THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.38406 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The first respondent herein was discharged from services by proceedings dated 26.09.2013, and was informed that his salary and other emoluments from 01.05.2010 to 21.02.2013, for which period he continued beyond the age of superannuation, would be recovered from him.

Facts, in brief, are that the first respondent was initially appointed as Khallasi in the year 1980 in the office of the second respondent herein. He was later promoted as a Compositor in the year 1985 which comes under Last Grade Service Rules. The age of superannuation prescribed thereunder is 60 years. As the date of retirement of the first respondent was recorded as 20.04.1950, he was to retire, on attaining the age of superannuation of 60 years, by 30.04.2010. The first respondent, however, continued in service from 30.04.2010 and it is only after proceedings dated 21.02.2013 were issued, was he discharged from service. The grievance of the first respondent herein, before the Tribunal, was that pension and other benefits were not being paid to him even after he was discharged from services on 21.02.2013. The second petitioner herein contended before the Tribunal that it was the first respondent-employee who was required to inform them of his date of superannuation. The Tribunal referred to Rule 42 of the Andhra Pradesh Revised Pension Rules, 1980 (for brevity, 'the Rules') and held that nothing prevented the petitioners herein from initiating and conducting proceedings contemplated under law and, in the absence of any such proceedings, withholding the pension and other benefits was untenable and impermissible. The Tribunal relied on the judgment of the Supreme Court in **State of Bihar and others v. Pandey Jagdishwar Prasad**[1] wherein it was held that, if there was no allegation of misrepresentation or fraud, which could be attributed to the employee, and as he was allowed to work and was paid salary for the duties discharged by him during the period after his actual date of retirement, without raising any objection whatsoever, no deduction could be made for that period from his retiral benefits.

The Tribunal held that, in the absence of any disciplinary enquiry and punishment orders, not paying pension and other benefits to the first respondent-employee was illegal and arbitrary. The petitioners herein were directed to release the pension and other benefits due to the first respondent-employee as per rules, by taking and adjusting the period from 30.04.2010 to 21.02.2013 as the re-employment period, within a period of eight weeks from the date of receipt of a copy of the order.

Rule 42 of the Rules, on which reliance is placed by the learned Government Pleader, only stipulates that every Government servant to whom these rules apply shall compulsorily retire on attaining the age of superannuation. It is not even the case of the writ petitioners herein that the first respondent-employee had continued in service by misrepresentation or fraud. The petitioners herein have permitted the first respondent to work for the period subsequent to 30.04.2010 till they realized that he had attained the age of superannuation. It is only thereafter was proceedings dated 21.02.2013 issued discharging him from service. The Tribunal was, therefore, justified in holding that the pension of the first respondent could not be withheld.

Whether or not the period from 30.04.2010 to 21.10.2013 should be treated as re-employment, the fact remains that, as the first respondent-employee had discharged his duties and was paid salary for having done so, the law declared by the Supreme Court in **Pandey Jagdishwar Prasad**[1] would apply. We see no reason, therefore, to interfere with the order of the Tribunal. Suffice it to make it clear that the entitlement of the first respondent-employee, to pension and other retiral benefits, shall be calculated reckoning his date of superannuation as 30.04.2010 only. The entitlement of the first respondent-employee for such benefits shall be only for the period after he was actually discharged from service on 21.02.2013.

Subject to the above, the Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

28th January, 2015.
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[1] 2009 (3) SCC 117