

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition NO.21865 OF 2014

DATE:01.06.2015

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BETWEEN:

K. Narasimha Reddy .. Petitioner

And

The Govt. of A.P. rep. by its Principal Secretary (Chairman), A.P. Agro Industries Development Corporation Ltd., Hyderabad and two others

.. Respondents

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition NO.21865 OF 2014

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking to issue a writ of mandamus declaring the proceedings of the second respondent in PERS/EPF/868/97, dated 26.07.2014

as arbitrary, illegal, and *non-est* with a consequential direction to place the request of the petitioner before the Board of Directors as per Paragraph No.5.14 of the Administrative Manual of the A.P. State Agro Industries Development Corporation Limited.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner was an employee in the A.P. State Agro Industries Development Corporation Limited (hereinafter referred to as 'the second respondent'). The age of the superannuation of the employee in the second respondent Corporation is 58 years. But, the Board of Directors in the meeting held on 28.06.2001 passed a resolution making the following amendment to Paragraph 5.14 of the Administrative Manual:

"Every employee shall retire on attaining the age of 58 years on superannuation. In exceptional and deserving cases, the services of an employee may be extended up to the age of 60 years by the Board only. The Board or the Managing Director, as the case may be, may however retire an employee on his attaining the age of 50 years or completing 20 years of service whichever is earlier, without assigning any reasons but after giving two months notice or paying two months salary in lieu thereof. Any employee who has completed 20 years of service or attained the age of 50 years shall have the option to retire by giving two months notice or remitting two months salary in lieu thereof."

4. Prior to his attaining the age of 58 years on superannuation, the petitioner made an application to the second respondent-Corporation to extend the age of superannuation till he attains the age of 60 years. As the said application was not considered, the petitioner filed W.P.No.5107 of 2014 in which this Court passed an order directing the respondents to consider the representation submitted by the petitioner. By the date of passing of the said order, the petitioner having attained the age of 58 years, retired from service. Thereafter, the second respondent i.e. Vice-

Chairman and Managing Director of the Corporation rejected the representation made by the petitioner for the reasons recorded therein. Thereafter, the petitioner filed the present writ petition contending that as per Para 5.14 of the

Administrative Manual, the issue of extending the age of superannuation of the employee till 60 years shall be exercised by the Board only. But, the Vice-Chairman & Managing Director has no authority to reject the representation made by the petitioner in spite of the direction issued by this Court in the W.P.No.5107 of 2014. According to the petitioner, he rendered commendable service to the Corporation and therefore, he has a fair case to be considered by the Board for extending the age of superannuation up to 60 years. The grievance of the writ petitioner that instead of rejecting his representation, the Vice-Chairman & Managing Director ought to have placed the matter before the Board of Directors of the A.P. Agro Industries Development Corporation Limited. He, therefore filed the present writ petition.

5. The respondents filed counter-affidavit contending as follows:

The second respondent Corporation in strict compliance of the order, dated 06.06.2014 passed by this Court in W.P.No.5107 of 2014 considered the representation of the petitioner dated 18.01.2014 and decided to reject the request of the petitioner for extension of his age of retirement from 58 years to 60 years basing on the personal/service track record of the petitioner while in service. The fact that the petitioner rendered commendable service to the Corporation is flatly denied. According to the respondents, the service record of the petitioner is bad. While in service, the petitioner was involved in criminal case punishable under Sections 138 and 142 of the Negotiable Instruments Act and was convicted by the III Additional Junior Civil Judge, FAC IV Additional Judicial Magistrate of First Class, Chittoor and was sentenced to suffer imprisonment for a period of one year and also sentenced to pay a fine of Rs.1,000/- by order dated 06.02.2008 in S.T.C.No.121 of 2007. Subsequently, he was sent to jail and was in remand for 9 days and later he was released on bail. Copy of the order dated 06.02.2008 is made part of the record.

6. Nextly, it is submitted that the petitioner was very irregular in attending his official duties. As per the service details, according to the respondents, the petitioner has availed 561 days of E.O.L. (Extra Ordinary Leave) during his service period and he was awarded with the punishment of '**Censure**' vide order dated 07.07.1983 for availing the leave frequently without prior sanction and the same was recorded in his service register. Therefore, the version of the respondents is that the candidature of the petitioner does not deserve for

positive consideration to refer the matter to the Board of Directors and the Managing Director of the respondent Corporation rejected the request of the petitioner.

7. It is further submitted that though the age of superannuation can be extended up to the age of 60 years by the Board only, the Managing Director has the power and jurisdiction to refer the matter to the Board basing on the service record of an employee. According to the respondents, only when the matter is referred by the Managing Director, the Board of Directors would consider the matter basing on the feed back submitted by the Managing Director and therefore, the rejection order passed by the second respondent/Managing Director is perfectly valid.

8. In the first place, it requires to be noticed that as per the service regulations governing the employees of the Corporation, the petitioner has no right to insist upon the Corporation to consider his case for the extended age of superannuation. It is basing on the information submitted by the Managing Director who is the Administrator of the affairs of the Corporation, the Board would examine the request, if any, made by the employees for extended service of superannuation.

9. Para 5.14 of the Administrative Manual lays down that every employee shall retire on attaining the age of 58 years on superannuation. In exceptional and deserving cases, the services of the employee may be extended up to the age of 60 years by the Board only. From the said provision in the Administrative Manual, it is not possible to hold that every employee before attaining the age of 58 years has a right to make an application to the Board to consider his case for the extended age of superannuation. It is for the Board to consider the cases for extending the age of superannuation up to the age of 60 years only in exceptional and deserving cases. Therefore, the petitioner has no right to insist that the Vice-Chairman & Managing Director has to forward his representation to the Board without scrutinizing the same. After receiving the orders passed by this Court in W.P.No.5107 of 2014 to consider the request of the petitioner for extended age of superannuation, the Vice-Chairman & Managing Director examined his case and decided to reject his case considering his service record. Therefore, it is not possible to hold that the said rejection order was

passed in violation of the order passed by this Court in W.P.No.5107 of 2014. The relevant provision in the Administrative Manual only shows that the Board on its own can extend the age of superannuation only in exceptional and deserving cases, but no employee has right to invoke the jurisdiction of this Court to issue any direction to the Board to consider the representation for the extended age of superannuation. In the considered opinion of this Court, the writ petition itself is not maintainable and deserves to be dismissed.

10. Consequently, the writ petition is dismissed without any order as to costs.

Miscellaneous petitions, if any, filed in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:01.06.2015

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THE HON’BLE SRI JUSTICE R.KANTHA RAO

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