

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.3598 OF 2006

ORDER :

Challenging the action of the Assistant Pension Payment Officer in issuing the proceedings Lr.No.2201/B/APPO/B&MO/2006, dated 06.01.2006 and subsequent letter No.2201/B/APPO/B&MO/05-06, dated 02.02.2006 as violative of Articles 14 and 16 of the Constitution of India, the present Writ Petition came to be filed.

The petitioner herein, after his retirement as District and Sessions Judge, Cuddapah, was appointed as President of the District Consumer Forum, Prakasam District at Ongole, vide G.O.Ms.No.41, Food, Civil Supplies and Consumer Affairs (CS.III) Department dated 19.09.2002 issued by the Government of Andhra Pradesh. While issuing appointment orders the petitioner was given option either to draw honorarium of Rs.10,000/- p.m., or last drawn minus pension per month, whichever is beneficial to him. The G.O., further clarifies that the appointee shall not be entitled to any T.A., or conveyance allowance for attending the office of District Fora from the place of his residence during the period of his term of office. The petitioner claims that he has opted for honorarium last drawn pay minus pension which comes to about Rs.15,702/- per month. The petitioner is said to have joined as President of the District Fora on 07.10.2002 and worked there till 30.11.2005. After completing the term of the office as President of District Fora, the impugned proceedings came to be issued for

recovery of Rs.2,04,071/- paid to the petitioner towards his Dearness Relief on pension. The said amount was sought to be recovered on instalment basis without effecting his total pension. Challenging the same, the present Writ Petition came to be filed.

A counter came to be filed by the respondent stating that the petitioner herein was reemployed through G.O.Ms.No.41 dated 19.09.2002 and as per Government Orders vide G.O.Ms.No.233 Finance and Planning (FW.PEN.1) dated 12.07.1977 any pensioner or any person reemployed in any post receiving any kind of remuneration is not entitled to Dearness Relief on pension. It is further averred in the counter that after his reemployment, the petitioner has submitted his retirement papers and in the non-employment certificate submitted on 28.11.2002 he is said to have stated that he was not reemployed anywhere. Basing on the declarations made, the Dearness Relief was calculated from 07.11.2002 to 30.11.2005. It is stated that in view of the declaration made, which is incorrect, the petitioner has to repay the excess amount paid by way of Dearness Relief on pension.

A reply came to be filed by the petitioner stating that after his appointment as President of District Forum he has drawn emoluments as per G.O.Ms.No.41. It is his case that G.O.Ms.No.233 is not applicable since it applies only to those persons who are reappointed or reemployed. It is his case that G.O.Ms.No.233 date 12.07.1997 was issued in respect of temporary increase/adhoc relief or granded relief but not in respect of Dearness Allowance. It is his case that as per the

Memo 10393/A/79.PCS/2005 dated 19.10.2000 all retired employees have to furnish the life certificate and employment particulars and as such he has submitted his life certificate. He denied the allegation that he has not disclosed his appointment as President of District Consumer Forum.

In order to appreciate the rival contentions, it would be necessary to refer to G.O.Ms.No.41, G.O.Ms.No.233 and the order of appointment. G.O.Ms.No.233 dated 12.07.1977 refers to non-payment of reliefs to pensioners who were employed or reemployed in Government service or undertaking or absorbed in public sector undertaking and who are allowed remuneration in the form of consolidated pay, fixed allowance, special pay or honorarium. It further states that so long as the Government pensioner is in receipt of remuneration in any form from Government Department/Office, Public Enterprise or Autonomous Body or Nationalized Bank, the payment of temporary increase or Adhoc relief and or Granded Relief shall remain suspended. G.O.Ms.No.41 reads as under :

“The Presidents of the District Consumer Forums shall hold office for 5 years or upto the age of 65 years, whichever earlier and they shall not be eligible for re-appointment. They shall draw a consolidated honorarium of Rs.10,000/- (Rupees ten thousand only) per month or last pay drawn minus pension per month whichever is beneficial to them as laid down in G.O.Ms.No.26, FCS and CA (CS.III) Department, dated 04.04.2000, during their term of office. The individuals mentioned in para 1 above shall not be entitled for Travelling Allowance or Conveyance Allowance for attending to the office of the District Consumer Forums from their place of residences during the period of their term of office.”

The appointment order of the petitioner which is dated 19.09.2002 reads as under :-

“After careful consideration of the recommendation made by the

selection committee under Section 10(1A) of the Consumer Protection Act, 1986 made in the reference 5th read above, Government hereby appoint Sri D.Mohan Rao, District and Sessions Judge, Cuddapah as President, District Consumer Forum, Prakasam at Ongole.”

As stated above, the learned Government Pleader relied upon G.O.Ms.No.233 to show that the person who is reappointed or reemployed in any Government undertaking and receiving honorarium or special pay etc., is not entitled for payment of temporary increase, adhoc relief and/or granded relief. It is his case that the payment of Dearness Relief falls under the category of Granded Relief and hence the petitioner is not entitled for any relief, since he was reappointed as a President of the District Fora. It is to be noted that the petitioner is neither reappointed nor reemployed. After his retirement as Grade-I District Judge, the petitioner was appointed afresh as President of District Fora. The Government Pleader states that the word granded relief is inclusive of Dearness Relief and hence submits that the petitioner has to return the D.A., on pension. If really the Government wants to exclude D.A., on pension, in case of persons who are either reappointed or reemployed on honorarium, the same would have been reflected in clear terms in the G.O. A plain reading of the said G.O., does not anywhere indicate the same.

Further, the learned Government Pleader tried to contend that the petitioner while working as President of District Fora has suppressed his employment while submitting non-employment certificate, since the same does not contain any date and all the columns in the said certificate are blank. It is to be noted that the live certificate which is being submitted from

time to time, shows disclosure of petitioner working as President, District Consumer Forum, Prakasam District, with effect from 07.10.2002. Therefore, it cannot be said that there was any false declaration or any fraudulent act on the part of the petitioner in trying to get allowance.

In W.P.No.3502 of 2000 and 4990 of 2003 dated 19.12.2008 a learned Single Judge of this Court had an occasion to consider whether District Judge Grade-I who was appointed as Upa Lokayuktha is entitled for Dearness Allowance or Dearness Relief, on pension payable to him after remitting the office on completion of the term. In the said case, the petitioners, who held the office of Lokayuktha, contended that a District Judge, who is appointed as Upa Lokayuktha is entitled to claim D.R., on pension drawn as District Judge as well as Upa Lokayuktha. After referring to various provisions and the judgments of this Court, the learned Single Judge allowed the Writ Petitions directing the respondents to sanction and release D.A/D.R. on pension payable to the petitioners for the services as Upalokayuktha from respective dates of remitting office. Ofcourse, situation on hand is slightly different, wherein the Grade-I District Judge who was appointed as President of Consumer Forum was asked to pay back the D.A., which was paid to him, while working as the President of the District Forum. But, in my view the principle appears to be the same since the G.O., which is sought to be relied upon by the Government Pleader does not contemplate a contingency of this nature. Apart from that the Apex Court in **State of Punjab and another v. Rafiq Masih (White Washer) and others**^[1]

while dealing with repayment of monetary benefits which were made in excess of their entitlement, held as under :

“11. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class -III and Class -IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

Hence, I am of the view that the case on hand falls under category IV of the guidelines laid down by the Supreme Court thereby preventing the authorities from recovering the amount paid. Hence, it would be impermissible to allow recovery of the Dearness Relief paid on pension while the petitioner was working as President of Consumer Forum after his retirement as District Judge, at this length of time. Recovery of money paid would be harsh as it would definitely put the petitioner to great hardship moreso when it is not the case of the respondent that the petitioner obtained the said amount by playing fraud. Apart from that the petitioner has also paid

income tax on the said amount.

For the aforesaid reasons, the Writ Petition is allowed quashing the impugned Lr.No.2201/B/APPO/B&MO/2006, dated 06.01.2006 and subsequent letter No.2201/B/APPO/B&MO/05-06, dated 02.02.2006. No costs. Consequently, Miscellaneous Petitions pending if any, in this Writ Petition, shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

Dt:16.12.2015
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