

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.28679 of 2013

ORDER:

This Writ Petition is filed praying to grant the following relief:

“to issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus by directing the respondents to allow the grant of increments from 19.12.1984 in the cadre of Senior Assistant till the date of his retirement as on 31.01.2000 on the ground that the petitioner continuously held the post during the said period, to allow all consequential service benefits as if the regulations deemed to have been relaxed in his favour by treating his service from 19.12.1984 to 31.01.2000 as regular service in the cadre of Senior Assistant as held by this Hon'ble Court in W.P.No.14599/2001 and consequently direct the respondents to pay all the terminal benefits of retirement from service including pay fixation arrears, leave pay fixation arrears, leave encashment amount together with an interest at the rate of 24% per annum from the date of retirement i.e., from 31.01.2000 in the interest of justice.”

2. The petitioner, who was an employee of 5th respondent college, appeared as party-in-person. Heard party-in-person and learned Assistant Government Pleader. Learned Assistant Government Pleader ably assisted the Court in deciding issue.

3. The petitioner joined the service as Lower Division Clerk and the next promotion is Upper Division Clerk. For the post of Upper Division Clerk, certain qualifications are prescribed in the Andhra Pradesh Ministerial Service Rules, which include passing of Accounts Test for Subordinate Officers Part-I and Deputy Inspectors. As per the said provision, the petitioner was not qualified for promotion. However, as there was no other eligible candidate for promotion, the petitioner was granted promotion as Senior Assistant with effect from 19.12.1984. In the mean time, certain instructions were issued not to insist the

persons to pass departmental tests, who have crossed the age of 45 years at the time of their promotion. The petitioner has crossed 45 years by 01.02.1987. When the petitioner was sought to be reverted in the year 1989, he filed W.P.No.14584 of 1989. He placed reliance on the exemption granted to the employees, who have crossed 45 years of age. By virtue of interim order granted by this Court, the petitioner was continued to work as Senior Assistant. However, pending Writ Petition, the petitioner passed Accounts Test for Subordinate Officers (Part-I) in June 1991 and Deputy Inspectors in June 1992. The said Writ Petition was dismissed on 24.11.1992. Challenging the same, the petitioner filed W.A (SR) No.89072 of 1992 and the same was disposed of at the S.R. stage by order dated 07.08.1996.

4. Pending Writ Petition, the scales of pay were revised with effect from 01.07.1992. The revised scales are not extended to the petitioner as he was not granted the increments due and payable to him. By proceedings, dated 24.02.1998, the Director of Collegiate Education passed orders proposing to fix the scales of the petitioner in the cadre of Senior Assistant with effect from 01.07.1992, recording the fact that the petitioner, in the mean time, acquired eligibility and also crossed 45 years. The proposals of the Deputy Director of Collegiate Education were not accepted. Ultimately, the petitioner retired from service on 31.01.2000 on attaining the age of superannuation.

5. The petitioner earlier filed W.P.No.14599 of 2001 praying the following relief:

“to issue an appropriate order, writ or direction more particularly one in the nature of writ of mandamus by directing the respondents to allow the grant of increments from 19.02.1984 in the cadre of Senior Assistant till the date of his retirement as on 31.01.2000 on the ground that the petitioner continuously held the post during the said period, to allow all consequential service benefits as if the regulations deemed to have been relaxed in his favour by treating his service from

19.12.1984 to 31.01.2000 as regular service in the cadre of Senior Assistant and consequently to pay all the terminal benefits of retirement from service including pay fixation arrears, leave pay fixation arrears, leave encashment amount together with an interest at the rate of 18% P.A. from the date of retirement i.e., from 31.01.2000 A.N. in the interest of justice.”

The Writ Petition was allowed by order dated 15.03.2012. Having noticed the fact that the petitioner crossed 45 years as on 01.02.1987 and he acquired requisite qualification in the year 1992 and that he continued to work as Senior Assistant, while allowing the Writ Petition, this Court directed to grant annual grade increments to the petitioner from 19.12.1984 in the post of Senior Assistant till the date of his retirement and also to grant him all consequential benefits. This decision has become final.

6. Alleging that the orders of this Court in the above Writ Petition are not complied with, the petitioner filed C.C.No.583 of 2013. During pendency of the above Contempt Case, the Commissioner of Collegiate Education passed orders vide proceedings Rc.No.672/Admn.I-2/2012, dated 26.06.2013, wherein while narrating the history of the case, the Commissioner held that the petitioner has acquired the eligibility by 15.06.1992 and he was permitted to receive all the increments and other benefits from June, 1992 in the cadre of Senior Assistant. As a consequence, Commissioner passed orders on 24.07.2013 directing the college management to revise the pay fixation and to submit proposals. The proposals submitted in the said manner are objected by the Audit Officer on the ground that the petitioner is not entitled to any increments in the cadre of Senior Assistant from 19.12.1984 to June, 1992 as he was unqualified, but continued as Senior Assistant by virtue of Court orders.

7. Party-in-person contends that illegally the respondents denied

the increments due and payable to him from the date of his promotion as Senior Assistant; that illegally denied the application of revised scales of pay in the cadre of Senior Assistant from 01.07.1992 and he was harassed and humiliated; that though he retired from service on 31.01.2000, even after 16 years, pensionary benefits and arrears of amount due and payable to him are not paid. On account of inordinate delay in settlement of benefits, for which the petitioner is entitled to, injustice is caused to him and he incurred huge expenditure in order to meet the requirements and he had also incurred financial liabilities as he had to borrow money from friends and relatives.

8. Learned Assistant Government Pleader submits that since the petitioner was not qualified to be promoted as Senior Assistant as on 19.12.1984, his promotion being temporary, he is not entitled to fixation of pay and allowances in the cadre of Senior Assistant until he acquired eligibility. The promotion of the petitioner is illegal, but he was not reverted only because of Court orders and he was allowed to continue in the cadre of Senior Assistant. Since the petitioner acquired requisite qualification only in June, 1992, earlier to June, 1992 he was not eligible to be promoted and therefore, he was not entitled for pay fixation in the cadre of Senior Assistant. Thus, learned Assistant Government Pleader supports the objection raised by the Audit authority in not accepting the proposal submitted taking into account the increments in the cadre of Senior Assistant from December, 1984.

9. Though in the long history of this case the petitioner was subjected to several rounds of litigation with reference to his service grievance, it is suffice to note that in W.P.No.14599 of 2001, the relief of which was already extracted, the petitioner sought to grant increments from 19.12.1984 (wrongly typed as 19.02.1984) in the cadre of Senior Assistant till his retirement, consequential service benefits and all terminal benefits on retirement from service including

pay fixation arrears, leave encashment amount together with interest @18% per annum from the date of retirement. The Writ Petition was allowed by this Court vide order, dated 15.02.2012, and directed to grant annual increments to the petitioner from 19.12.1984 in the post of Senior Assistant till the date of his retirement and also grant him all consequential benefits.

10. Learned Assistant Government Pleader fairly states that no appeal was filed challenging the said decision. Thus, in terms of the above said order, the petitioner is entitled to fixation of his pay and allowances as Senior Assistant from the date of promotion and also revision of scales of pay in the cadre of Senior Assistant, as a consequence of revision of scales of pay in the year 1992 and all other consequential benefits. While so strangely, the Commissioner of Collegiate Education passed orders on 26.06.2013 restraining determination of service as Senior Assistant from 15.06.1992. The order of the Commissioner in the teeth of order of this Court in W.P.No.14599 of 2001 is exfacie illegal, void and unenforceable.

11. Be that as it may, even according to this order, it is accepted by respondents that the petitioner is entitled to be treated as Senior Assistant on regular basis from 15.06.1992. Thus, the petitioner is entitled to application of revised scales of pay from July, 1992.

12. Admittedly, the petitioner has been working as Senior Assistant since 19.12.1984. Though he was sought to be reverted, he was continued to work as Senior Assistant till he was granted regular promotion as Senior Assistant. Any employee, who works in higher cadre is entitled to draw increments and pay and allowances as admissible to the post as long as he works in the said post. There is no dispute with regard to the fact that the petitioner continuously worked as Senior Assistant till he retired from service. At any rate from 15.06.1992, he was treated as regular Senior Assistant by the

respondents. While determining the pay payable to the petitioner on regular promotion granted to him, the increments drawn by him till that date cannot be ignored. It is not the case of the respondents that the petitioner played fraud in obtaining promotion. Admittedly, the petitioner crossed 45 years as on 01.02.1987. These are all facts which are known to the respondents. Thus, it cannot be said that promotion granted to the petitioner on 19.12.1984 is void, was obtained by fraud and therefore, the petitioner is disentitled to claim the benefits flowing out of his working in the higher cadre.

13. Be that as it may, in view of judgment of this Court in W.P.No.14599 of 2001, it is no more open to the respondents to say that the petitioner is not entitled to draw increments in the cadre of Senior Assistant from 19.12.1984 till 15.06.1992. Thus, the action of the respondents in not settling the retirement benefits by applying the appropriate pay fixation in due compliance of judgment of this Court in W.P.No.14599 of 2001 and on account of fact that the petitioner is continued to work as Senior Assistant is *ex facie* illegal and arbitrary and amounts to harassment of a retired employee. Grave injustice was caused to the petitioner by not settling the retirement benefits for more than 16 years.

14. Accordingly, the Writ Petition is allowed with costs of Rs.10,000/- (Rupees ten thousand only). The respondents are directed to determine the pay and allowances payable to the petitioner as Senior Assistant from 19.12.1984 till the date of his retirement with all consequential benefits, including retirement benefits. The arrears of amount shall be calculated and paid to the petitioner within a period of three months from the date of receipt of a copy of this order.

15. Though he retired from service in the month of January, 2000 the retirement benefits are not yet settled. It is fairly stated by learned Assistant Government Pleader that so far no pay fixation is done,

pension is not determined and the benefits payable to the petitioner are not paid. According to the party-in-person, he is getting anticipatory pension, but no other benefits are paid to him. Party-in-person stated that though he has serious hearing problem, he is unable to fix hearing aid due to financial constraints. The petitioner claimed 18% interest on the amounts due and payable to him. Having regard to the fact that the petitioner was unnecessarily harassed and was made to wait for settlement of retirement benefits and pension from 2000, I am of the opinion that justice would serve if the respondents are directed to pay interest @10% per annum on the arrears of amounts due and payable to the petitioner from the date of due till the date of the payment.

16. Party-in-person states that he is unnecessarily harassed and humiliated even though W.P.No.14599 of 2001 was allowed on 15.03.2012 and unless the time limit is fixed for undertaking the exercise of compliance of the order and a further direction is issued to file report, the respondents would not settle the amounts. Having regard to background of this case, there is merit in the submission of party-in-person. Thus, the respondents are directed to workout the arrears of amount due and payable including the interest payable on amounts due to the petitioner and shall pay those amounts within (3) three months. A report shall be filed before this Court to that extent within three months from the date of receipt of this order. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

P.NAVEEN RAO, J

FEBRUARY 10, 2016
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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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Dt: 10.02.2016

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