

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 559/2017

MUNIMASTHAIAH

Appellant(s)

VERSUS

THE STATE OF KARNATAKA AND ORS.

Respondent(s)

O R D E R

1. This appeal arises out of an order of dismissal passed by the High Court of Karnataka at Bangalore<sup>1</sup>, filed by the appellant against the orders passed by the Karnataka Administrative Tribunal<sup>2</sup> seeking reckoning of the period from 17.02.1987 to 14.09.1992 for computation of pensionary benefits.

2. Facts, as are relevant for the determination of the present appeal are that the appellant worked as Superintendent in the Government Press. While he was working, a Charge Memo dated 23.05.1987 was issued alleging shortage of stationary. The appellant was kept under suspension by an order dated 17.02.1987 and after holding an inquiry, a punishment of dismissal from service was imposed on him by order dated 13.08.1991. The appellant challenged the order of dismissal before the Appellate Authority which was disposed of by order

1 W.P. (C) No. 771 of 2012 (S-KAT) dated 11.12.2013.

2 Application No. 2348 of 2010 dated 14.10.2011 and Review Application No. 20 of 2011 dated 30.11.2011.

dated 10.09.1992 setting aside the dismissal order but directing that a sum of Rs.60,000/- be recovered from the appellant and his pay be reduced to the minimum of pay scale.

3. The appellant challenged the above order by filing an application before the Karnataka Administrative Tribunal which was partly allowed by order dated 14.09.1995 quashing the order of recovery of the amount of Rs.60,000/- with a direction to the authority to verify the stock and redetermine the loss after giving an opportunity to the appellant to examine the registers. It was also directed that if the amount has been already recovered, the same shall be refunded to the appellant. Relevant portion of the order is extracted herein for ready reference:

"4. It is rather difficult to accept the contentions of the learned Government Pleader that punishment could be ordered for the time being and that the words "time being" have been used inadvertently and no more significance should be attached to the same. In view of the submission of the learned Counsel for the Applicant that the Applicant had been repeatedly urging that the reconciliation of the Stock Register and Issue Register should have been done before the number and cost of the missing items is determined and taking into consideration the language of the impugned order of the Appellate Authority, it is evident that the Appellate Authority was not very sure of the exact number of typewriters and, therefore, the cost of the above attributable to the negligence or misconduct of the Applicant. In that view of the matter, the impugned order is only tentative and cannot be called as final order until action is taken for reconciling the Stock Register and

**Issue Register.**

5. The Application is therefore allowed partly to the extent of quashing the impugned order with a direction to the Respondents to first have the Stock and Issue Register reconciled and then establish the number of typewriters actually missing, giving the Applicant an opportunity to examine the said registers and take part in such reconciliation. If any amount is already recovered the same shall be set off against future recoveries or adjusted suitably."

4. During the interregnum, the appellant retired from service after attaining the age of superannuation on 31.05.1993.

5. Since no action was taken as per the judgment of the Tribunal dated 14.09.1995 for about nine years, the appellant approached the Tribunal by filing an application seeking direction to the Department not to hold any further inquiry or to effect recovery. The said application was allowed on 03.02.2009 on the ground that the recovery proceedings cannot be held at a belated stage after a lapse of 9 years. It was also directed that portion of amount recovered from the salary of the applicant be refunded to him.

6. Since the period spent by the appellant during suspension was not reckoned, the appellant again approached the Tribunal by filing an application to direct reckoning the period of suspension for computation of pensionary benefits. Said application came to be disposed of on 06.11.2009 with a

direction to the appellant to submit the representation seeking regularization of the said period as on duty. The representation filed by the appellant was rejected, holding that the period of suspension be treated as suspension only.

7. Said order was again assailed by the appellant before the Tribunal in Application No.2348/2010 which came to be dismissed on 14.10.2011. Against the dismissal, a review was filed, which was also dismissed by order dated 30.11.2011. The orders dated 14.10.2011 and 30.11.2011 were challenged by the appellant by filing a writ petition which was disposed of by the order impugned before us, with the following direction:

"3. We do not find any ground to interfere in the impugned orders. In our considered opinion, the petitioner was not exonerated as such after full-fledged enquiry. On the other hand, the Tribunal directed the Authority not to precipitate the enquiry in view of lapse of time. Therefore the petitioner's case falls under Rules 99(4) and 99(5) of the Karnataka Civil Service Rules (KCSRs' for short). Hence the Tribunal has rightly rejected the prayer of the petitioner. However the Tribunal is justified in directing the petitioner to make representation under the proviso to Rule 99(5) of the KCSRS to treat such period as any kind of leave admissible to him. The proviso to sub-rule (5) of Rule 99 makes it clear that if the Government servant desires, the employer may direct that the period of absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant. The case of the petitioner shall be considered if the representation is made by the petitioner in the light of the proviso to sub-rule (5) of Rule-99

of the Karnataka Civil Service Rules."

8. Mr. G V Chandrashekar, learned Senior Advocate appearing for the appellant submits that the denial of reckoning the period from 17.02.1987 to 14.09.1992 will not be only unjust but also contrary to Rule 99 of the Karnataka Civil Services Rules, 1958.

Rule 99 is quoted hereunder:

"[99(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 or superannuation while under suspension or not] 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 said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement, is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated the Government servant shall, subject to the provisions of sub rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of 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 and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such proportion of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of [Clause (1) or Clause (2) of Article 311] of the Constitution and no further inquiry is proposed to be held) the Government servant, shall subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

(5) In case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note:- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of,-

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all the other conditions under which such allowances are admissible.

(7) The proportion of the full pay and allowances determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 98.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

(9) No extra cost may ordinarily be imposed on the State by the grant of an allowance under this Rule without the permission of Government. This power is delegated to Heads of Departments in cases where the period during which the

Government servant has remained unemployed through removal or dismissal [does not exceed one year].

Note:- The grant of pay and allowances or a proportion of them does not cancel any officiating arrangements that may have been made while the Government servant was under removal or dismissal."

9. On the basis of inquiry that was initiated against the appellant and culminated in the order dated 14.09.1995, we can clearly come to the opinion that no adverse order on the basis of the allegations made against the appellant has been found. In view of the direction by order dated 14.09.1995, it can be concluded that the Tribunal had permitted the Government to have the Stock and Issue Register to be reconciled first, establish the number of typewriters actually missing, give appellant an opportunity and take a decision. This direction was passed after the Tribunal had infact "quashed the impugned order". After the order dated 04.09.1995, the Government did not take any action. After fourteen years on 03.02.2009 by a subsequent order, noting that as no action was taken, the Tribunal held that 'no further enquiry can be held' and had infact directed return of the amount of Rs.60,000/- which was reconciled from the appellant. In other words, no enquiry whatsoever lies against the appellant and no disciplinary proceedings pending.

10. In the facts and circumstances of the case, we are of the

opinion that the case of the appellant clearly falls under first part of Rule 99(1)(excluding its proviso) and 99(2).

11. In view of the above, we allow the appeal, set aside the judgment and order passed by the High Court and direct that the appellant shall be given the benefit of reckoning the period commencing from 17.02.1987 to 14.09.1992, for pensionary and other consequential benefits.

12. The Government shall initiate necessary action and pass directions within a period of two months from today.

13. There shall be no order as to costs.

.....J.  
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.  
[JOYMALYA BAGCHI]

New Delhi  
20-03-2025

ITEM NO.105

COURT NO.11

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 559/2017

MUNIMASTHAI AH

Appellant(s)

VERSUS

THE STATE OF KARNATAKA AND ORS.

Respondent(s)

Date : 20-03-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE JOYMALYA BAGCHI

For Appellant(s) : Mr. G V Chandrashekar, Sr. Adv.  
Mr. N K Verma, Adv.  
Ms. Anjana Chandrashekar, AOR

For Respondent(s) : Mr. V. N. Raghupathy, AOR  
Mr. Raghavendra M. Kulkarni, Adv.  
Ms. Mythili S, Adv.  
Mr. M. Bangaraswamy, Adv.  
Mr. Venkata Raghu Mannepalli, Adv.  
Mr. Shiv Kumar, Adv.  
Ms. Vaishnavi, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

- 1.The Appeal is allowed in terms of the signed order.
- 2.Pending application(s), if any, shall stand disposed of.

(INDU MARWAH)  
AR-cum-PS

(NIDHI WASON)  
COURT MASTER (NSH)

(Signed order is placed on the file)