

K. Ponnamma (Smt)

Vs

State of Kerala and Others

SLP (C) No. 4885 of 1997

(K. Ramaswamy. G. T. Nanavati JJ)

17.03.1997

ORDER

1. This special leave petition has been filed against the judgment of the Kerala High Court, made on 7-11-1996 in Writ Appeal No. 850 of 1996.

2. Admittedly, the petitioner and her husband were charged for an offence under Section 302 and also Section 201 IPC etc. While the husband of the petitioner was convicted, she was acquitted of the offences under Sections 302 and also 201, getting her the benefit of doubt. Consequently, she was reinstated into service but back wages were denied after conducting the enquiry under the Kerala Service Rules. Rule 57 of the Rules provides that :

"An officer who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, or is undergoing imprisonment, shall be deemed to be under suspension with effect from the date of commencement of the detention or imprisonment, as the case may be, and shall not be allowed to draw any pay and allowances during such period of suspension other than any subsistence allowance and other allowances that may be granted in accordance with Rule 55, until he is reinstated in service."

Rule 56 of the Rules provides thus :

"(1) When an officer who has been dismissed, removed or compulsorily retired including an officer who has been compulsorily retired under Rule 60-A, is reinstated as a result of appeal or review or would have been so reinstated, but for his retirement on superannuation while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order :

(a) regarding the pay and allowances to be paid to the officer for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be,

(b) whether or not the said period shall be treated as a period spent on duty."

3. A reading thereof would clearly indicate that where an officer has been kept under suspension, on account of the pendency of the charges/detention for 48 hours and continued to remain under suspension pending the trial of the criminal charge, statutorily he/she is disabled to perform the duties of the post. On re-instatement under Rule 56, the competent authority shall have a duty to

consider whether, on reinstatement, the suspended officer would be entitled to the payment of full pay etc. for the period of his suspension. The mandate of Rule 56 is that the competent authority should consider the case in accordance with the rules and pass the order. The nature of the order is discretionary depending upon the facts in the case. It is seen that on account of the involvement of the petitioner in a criminal charge by statutory operation, she was under suspension till she was acquitted. On acquittal, the departmental enquiry was conducted as to the nature of the order to be made under Rule 56. Accordingly, the authority, in its discretion, found that the payment of the salary during the period of suspension except suspension allowance already paid, could not be granted. It being in accordance with the Rules, we do not think that the High Court has committed any error warranting interference.

4. The special leave petition is dismissed.