

SUPREME COURT OF INDIA

Gr.Hydrabad Mun.Corp.

Vs.

M.Prabhakar Rao

C.A.No.6014 of 2011

(R.V.Raveendran and A.K.Patnaik,JJ.,)

28.07.2011

JUDGMENT

A.K.Patnaik,J.,

SLP.(Civil)No. 22723 of 2010

1. Delay condoned.

2. Leave granted.

3. This is an appeal against the order dated 18.02.2010 of the Division Bench of the Andhra Pradesh High Court dismissing Writ Petition No.1564 of 2010 of the appellant against the order dated 18.08.2009 of the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. No.7377 of 2008.

4. The facts briefly are that the respondent was working as a Bill Collector in the Municipal Corporation of Hyderabad. On 19.05.2007, he was placed under suspension by the Commissioner & Special Officer, Municipal Corporation of Hyderabad (for short `the competent authority), as it was reported by the Deputy Director, Anti-Corruption Bureau, C.I.U. and City Range Hyderabad, that he had demanded Rs.2,000/- from the complainant, M.R. Srinivas, for assessment of his house and had accepted the bribe. On 28.06.2001, the competent authority revoked the suspension of the respondent and reinstated him in service without prejudice to the prosecution pending against him and posted him in a non-focal post. The respondent was thereafter prosecuted, but acquitted by the trial court. The acquittal of the respondent was challenged by the State in the Andhra Pradesh High Court in Criminal Appeal No. 2548 of 2004, but by judgment dated 06.12.2004, the High Court dismissed the appeal.

5. The respondent then made a representation seeking back-wages for the suspension period and other consequential benefits, but the same was rejected by Memo dated 01.07.2005. The respondent filed O.A. No.3627 of 2005 before the Andhra Pradesh Administrative Tribunal,

Hyderabad (for short 'the Tribunal') against such rejection of back-wages for the suspension period and by order dated 13.11.2006, the Tribunal set aside the Memo dated 01.07.2005 and remitted the matter to the authorities with a direction to re-examine the entire issue with reference to the rules and pass appropriate orders duly giving an opportunity to the respondent. The competent authority in his order dated 17.11.2008 re-examined the issue and took the view that the suspension of the respondent cannot be regarded as wholly unjustified and hence the back-wages and consequential benefits for the suspension period cannot be paid to the respondent. Aggrieved, the respondent filed O.A. No.7377 of 2008 before the Tribunal and by order dated 18.08.2009, the Tribunal allowed the O.A. and set aside the order dated 17.11.2008 of the competent authority and declared that the respondent was entitled for treating the period of suspension as on duty and for release of all consequential benefits. The appellant challenged the order of the Tribunal before the High Court in Writ Petition No. 1564 of 2010 but by the impugned order, the High Court dismissed the Writ Petition.

6. Mrs. D. Bharathi Reddy, learned counsel for the appellant, submitted that under the F.R. 54-B of the Andhra Pradesh Fundamental Rules (for short 'F.R. 54-B'), which is applicable to employees of the Municipal Corporation of Hyderabad, the competent authority has been vested with the power to pass an order as to how the period of suspension would be treated. She submitted that sub-rule (3) of F.R. 54-B provides that where the competent authority is of the opinion that the suspension was wholly unjustified, an employee would be paid full pay and allowances to which he would have been entitled, had he not been suspended. She submitted that in the facts of the present case, the respondent had been placed under suspension for accepting a bribe from the complainant and a charge sheet was filed in the court against him, but he was acquitted by the trial court and the High Court has sustained the acquittal of the respondent only because the prosecution witnesses had turned hostile and did not support the prosecution version that the respondent was paid Rs.2,000/- towards illegal gratification and on these facts, the competent authority had rightly taken the view that the suspension cannot be regarded as wholly unjustified. She submitted that the orders passed by the Tribunal and the High Court, therefore, should be set aside.

7. Mr. Naveen R. Nath, learned counsel for the respondent, on the other hand, submitted that the High Court, after going through the evidence adduced by the prosecution and the finding of the Tribunal, did not find any compelling reason to interfere with the judgment of the trial court acquitting the respondent. He submitted that it will be clear from the judgments of the trial court and the High Court that the suspension of the respondent was wholly unjustified and yet the competent authority took the erroneous view in the order dated 17.11.2008 that the suspension of the respondent cannot be regarded as unjustified. He submitted that the Tribunal has rightly held that the suspension of the appellant was unjustified and the High Court has held in the impugned order that the order of the Tribunal needs no interference.

8. Sub-rule (3) of F.R. 54-B is extracted hereinbelow:

"(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 the 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 attributable to the Government servant, it may after giving him an opportunity to make his representation [within sixty days from the date on which communication to 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]."

Sub-rule (3) of F.R. 54-B extracted above, thus, vests power on the authority competent to order reinstatement to form an opinion whether suspension of a Government servant was wholly unjustified and if, in his opinion, the suspension of such Government servant is wholly unjustified, such Government servant will be paid full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to sub-rule (3) of F.R. 54-B, however, states 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 attributable to the Government servant then 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. In other words, even where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant may still not be entitled to be paid the whole pay and allowances, but may be paid such pay and allowances as may be determined by the competent authority.

9. The rationale, on which sub-rule (3) of F.R. 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in *Union of India & Ors. v. K.V. Jankiraman & Ors*¹. At page 121 in Para 26 P.B. Sawant, J, writing the judgment for the Court in the aforesaid case further observed:

"26. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in

every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests."

It will be clear from what this Court has held in *Union of India & Ors. v. K.V. Jankiraman & Ors.* (supra) that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which deserves it. In the aforesaid case, this Court has also held that this power is vested in the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardized and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of each case.

10. In the facts of the present case, the Deputy Director, Anti-Corruption Bureau, C.I.U. and City Range Hyderabad, had reported that the respondent had taken Rs.2,000/- from the complainant, M.R. Srinivas, for assessment of his house and had accepted Rs.2000/- from him on 14.05.1997 at his house and that the bribe amount was recovered from the possession of the respondent and that the test of right hand fingers and shirt pocket of respondent was positive and that he was arrested and released on bail and on such report, the respondent was placed under suspension with immediate effect by order dated 19.05.1997. The trial court, however, acquitted the respondent of the charges and in the criminal appeal of the State, the High Court sustained the acquittal of the respondent and dismissed the criminal appeal. The reasons for sustaining the acquittal of the respondent given by the High Court in its judgment dated 06.12.2004 in the criminal appeal are quoted hereinbelow:

"The story of the prosecution is that the amount that was recovered from the pocket of A.1 was paid by PW.1 on demand made by A.1 and A.2 as illegal gratification and was accepted by A.1. The prosecution in order to prove the guilt of the respondents examined PWs 1 to 8 and marked Exs. P.1 to P.13 and M.Os. 1 to 11. The lower court after considering the evidence acquitted the respondents by holding that the prosecution failed to prove that the amount recovered from A.1 was taken by him as illegal gratification. PWs1 and 2 made a complaint to ACB officials complaining that A.1 and A.2 demanded illegal gratification for reducing the property tax and it was accepted by them when tainted notes were given. But unfortunately, PWs 1 and 2 turned hostile and did not support the prosecution version that they paid amount of Rs.2,000/- to A.1 towards illegal gratification. Though the recovery of the amount was proved by the prosecution, the purpose for which the amount was paid could not be proved, therefore, the lower court rightly came to a conclusion that there is a doubt whether the amount that was paid to A.1 was towards illegal gratification. After carefully going through the evidence adduced by the prosecution and the findings of the lower court, I do not find any compelling reasons to interfere with the judgment of

the lower court regarding the acquittal of both the respondents. There are no grounds to interfere with the judgment of the lower court."

Thus, the High Court found that PW-1, who made the complaint that the respondent had demanded illegal gratification for reducing the property tax, turned hostile and did not support the prosecution version that he had paid Rs.2,000/- to the respondent towards illegal gratification. The High Court also held that the recovery of the amount was proved by the prosecution, but the purpose for which the amount was paid could not be proved and therefore the trial court rightly came to the conclusion that there is a doubt whether the amount that was paid to the respondent was towards illegal gratification. On these materials, the competent authority has formed the opinion in his order dated 17.11.2008 that the suspension of the respondent cannot be regarded as wholly unjustified and has declined to grant any salary and allowance to the respondent during the period of suspension. This opinion of the competent authority was a possible view on the materials which the competent authority could form in the facts and circumstances of the case while passing an order in exercise of his powers under sub-rule (3) of F.R. 54-B, declining to allow the salary and allowances of the respondent for the period of suspension.

11. Yet, the Tribunal has found fault with the order dated 17.11.2008 of the competent authority and has held that the suspension of the respondent was unjustified. The reasons given by the Tribunal in its order are that the prosecution has failed to prove the case beyond reasonable doubt about the demand and acceptance of the bribe and the criminal court has acquitted the respondent and it was open for the authorities to proceed against the respondent departmentally, but no such departmental proceedings were initiated to prove the misconduct of the respondent. The approach of the Tribunal, in our considered opinion, was not correct. Sub-rule (3) of F.R. 54-B does not state that in case of acquittal in a criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of F.R. 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of F.R. 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if he is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.

12. In the result, we allow this appeal and set-aside the order of the Tribunal and the impugned order of the High Court and dismiss the original application filed by the respondent before the Tribunal. There shall be no order as to costs.

¹(1991) 4 SCC 0109