959 which is retracted in page No.245 of Swamy's Compilation of Fundamental Rules and Supplementary Rules 15th Edition, 2001.

When a Government servant who is deemed to be under suspension in the circumstances mentioned in Clause (a) or who is suspended in the circumstances mentioned in Clause (b) is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under FR 54-B, i.e., In the event of his being acquitted of blame or (if the proceedings taken against him was for his arrest for debt) its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under FR-B(3); otherwise it may be dealt with under proviso to FR.54-B.

(G.I., M.F., O.M. No. F.15(8), IV/57, dated the 28th March, 1959, as amended),

11. The cumulative effect of the above said Fundamental Rules and Administrative Instructions issued by the Central Government would go to show that if the disciplinary proceedings instituted against the Government servant was delayed owing to the reasons directly attributable to the Government servant, he is not entitled for pay and allowances for the period during which he was under suspension on account of pendency of criminal case against him. It is further stated that the Management should justify its decision in unequivocal terms, regarding the circumstances under which the period of suspension could not be treated as "spent on duty".

12. As far as the Management is concerned the impugned order dated 19.04.2004, throws light on the subject. The first respondent was involved in a string of criminal cases, five in number, during the relevant period. During the pendency of those criminal cases he was under suspension. He got acquittal in all the criminal cases by extension of benefit of doubt that arose in prosecution case, as observed by the Judicial Magistrate Courts. No criminal case was registered or initiated against him at the behest of the Management. Those cases were out-come of police complaints against him. Hence, the absence from service of the employee was not attributable to the Management. The Management has mentioned in their proceedings dated 30.09.2002 and 19.04.2004 that the acquittal obtained by the employee was not a honourable one but was a result of grant of benefit of doubt and hence his case could not be brought under the purview of FR 54-B. In this context, for better appreciation,

we extract the operative portion of the proceedings of Management, dated 19.04.2004 as follows:

In view of the foregoing that the said suspension was justified, and as per existing Government instructions "where the acquittal is not honourable and the case is decided by giving benefit of doubt" the suspension is justified and the suspension/deemed suspension cannot be treated as one spent on duty and in such cases, the Government Employee shall be allowed only such pay and allowances as has been admitted to him.

Thus, the management has justified its decision for the view taken by it for refusing the pay and allowances during the period of suspension.

13. The arguments of the learned Counsel for the writ petitioner gained momentum while he referred to decisions of Honourable Supreme Court directly on this subject and he would submit that since the decision of the Management is justifiable, except the subsistence allowance paid during the suspension period, the employee was not at all eligible for any other pay and allowances. For his contention, he invited the attention of this Court to the decision of Honourable Supreme Court in *Ranchhodji Chaturji Thakore v. Superintending Engineer, Gujarat Electricity Board and Anr.* 1997 (2) L.L.N. 979 and important portions therein have been culled out hereunder:

The retirement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back-wages? 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 the proviso to the statutory rules applicable to the situation. The question of back-wages 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 its own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back-wages.

As per the observations of the apex Court, in the aforementioned decision, if the employee himself had involved in a crime, where the Management had not played any role, though he was later acquitted, since he had disabled himself from rendering service on account of conviction and incarceration in jail, he is not entitled for any back wages.

14. In *Union of India and Ors. and Jaspal Singh* 2004 (1) L.L.N. 520, the above said decision has been referred and it is held thus:

If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial Court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law requires a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reasons that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages is liable to be and is hereby set aside.

In both the decisions, the Supreme Court has held that if the Management could not avail the services of the employee on account of his deeds, by no stretch of imagination, it could be stated that the management has to pay the employee pay and allowances for the period of suspension.

15. In this case, as adverted to supra, the first respondent was implicated in the criminal cases by the police complaints and after trial, in all those cases he was acquitted by the Courts giving benefit of doubt. The learned Counsel for the first respondent in his argument would say that it is the usual practice of the Judicial Officers to mention in their judgments, if the result of the case was one of acquittal, it is by means of extending benefit of doubt. But his contention is far from acceptance.

16. The learned Counsel for the first respondent placed reliance upon a decision of Honourable Supreme Court in *Brahma Chandra Gupta Vs. Union of India (UOI)*, and contended that when the employee got acquittal in a criminal case, he must be made eligible to get the monetary benefits for the period of suspension. The principles laid down in the said decision are as follows:

Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial Court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary

should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach.

The facts discussed in the above said case are quite distinguishable with those in this case. In the case before the Supreme Court, the Management did not justify its decision to place the employee under suspension in view of pendency of criminal case and it had been paying 3/4th of his salary during the period of suspension, thereafter the employee initiated proceedings for remaining 1/4th his salary for the said period, and finally the Supreme Court recognised his rights to get the said amount. The Supreme Court has candidly observed that the management has not held the suspension justified because, 3/4th of the salary was ordered to paid to the employee. Based on these circumstances, the Supreme Court held that the employee was entitled to get full back wages throughout. But, the facts in this case are otherwise. The Management has held the suspension was justified and subsistence allowance alone was paid to the employee, but not any portion of salary. Hence, the circumstances of this case stand on a different footing.

17. Summarising all, as stated by the Management, the suspension order passed by the Management was justified and that the employee was not entitled to get any pay and allowances during the period of suspension. The Central Administrative Tribunal, on erroneous premise, has concluded that after the acquittal in the Criminal cases, on reinstatement, the employee is entitled for full backwages, during the period of suspension. The said conclusion of the Tribunal is not acceptable, which deserves to be set aside. On the factual background, the employee has to be non-suited for the relief. Legally also, he is not entitled for the reliefs sought for.

18. In fine, the writ petition is allowed. The order of the Central Administrative Tribunal in O.A. No. 591 of 2004 dated 26.04.2005 is set aside. No costs.