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Wesley (G.N.) Vs. State of Mysore

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Court : Karnataka

Decided On : Apr-12-1961

Reported in : (1961)IILLJ594Kant

Judge : Somnath Ayyar and ;Mir Iqbal Husain, JJ.

Appellant : Wesley (G.N.)

Respondent : State of Mysore

Judgement :
ORDER

Somnath Ayyar, J.

1. The services of the petitioner who was a first division clerk in the department of Industries and commerce; were terminated on 11 December 1952, without any disciplinary proceedings having been Instituted against him. When the petitioner protested against the termination of his services in that way, charges were framed against him on 22 December 1964. It is mentioned on behalf of the state in the counter-affidavit produced that no enquiry was made into the charges, since it was decided that no major punishment was called for. What was done was that on 9 March 1956, the petitioner was intimated that it had been decided by the Government on 29 February 1956, that the petitioner should be reinstated in service, the period between 1 December 1952 and the date of his rejoining duty being treated as leave without allowances.

2. I have omitted to mention that when the petitioner's services were terminated on 11 December 1952, his services were terminated with effect from 1 December 1952, and that date was one of the terminated of the period referred to in the Government order.

3. After the Government order was made in that way the petitioner was agitating for the period between 1 December 1952 and the date of his joining duty being treated as a period daring which he was on duty. He was also claiming his emoluments for that period.

4. His representations in that regard having proved unsuccessful, this application has been made to this Court, in which he claims that he should, be directed to be paid his salary for the period between 1 December 1952, and 11 March 1956, and that the period of his absence between those two dates should be treated as a period during which he was on duty.

5. It is clear that in this case when the Government order was made on 29 February 1956, that order did not find the petitioner guilty of the charges which had been framed against him. On the contrary, the affidavit produced on behalf of the State reveals that the enquiry which was commenced against the petitioner into those charges was dropped, although it is stated that it was dropped on the ground that no major punishment was called for in this case.

6. We have not been shown In this case any proceeding, although it did not amount to an enquiry, in the course of which the charges which were framed against the petitioner were held to have been proved and in which the petitioner was found guilty of the acts of misconduct attributed to him.

7. It may be that an enquiry, as contended by Sri Chandrasekhar, the learned Government Pleader, was not obligatory, where a major punishment is not proposed to be inflicted. But the non-payment to the petitioner of his salary for the period between 1 December 1952 and 11 March 1956, would not be permissible unless such non-payment constitutes a punishment imposed after the petitioner was found guilty of the charges made against him. If it was by way of punishment that it-was directed by the state that the petitioner should not be paid his salary for

that period, it would have been impossible for the petitioner to claim the salary for that period. But, since in this case, it has not been shown to us that any punishment at all was imposed on the petitioner on the basis of a finding that he was guilty of the charges which were framed against him, it is clear that that part of the Government order which directs that the petitioner should be treated as being on leave without allowances from 1 December 1952 to 11 March 1956, cannot be sustained.

8. In my opinion, the petitioner is right in claiming his salary for that period.

9. In the affidavit produced on behalf of the State, it is contended that the petitioner must be regarded to have been re-employed with effect from 11 March 1956, when be joined duty in pursuance of the impugned Government order.

10. It is obvious that this construction of the Government order cannot toe supported. The Government order makes it abundantly clear that there was no break in the service of the petitioner and that he should only be treated as a person on leave without allowances from 1 December 1952 to 11 March 1956.

11. In my opinion, the petitioner is right in claiming that he should not be regarded as having been re-employed from 11 March 1956, and that it should be held that there was no interruption in his service during the period between 1 December 1952 and 11 March 1956.

12. The writ prayed for by the petitioner in this case, should, in my opinion, issue. We should, in my opinion, direct that the petitioner should be paid his salary and other emoluments to which he was entitled from 1 December 1952 to 11 March 1956, and during that period, he should be considered to have been on duty.

13. Sri Chandrasekhar contends that if, in fact, the petitioner was in some other employment between 1 December 1952 and 11 March 1956, he would not be entitled to his salary for that period.

14. If, during that period, the petitioner was in fact in some other employment, then, the salary to be paid during that period to the petitioner would only be the difference between the salary which he was earning in private employment and

that which was payable to him by the Government.

15. No costs.

Mir Iqbal Hussin, J.

16. I agree.

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