

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No. 18395 OF 2005

ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the action of the respondents in declining to extend the benefit of payment of retirement and pensionary benefits.

Heard Sri B.D. Raju, learned counsel for the petitioner and Sri G.Vidyasagar, learned Senior counsel for the respondents, apart from perusing the material available before this Court.

According to the petitioner, he joined in the respondent organization as a watch and ward on daily wage basis on 04.11.1981 and worked continuously up to 31.07.1984 and he was illegally terminated by the Assistant Accounts Officer, ERO, APSEB, Tadepalligudem on 31.07.1984. Thereafter, the petitioner raised an industrial dispute vide I.D.No.56 of 1985 and the Labour Court, Guntur, dismissed the said industrial dispute on the ground that the petitioner herein failed to produce any documentary proof in support of his case. The said award rendered by the Labour Court was confirmed in W.P.No.18651 of 1987 by this Court and the W.A.No.1301 of 1990 preferred by the petitioner was withdrawn by him. Thereafter, the petitioner filed W.P.No.6496 of 1996 praying for absorption in the service of respondents in terms of memo, dated 26.08.1985, and the notification, dated 06.11.1989, issued by the respondents. Following the earlier judgment rendered by this Court, the said Writ Petition was allowed on 29.03.1996. Pursuant to the same, a call letter was sent by the Superintendent Engineer (Operation) asking the petitioner to appear for interview on 29.09.1997 and after interview, vide letter, dated 19.02.1998, the claim of the petitioner was rejected on the ground that he became over aged. Challenging the said letter, dated

19.02.1998, the petitioner filed W.P.No.5816 of 1999 and the same was allowed by this Court by setting aside the said letter and directed the respondents not to disqualify the petitioner from consideration for absorption in terms of BPMS.No.36, dated 10.05.1997, on the ground that he became over aged. Subsequently, the petitioner was absorbed into services of the respondents on 04.11.1999, and thereafter, his services were regularized on 20.07.2001. According to the petitioner, he retired from service on 30.06.2004 while working in the office of Superintending Engineering, Bommoor, East Godavari District. With the above background, the present Writ Petition came to be filed for a direction to the respondents to settle the retirement benefits from 29.03.1996 i.e., from the date of the order in W.P.No.6496 of 1996.

In response to the Rule Nisi issued by this Court on 20.08.2005, a counter affidavit, deposed by the Superintending Engineer, Rajahmundry, is filed denying the averments in the affidavit filed in support of the Writ Petition and in the direction of justifying the impugned action.

According to the learned counsel for the petitioner, because of the impugned action on the part of the respondents, the petitioner is completely deprived of his pensionary benefits and that the respondents ought to have computed his service at least from the date of the order in W.P.No.6496 of 1996 i.e., 29.03.1996. It is submitted by the learned counsel that earlier the petitioner filed M.P.No.9 of 1989 before the Labour Court, Guntur, claiming difference of wages for the period from 1981 to 1984 for 871 days @ Rs.5/- to Rs.9.50/- per day and the Labour Court allowed the said application, awarding the differential wages.

On the contrary, it is contended by the learned Standing counsel, appearing for the respondents that since the petitioner failed before the Labour Court in

I.D.No.56 of 1985, as confirmed by this Court in the Writ Petition, the petitioner cannot claim any amount for the period prior to 1984. It is submitted that in terms of the orders of this Court in W.P.No.6496 of 1996, the case of the petitioner was considered and rejected on the ground that he became over aged and questioning the same, W.P.No.5816 of 1999 was filed and the same was allowed by this Court on 23.03.1999. Pursuant to the said order, the petitioner was absorbed into services on 04.11.1999, and as such, the period anterior to the said date cannot be reckoned for the purpose of settling the retirement benefits. It is also the categorical case of the respondents in their counter that the petitioner remained absent unauthorizedly from 07.04.2003 till he attained the age of superannuation on 30.06.2004 and eventually he was retired from services vide memo, dated 30.06.2004.

There is absolutely no dispute with regard to the fact that the claim of the petitioner with regard to the service alleged to have been rendered prior to year 1984 was disbelieved by the Labour Court in its award in I.D.No.56 of 1985 and the petitioner also failed in W.P.No.18651 of 1987 and the writ appeal filed against the said order was admittedly withdrawn by the petitioner. It is also required to be noted that in the year 1996 the petitioner filed W.P.No.6496 of 1996, claiming consideration in terms of memo, dated 26.08.1985, and the said Writ Petition was disposed of and in view of the direction issued by this Court in that writ petition, the case of the petitioner was considered and rejected on the ground that he became over aged. It is a fact that the said rejection order was, the subject matter of W.P.No.5816 of 1999 before this Court and this Court in the said Writ Petition directed the respondents not to disqualify the petitioner on the ground that he became over aged. Pursuant to the said order, the petitioner was appointed and absorbed on 04.11.1999. According to the learned counsel for the

petitioner, the date of disposal of W.P.No.6496 of 1996 alone needs to be taken into consideration for the purpose of computing the period. Though it is specifically stated in the counter affidavit filed by the respondents that the petitioner remained absent from 07.04.2003 till he attained the age of superannuation on 30.06.2004, no reply is filed disputing the same, as such, the same is required to be construed as true. Since the petitioner was absorbed only on 04.11.1999 and did not put in the required qualifying service to claim the entitlement and having regard to the reasons mentioned supra, this Court is not inclined to grant any relief in the present Writ Petition.

For the aforesaid reasons, the Writ Petition is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 07.12.2016
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A.V. SETHA SAI, J