

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Writ Petition No.23113 of 2015

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

The relief sought for in this writ petition is to declare the action of the 1st respondent, in not paying gratuity to the petitioner from the date of his retirement i.e. 01.10.2009 till date, as illegal and contrary to law. A consequential direction is sought to the 1st respondent to pay gratuity to the petitioner, as per his eligibility based on his length of service, with interest from 01.10.2009 till the date of making payment.

The petitioner joined service as an Amin on 20.12.1977 at Razolu in East Godavari District. He was later promoted as an Upper Division Clerk on 23.09.1996. The petitioner was imposed the punishment of compulsory retirement on 01.10.2009. He was paid provisional pension pursuant to the order of this Court in W.P.No.23879 of 2009 dated 23.12.2009. Aggrieved by the action of the respondents in not paying him gratuity, the petitioner has invoked the jurisdiction of this Court by way of the present writ petition.

In the counter affidavit filed on behalf of the 2nd respondent, it is stated that four disciplinary proceedings are still pending against the petitioner herein, which are as under:

i. Enquiry in DE File No.69 of 2009 wherein the Hon'ble High Court forwarded DO letter in Dis.No.DOLr.No.1164/11-Vigilance Cell dated 27/8/2011 to the Government.

ii. Enquiry in DE file No.29 of 2007 wherein the Hon'ble High Court forwarded DO letter in Dis.No.DOLr.No.1166/11-Vigilance Cell dated 27/8/2011 to the Government.

iii. Enquiry in DE file No.68 of 2007 wherein the Hon'ble High Court forwarded DO letter in Dis.No.DOLr.No.1165/11-Vigilance Cell dated 27/7/2011 to the Government.

iv. Enquiry in DE file No.52 of 2007 wherein the Hon'ble High Court forwarded DO letter in Dis.No.DOLr.No.1167/11-Vigilance Cell dated 27/8/2011 to the Government.

Reference is made in the counter affidavit to Rule 52(c) of the Revised Pension Rules, 1980 (for short “the Rules”) which stipulates that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings, and issue of final orders. All the aforesaid four departmental enquiries were initiated even when the petitioner was in service, and prior to imposition of the punishment of compulsory retirement. As these four departmental proceedings have not yet culminated in either an order of punishment being passed or the petitioner being absolved of the charges levelled against him, Rule 52(c) of the Rules prohibits the respondents herein from paying the petitioner gratuity till the departmental proceedings initiated against him are concluded, and final orders are issued.

Sri Jayanti S.C. Sekhar, learned counsel for the petitioner, would place reliance on ***State of Jharkhand vs. Jitendra Kumar Srivastava*** in support of his submission that the petitioner is entitled for payment of gratuity. In the said judgment, the Supreme Court observed that gratuity and pension are not bounties; an employee earns these benefits by dint of his long, continuous, faithful and unblemished service; and, in the absence of any specific Rule prohibiting payment of pension, the Government servant is entitled to be paid pension.

In the present case, Rule 52(c) of the Rules prohibits payment of gratuity till disciplinary proceedings are concluded, and a final order is passed by the competent authority. While the petitioner is not entitled to the relief sought for in this writ petition, the fact remains that the disciplinary proceedings, which are said to be still pending, were initiated against the petitioner in the years 2007 and 2009.

Sri S.Sriram, learned Standing Counsel for the High Court, would submit that, on conclusion of the disciplinary enquiry in all the four cases, the matter has been referred to the Government in the year 2013 itself, and it is for the Government to exercise its powers under Rule 9(1) of the Rules, and take a decision whether or not punishment should be imposed on the petitioner. Ends of justice would be met if the respondents are directed to complete disciplinary proceedings, and issue final orders at the earliest, in any event not later than two (2) months from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, disposed of.

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

Date:24.11.2015.

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