

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.6149 OF 2005

DATED 04th SEPTEMBER, 2015

Between

A. Hanumantha Rao

... Petitioner

and

The Registrar, Potti Sreeramulu
Telugu University

... Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.6149 OF 2005

ORDER

The petitioner, an employee of the Roads and Buildings Department of the State, was sent on deputation to Potti Sreeramulu Telugu University, Hyderabad (hereinafter referred to as 'the University'). He thereafter retired from service in his parent department as a Deputy Executive Engineer on 31.01.2001. While so, the Registrar of the University issued letter dated 28.01.2005 informing the petitioner that a sum of Rs.1,15,050/- which was paid to him as additional pay would be recovered from his pension through his parent department. Challenging this action of the University, he filed this writ petition. He also sought a consequential direction to the University to release a sum of Rs.40,627/- towards arrears of dearness allowance along with interest.

By order dated 27.04.2005, this Court granted interim suspension of the impugned letter for a period of eight weeks. The writ petition was thereafter admitted on 29.06.2005 and the interim order granted on 27.04.2005 was directed to be continued.

Heard Sri Y.S. Venkat Rao, learned counsel for the petitioner, and Sri S. Parikshith, learned standing counsel for the University.

The admitted facts of the case are as under:

The petitioner entered the service of the Roads and Buildings Department of the State in the year 1970 as an Assistant Executive Engineer. Under proceedings dated 24.03.1988 of the Engineer-in-Chief of the Roads and Buildings Department of the State, sanction was accorded for deputation of the petitioner on foreign service to the University. The terms and conditions that would govern his deputation

were detailed in the aforesaid proceedings. In so far as his pay and allowances were concerned, the foreign employer was required to pay the petitioner, during the period of his foreign service, the scale as fixed under Fundamental Rule 35, whereunder he was to be paid an additional pay of 25% of his basic pay. By proceedings dated 28.02.1989 of the Registrar of the University, he was taken on deputation to work in the University as a Deputy Executive Engineer at its Srisailam campus. The petitioner reported for duty in the service of the University on 05.03.1989. At the request of the University, the petitioner's deputation was extended by the parent department up to 04.09.1991 and again up to 04.03.1994. On 21.12.1992, the petitioner was given full additional charge of the post of Executive Engineer in the University. In the meanwhile, he was promoted as a Deputy Executive Engineer in his parent department on 30.06.1991.

After completion of the five year period of deputation, the petitioner was repatriated to the parent department under letter dated 22.02.1994 of the University. He rejoined his parent department on 04.03.1994. The University again requested for deputation of the petitioner under letter dated 17.03.1994. The said request was accepted and by proceedings dated 31.03.1994, the Roads and Buildings Department again deputed the petitioner to the University. He accordingly reported for duty on 07.04.1994 and was again given full additional charge of the post of Executive Engineer.

By proceedings dated 02.08.1996, the University informed the petitioner that the audit department had raised an objection with regard to the payment of the additional pay of 25% on his basic pay and directed recovery of the same. Aggrieved thereby, he filed W.P.No.18459 of 1996 before this Court. The said writ petition was allowed by order dated 29.03.1997, taking note of the fact that the petitioner was paid the additional pay for shouldering higher responsibilities in a higher post than that held by him in his parent department. This Court therefore held that this additional pay could not be categorized as a deputation

allowance, which was what was objected to by the audit department. The University was directed to continue to pay the additional pay of 25% of his basic pay to the petitioner as per the terms and conditions of the deputation along with arrears of the additional allowance which had been stopped consequent to the objection raised by the audit department. This order has admittedly attained finality.

The petitioner's second round of deputation lasted up to 06.04.1998 whereupon he was repatriated to his parent department. He retired from service in his parent department as a Deputy Executive Engineer on 31.01.2001. While so, the University issued the impugned letter dated 28.01.2005 stating that he was only entitled to additional pay of 25% over and above his basic pay as per Fundamental Rule 35 for discharging higher responsibilities in the post of Deputy Executive Engineer but as he had been promoted as a Deputy Executive Engineer on 29.06.1991, he would not be entitled to any additional pay from the said date. On that ground, the University proposed to recover a sum of Rs.1,15,050/-, towards the additional pay given to him after 29.06.1991, from his pension. This was the cause for filing of the present writ petition.

The University filed a counter through its Registrar only in August, 2015, after the matter was taken up for hearing by this Court. Therein, the Registrar, while admitting the aforesaid facts, stated that the initial objection raised by the audit department under letter dated 26.10.1995 was with regard to payment of a deputation allowance, which concept had been withdrawn long prior to the deputation of the petitioner to the University and therefore, the initial recovery proceedings had been ordered. However, pursuant to the order passed by this Court in W.P.No.18459 of 1996, the additional pay, which had been withheld pursuant to the audit objection, had been released. This amount was quantified and after deduction of Rs.34,500/- therefrom towards TDS, a sum of Rs.80,550/- was said to have been paid to the petitioner. The Registrar stated that dissatisfied with this amount, the petitioner was claiming a further sum of Rs.40,627/-. The Registrar again tried to rake

up the issue of payment of a deputation allowance to the petitioner stating that it was highly objectionable in terms of the Government Orders of the years 1976 and 1984. He further stated that the University would have no objection to release of the additional pay if the same was sanctioned by the Government. According to the Registrar, once the petitioner was promoted as a Deputy Executive Engineer in his parent department, with effect from 29.06.1991, he was no longer eligible for additional pay from the University as he was discharging the same duties as a Deputy Executive Engineer in its service also. A sum of Rs.1,15,050/- was stated to have been paid to him against the rules and therefore, this amount had to be recovered from him. This was the justification offered for issuance of the impugned letter.

The stand of the University, as put forth in the above counter, completely ignores the findings of this Court in the earlier round of litigation. In its order dated 29.03.1997 in W.P.No.18459 of 1996, this Court rendered a categorical finding that the petitioner was to be given the additional pay of 25% of his basic pay for shouldering higher responsibilities in a higher post. Therefore, this Court held that the said allowance was not a deputation allowance, which concept was withdrawn under the Government Orders of 1976 or 1984. Therefore, as long as the petitioner shouldered higher responsibilities in a higher post than his post in the parent department, he was entitled to be paid the additional allowance of 25% of his basic pay.

In so far as this aspect is concerned, it is not in dispute that the petitioner, while working as an Assistant Executive Engineer in his parent department, was taken on deputation in the service of the University in the higher post of Deputy Executive Engineer from 05.03.1989 and continued as such till 29.06.1991. On 29.06.1991, he was promoted as a Deputy Executive Engineer in his parent department also. While holding the post of Deputy Executive Engineer in his parent department and continuing on deputation in the University, he was again given higher responsibilities in the higher post of Executive Engineer in

the University on 21.12.1992. This continued up to his repatriation to his parent department on 04.03.1994. Again, when he was taken on the second round of deputation on 07.04.1994, he was given higher responsibilities in the higher post of Executive Engineer in the University and continued as such up to the end of his deputation in April, 1998. Therefore, except for a short stint as a Deputy Executive Engineer in the University and also his parent department i.e. from 29.06.1991 up to 21.12.1992, the petitioner all along discharged higher responsibilities attached to a higher post than his actual post in his parent department, while working on deputation in the University. For that entire period he was entitled to the additional pay of 25% of his basic pay in keeping with his terms of deputation and as confirmed by this Court in the earlier round of litigation. Having accepted and abided by the order by this Court in the earlier writ petition, it is not open to the University to seek to reopen the same issue. Therefore, the action of the University in seeking to effect recoveries from the pension of the petitioner from 29.06.1991 on the ground that he had been promoted as a Deputy Executive Engineer in his parent department cannot be accepted and such recovery must necessarily be limited to the period 29.06.1991 to 21.12.1992 and not for the entire period up to his repatriation to the parent department in April, 1998.

In so far as the prayer of the petitioner for release of a sum of Rs.40,627/- towards arrears of dearness allowance is concerned, Sri Y.S. Venkat Rao, learned counsel, is unable to substantiate the same. According to the Registrar of the University, the amount payable to the petitioner pursuant to the earlier round of litigation had been quantified and after deducting tax at source of Rs.34,500/-, the sum of Rs.80,550/- was remitted to him. No material has been placed before this Court to substantiate the petitioner's claim that he was entitled to any further amount towards arrears.

The writ petition is accordingly allowed in part holding that the recovery proceedings initiated under the impugned letter dated

28.01.2005 shall be limited only to the period from 29.06.1991 to 21.12.1992. During this period the petitioner held the same post in his parent department and in the University to which he was deputed and was therefore not entitled to additional pay of 25% of his basic pay which was payable only in the context of his shouldering higher responsibilities in a higher post. The purported recovery for the remaining period upto his repatriation to his parent department in April, 1998 is held to be illegal. The petitioner's claim for a sum of Rs.40,627/- is unsubstantiated and his prayer in this regard is disallowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

04th SEPTEMBER, 2015

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