

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF JANUARY 2015

BEFORE

THE HON'BLE MR. JUSTICE L.NARAYANA SWAMY

WRIT PETITION NO.200893/2014 (S-RES)

BETWEEN:

Mohd. Shafiq Miyan
S/o Mohd. Mahaboob Saheb
Age: 44 years, Occ: Nil
R/o C/o Mehamood Tawakkal
Buqari Mohalla, Opp.Sadar Darwaja Masjid
Yadgir

... Petitioner

(By Sri P. Vilaskumar, Advocate)

AND:

1. The Secretary
Department of Labour & Employment
Vidhan Soudha
Bangalore-560001
2. Commissioner for Employment & Training
Kousalya Bhavan, Dairy Circle
Bannerughatt Road
Bangalore-560001
3. Jawahar Educational Society (Regd.)
Yadgir, through its President
Sri A.C.Kadloor
Kumbarwada, Yadgir

4. The Principal
Jawahar Industrial Training Centre
Opp. Rural Police Station
Yadgir
5. Joint Director of Employment & Training
Divisional office, 1st floor
Government ITI (M)
Opp.NEKRTC Depot No.1
Gulbarga-585501

. Respondents

(By Smt. Archana P. Tiwari, HCGP for R1, 2 & 5
Sri K.Ravindra, Advocate for R3
R4 served and unrepresented)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to issue writ of mandamus, directing the respondent No.2 to implement the order passed against the respondent No.1 and to take further action as deemed fit.

This petition coming on for preliminary hearing in 'B' group this day, the Court made the following:

ORDER

Petitioner states that he was kept under suspension on 27.05.2008 but enquiry has not been proceeded. Since he was not paid subsistence allowance, he has filed a revision petition before the

second respondent-Commissioner for Employment & Training. The Joint Director of Employment & Training addressed a letter to the third respondent-Jawahar Educational Society on 04.09.2013 to pay subsistence allowance. Despite the said communication, till today subsistence allowance is not paid. Hence, petitioner seeks direction to the third respondent to pay subsistence allowance as per direction issued by the second respondent.

2. I have gone through the papers. Pending enquiry a person could not be kept under suspension. If the enquiry is not yet proceeded and the delinquent is still serving the order of suspension, immediate steps are to be taken to proceed with by framing charge sheet and to hold enquiry. In the present case, no materials are available as to whether enquiry has been initiated or not. However, it is the undisputed fact that when a person is suspended he would be paid subsistence

allowance immediately. Non-payment of subsistence allowance is denial of right to life of petitioner under Article 227 of Constitution of India. The impugned action of the third respondent in not obeying the direction of the respondents is arbitrary. Under the circumstance the third respondent is directed to pay subsistence allowance to the petitioner within a period of three weeks from today.

3. In the communication dated 04.09.2013 the third respondent was directed to reinstate the petitioner into service and was further directed to report back to the Joint Director.

4. Keeping a person under suspension for an inordinate time is unheard of in the service jurisprudence and would not serve any purpose. Keeping under suspension is only prevent the delinquent in not interfering or dealing with the office or tampering the documents and also the witnesses. But

in the instant case, keeping the petitioner under suspension since 2008 petitioner is arbitrary one and violation of Articles 14 and 16 of the Constitution of India.

5. Under the circumstance, the third respondent is directed to reinstate the petitioner into service forthwith and pay regular salary with immediate effect. Time for compliance of today's order is within a period of three months from the date of receipt of a certified copy of the order.

**Sd/-
JUDGE**

sdu