
(2014) 04 AP CK 0108

In the Andhra Pradesh High Court

Case No : Review W.P.M.P. No. 40318 of 2013 in W.P. No. 26924 of 1999

V. Rama Rao

APPELLANT

Vs

The Chief General Manager and Another

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Citation : (2014) 4 ALD 638 : (2014) 4 ALT 41 : (2014) 142 FLR 682 : (2015) LabIC 1435 : (2014) 3 LLJ 140 : (2014) 3 LLN 630

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Kowturu Vinaya Kumar, Advocate for the Appellant; K. Srinivasa Murthy, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Chandra Kumar, J.—This review petition has been filed by the petitioner to review the order dated 21.06.2013 passed in W.P. No. 26924 of 1999 by this Court.

2. The petitioner herein was appointed in the respondent bank on 23.04.1970. He was removed from service on 23.11.1996 and the same was confirmed by the order of the second respondent on 27.12.1997. In the removal order dated 16.11.1996, in Para 4, it is mentioned as follows:-

As regards the period spent by you under suspension, I have examined the manner and consider that there is no case to treat it as on duty and accordingly, you will not be entitled for payment of any amount except the amount already paid to you by way of subsistence allowance.

3. When it was brought to the notice of this court that the petitioner has already put in 26 years of service and he had already attained the age of retirement and an officer who is removed from service is also entitled for pension and other retire mental benefits as per the existing rules if such employee had already put in 26 years of service. Having regard to such submissions, this Court passed the

order under review and the operative of the said order reads as follows:-

In the above circumstances, the respondents are directed to consider the case of the petitioner as to whether he is entitled for pension or other retirement benefits and pass appropriate orders within six weeks from the date of receipt of copy of this order.

4. Now this review petition has been filed to review the order dated 21.06.2013 seeking a direction to the respondent bank to count the period of suspension for the purpose of determining the pensionary benefits of the petitioner.

5. Learned counsel for the petitioner submitted that since there is no specific direction with regard to the suspension period, the respondents are taking advantage of the same. It is further submitted that since the petitioner was under an impression that there is no need to request this Court to make any specific observation with regard to the suspension period, as it is not mentioned in the removal order that such period cannot be counted for any other purpose, i.e., for pensionary benefits. It is also his submission that the petitioner, even after exercising due diligence, could not suspect that the respondents would pass an order detrimental to his interest merely because there is no reference with regard to the suspension period in the order under review and, therefore, the review is maintainable. It is also his submission that this Court ought to have clarified the position with regard to the period of suspension in the order under review and non-clarification of the same is an error apparent on the face of the record and, therefore, the review is maintainable.

6. Per contra, Learned counsel appearing for respondent bank submits that the respondents have already passed a detailed order stating that the petitioner will not be entitled for the pensionary benefits since he will not come within the eligibility criteria. According to the learned counsel for the respondent bank, an employee should have completed 20 years of pensionable service with 50 years of age or 25 years of pensionable service irrespective of the age and since the petitioner has not completed 25 years of service, he will not be eligible for pension.

7. The only question that arises for consideration in this review petition is how the suspension period has to be treated for the purpose of calculating the total period of service; and whether the same has to be clarified by way of review.

8. As seen from the record, as referred above, in the removal order, it is mentioned that there is no case to treat it (suspension period) as on duty and accordingly, you (the petitioner) will not be entitled for payment of any amount except the amount already paid to you. The removal order does not show that the period of suspension shall not be counted for the purpose of calculating the pensionary benefits of the petitioner, probably, since the respondents did not whisper that the period of suspension shall not be counted for the purpose of calculating the pensionary benefits, this Court had not made any observation with regard to the suspension period.

9. An employer may initiate disciplinary proceedings against his employee. Suspension of an employee may become necessary where in a case, the charges are grave and continuing such employee in the same position may be detrimental to the interest of the organisation. Where the alleged misconduct pertains to minor charges, i.e., resulting in imposing the minor penalties, suspension may not be necessary. Suspension means keeping an employee away from his work. The word "suspend" is defined in "the Chambers Dictionary" as "to make to stop for a time", "to defer", "to hold in an indeterminate state". In Oxford Dictionary, the word "suspend" is defined as "temporarily prevent from continuing or being in force or effect". Thus, it is only an intermittent arrangement. Whether the monetary benefits are paid or not, an employee shall be deemed to be continued in service, at least, for the purpose of calculating the total length of service put in by an employee and the suspension period has to be counted. However, it is the primary duty of every employer to see that the disciplinary proceedings are completed at an early state. It is not desirable to keep an employee under suspension for more than six months and all the disciplinary proceedings have to be completed as early as possible, at least, within a period of one year. If an employee is continuously kept under suspension, it will not only cause misery to the employee and his family members, but also it will be a loss to the organisation if he is subsequently reinstated into service. Moreover, in any removal order, the authorities should specifically mention how suspension period is to be treated. The suspension does not result in break the service. Only removal order or dismissal order brings an end to the service. Unless the charges are proved and an employee is removed from service, he shall be deemed to be continued in service. During the period of suspension, an employee will be deemed to be in service. While passing final orders, the disciplinary authority may pass specific order with regard to the salary and monetary benefits to be paid to the employee during suspension period. Even if monetary benefits are denied, that will not amount to break of service.

10. In the case between O.P. Gupta Vs. Union of India (UOI) and Others, 7, the apex Court observed as follows:-

An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension.

11. In the case between P.L. Shah Vs. Union of India (UOI) and Another, , the Apex Court observed as follows:-

An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him.

12. In the case between Rohitashwa Kumar Vs. State of Rajasthan³, the Apex Court observed as follows:-

An order of suspension does not put an end to the service of an employee and he

continues to be member of the service.

Even though the order of suspension has injurious effect on the suspended employee, even so it is not a penalty imposed on him.

13. In the case between Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.⁴, the Apex Court observed as follows:-

The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his salary.

14. In the case between Khem Chand Vs. Union of India⁵, the Apex Court observed as follows:-

An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. When that order of dismissal was set aside the appellant's service revived; and so long as another order of dismissal is not made or the service of the appellant is not terminated by some other means, the appellant continues to be a member of the service and the order of suspension in no way affects this position. The real effect of the order of suspension is that though he continued to be a member of the Government service he was not permitted to work, and further, during the period of his suspension he was paid only some allowance-generally called "subsistence allowance"-which is normally less than his salary-instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a Government servant injuriously. There is no basis for thinking however that because of the order of suspension he ceases to be a member of the service.

15. In the instant case, the respondents did not state in the removal order that the period of suspension should not be counted for the purpose of calculating the pensionary benefits of the petitioner and subsequently, they cannot say that the said period cannot be counted for the purpose of calculating the pensionary benefits. A reading of the order under revision makes it clear that this Court was under an impression that the petitioner had already put in 26 years of service and as per the rules, he will be entitled to pension. Thus, this Court was under the impression that there is no need to dispose of the case on merits since the petitioner would automatically get the pensionary benefits. The respondents subsequently cannot say that the period of suspension cannot be treated for the purpose of pensionary benefits and treat it as a break in service. The respondents subsequently cannot pass any order imposing severe punishment, i.e., increasing the punishment than the punishment originally imposed.

16. Normally, no employee should be kept under suspension for a longer period. But the facts of this case reveal that the petitioner was kept under suspension from 13.02.1987 to 20.03.1991, i.e., for a period of four years one month. The

petitioner was appointed on 23.04.1970 and was removed on 23.11.1996 and thus, he had put in more than 26 years of service.

17. Thus, it appears that there is an error apparent on the face of the record in not clarifying the period of suspension in the order under review.

18. Accordingly, this review petition is allowed and the order dated 21.06.2013 passed in W.P.No.26924 of 1999 by this Court stands revised to the effect that the period of suspension of the petitioner shall be counted for the purpose of calculating the total period of service for determining his pensionary benefits. However, it is made clear that the petitioner shall not be entitled for any monetary benefits for the suspension period, except the subsistence allowance as per rules.