

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE MR JUSTICE V.ESWARAIAH
and
THE HON'BLE MR JUSTICE P.SWAROOP REDDY

WRIT PETITION No.8861 of 2008

Between:

- 1 The Engineer-in chief (R&B), Administration & Buildings,
Erramanzil, A.P., Hyderabad
- 2 The Principal Secreatary to Government, Tr. R&B Department,
A.P.Secreatariat, Secreatariat Buildings, Hyd.

..... PETITIONER(S)

AND

- 1 R.Krishna (Died) as per L.Rs. R.Laxmi, W/o. R.Krishna
H.No. 8-1-105/3, Shaikpert, Golconda Post, Hyderabad-500 008.
- 2 M.S.Andalu, D/o. Late R.Krishna
H.No. 8-1-105/3, Shaikpert, Golconda Post, Hyderabad - 500 008.
- 3 R.Anand S/o. Late R.Krishna
H.No. 8-1-105/3, Shaikpert, Golconda Post, Hyderabad - 500 008.
- 4 R.K.Harinath S/o. Late R.Krishna
H.No. 8-1-105/3, Shaikpert, Golconda Post, Hyderabad - 500 008.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of Certiorari calling for the records relating to the orders of the Hon'ble A.P.Admn, Tribunal, Hyderabad passed in O.A.No. 6133/2002 dated 06.09.2005 as being erroneous, illegal, and unreasonable and quash the same.

Counsel for the Petitioner:GP FOR SERVICES II

**Counsel for the Respondent : MR.K.RAM REDDY FOR
R10.07.08,VAK-1-4**

The Court made the following :

**THE HON'BLE MR JUSTICE V.ESWARAIAH
and
THE HON'BLE MR JUSTICE P.SWAROOP REDDY**

WRIT PETITION No.8861 of 2008

ORDER: (per the Hon'ble Sri Justice V. Eswaraiah)

This writ petition is filed questioning the order, dated 06-09-2005 passed by the A.P.Administrative Tribunal, Hyderabad (for short "the Tribunal"), in O.A.No.6133 of 2002.

The said O.A. was filed by the deceased R.Krishnaiah seeking to set aside the order of the Government in G.O.Rt.No.604, dated 01-06-2002 as the same is illegal, arbitrary and contrary to the provisions under Fundamental Rules and consequently to direct the respondents therein to pass orders treating the period of interruption in the service between the date of dismissal and the date of reinstatement as duty period under FR 54-A (1) with all consequential benefits.

The Tribunal by order, dated 06-09-2005, allowed the said O.A. setting aside the order of the Government in G.O.Rt.No.604, dated 01-06-2002 and accordingly, directed the petitioners herein to pass fresh orders in accordance with law within three months from the date of receipt of the order.

In the instant case, the deceased Krishnaiah was dismissed from service in the year 1989 vide G.O.Rt.No.685, dated 25-07-1991 and the said G.O. was questioned in O.A.No.2364 of 1997 before the Tribunal and the Tribunal by order dated 07-03-2000 held that the punishment of dismissal from service appears to be severe, taking into consideration the gravity of the offence and the conclusion of the Enquiry Officer as well as findings of the disciplinary authority in the provisional order, and therefore, it is a fit case to remit the matter to the disciplinary authority to review its order and impose a lesser punishment than that of dismissal, removal or compulsory retirement from service and accordingly, allowed the said O.A. setting aside the order of the Government in G.O.Rt.No.685, dated

25-07-1991. Aggrieved by the same, the petitioners herein filed W.P.No.12828 of 2000 before this court and this court by order, dated 26-12-2000, dismissed the said writ petition upholding the order of the Tribunal. Thereafter, the deceased respondent was reinstated into service imposing punishment of stoppage of one increment with cumulative effect besides recovery of Rs.14,110-50 ps. vide order of the Government in G.O.Ms.No.74, dated 17-05-2001. The Government, while considering the period of absence from duty i.e., from 25-07-1991 to 17-05-2001 as to whether it shall be treated as period spent on "Not Duty" or whether the deceased respondent is entitled for pay and allowance, issued G.O.Rt.No.604, dated 01-06-2002 holding that the period of absence is allowed to be counted towards fixation of pay, seniority and pension and the period of absence between the date of dismissal and the date of reinstatement i.e., from 25-07-1991 to 17-05-2001 shall be treated as period spent on "Not Duty" in terms of FR 54 (1) (b). The said order has been questioned before the Tribunal. The Tribunal, after hearing both sides and after considering the Rules held that the G.O. issued by the Government treating the period of dismissal as spent on "Not Duty" in terms of FR 54 (1) (b) is illegal and incorrect and accordingly, while setting aside the order of the Government in G.O.Rt.No.604, dated 01-06-2002, directed the petitioners herein to pass fresh orders in accordance with law within a period of three months.

FR 54 (1) (a) and (b) reads as follows:-

(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, 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 his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

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

FR 54-A (1) reads as follows:-

“Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.”

We have perused the relevant Rules.

In the instant case, admittedly, the Tribunal, which is also a court of law, set aside the order of dismissal on the ground that the punishment of dismissal from service appears to be severe and harsh and accordingly directed the disciplinary authority to review its order and impose a lesser punishment than that of dismissal, removal or compulsory retirement from service. Accordingly, the Government issued G.O.Ms.No.74, dated 17-05-2001, reinstating the deceased Krishnaiah by imposing lesser punishment of stoppage of one increment with cumulative effect besides recovery of Rs.14,100-50 ps. As there was no further enquiry and that reinstatement was made pursuant to the order of the court of law, we are of the opinion that FR 54-A (1) alone applies, as stated by the Tribunal. Therefore, we do not see any infirmity either legal or otherwise in the impugned order so as to call for interference by this Court under Article 226 of the Constitution of India. Hence, the writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. However, if the petitioners have not yet passed fresh orders, as directed by the Tribunal, they are permitted to pass the same within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

V.ESWARAIAH, J

P.SWAROOP REDDY, J

Date: 23-06-2009
Prv

