

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 3908 of 2011

Date :28.7.2016

Between :

Mohd.Muzafaruddin S/o Mohd Hafeezuddin
Plot No. 1 MIG Tanashanagar, HUDA colony,
Pokalwada, Hyderabad

Petitioner

And

A.P. Industrial Infrastructure Corporation Ltd (APIIC)
Basheerbagh, Hyderabad, rep by its VC & MD and another

Respondents

The Court made the following:

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ORAL ORDER:

Petitioner while working as surveyor, in terms of voluntary retirement scheme, retired from service on 31.3.2006. Grievance of the petitioner which necessitated him to knock the doors of the Industrial Tribunal cum Labour Court (for short Tribunal) was that he was entitled to three months notice before such retirement or pay in lieu of notice, whereas neither notice was given nor pay in lieu thereof was made. According to the petitioner he is entitled to amount of Rs.69,000/- for three months period and since there is inordinate delay in making payment, he is also entitled to interest on the said amount from the date of due till it is paid. Petitioner filed M.P. No. 51 of 2009 on the file of Labour Court III, Hyderabad.

2. The claim made by the petitioner was opposed by the respondent TSIIIC. The defense of the respondent was that normally a person is entitled to three months notice or amount in lieu thereof but while determining the ex-gratia amount to the employee retired under voluntary retirement scheme, if the notice period is also counted, the total amount should not exceed the exgratia amount payable. In the instant case, according to respondents, if amount in lieu of notice is also computed, he would be exceeding the entitlement amount of exgratia payable to him. The said stand of the respondent, found favour with the Tribunal and the petition was dismissed. However, the Tribunal, has not assigned the reason for dismissal. Tribunal erroneously observed that till the date petitioner was relieved under the voluntary retirement scheme, he was paid and as his retirement was not by way of penalty, petitioner is not entitled to notice pay. Petitioner assails the said finding of the Tribunal.

3. Heard learned counsel for petitioner, Sri L Prabhakar Reddy, learned counsel appearing for Telangana State Industrial Infrastructure Corporation Limited (for short TSIIIC) and learned Government Pleader for Labour.

4. Learned counsel for petitioner submits that insofar as petitioner is concerned, the original scheme is not applicable since he was retired by separate proceedings and is governed by proceedings of the respondent TSIIIC dated 18.3.2006. According to learned counsel for petitioner, in terms of clarification dated 17.9.2003 by Government, the date of relieving should be reckoned as cut off date. From that date the notice period amount has to

be calculated but same was not done.

5. Learned standing counsel submits that even according to proceedings of the TSIIIC dated 18.3.2006, the relevant clause of G.O.Ms No. 16 dated 22.3.2001 would apply and payment of notice period would arise only if exgratia amount payable does not exceed the basic pay plus Dearness Allowance of reminder of service and amount in lieu of notice. He would submit that if the notice period is calculated, petitioner shall be getting more therefore, in terms of this clause petitioner is not entitled additional amount.

6. The only issue for consideration is whether petitioner is entitled to payment of salary for the three months period in lieu of notice.

7. Learned counsel for petitioner submits that there is no necessity to link the issue of his entitlement for notice period to that of amount payable for reminder of service by computing the basic pay and Dearness Allowance. According to service regulations governing the service, whenever a person is to be retired from service voluntarily or retired by employer, three months notice has to be given or in lieu, the amount for notice period has to be paid. The same is incorporated into the scheme and in terms thereof petitioner is entitled to claim the same.

8. It is no doubt true that in the normal circumstances an employee is entitled to amount in lieu of notice if the notice is less than three months, or retirement was without notice period. However, by formulating the voluntary retirement scheme, certain conditions are imposed and one of the conditions is as follows:

“ Payment of ex-gratia for services rendered or left over service (which ever is less), as well as the amount payable for the notice period should, however, not exceed the basic pay + DA, that would have been paid to the employee who has opted for VRS till the date of his superannuation.”

9. Thus, petitioner has to satisfy that while making the claim for notice period amount, the amount to be paid shall not exceed the total amount determined and payable to him after calculating the amount payable under the scheme for the reminder of the service. It is the categorical assertion of the respondent that petitioner is not entitled to claim the notice period amount since if such amount is paid he would be drawing more money violating the above clause. This contention of the respondent-TSIIIC is not controverted by the petitioner by placing on record the calculation memo

showing that he is not exceeding the limit imposed by the scheme. As pointed out by the learned standing counsel, the issue was debated before the Tribunal and it was categorically asserted before the Tribunal that the payment of the amount as claimed by the petitioner would be violating the above clause and no material was placed before the Tribunal also in support of the claim of the petitioner. According to learned standing counsel, the record is not available to substantiate further at this distance of time as to what was the actual amount petitioner is entitled and payable to him.

10. On the claim made by the petitioner, on detailed analysis of the relevant proceedings and on considering the contentions of the learned counsel, I am not persuaded to accept the claim of the petitioner for payment of the notice period amount. Though, reason assigned by Tribunal was not correct but the result is sustainable for the reasons recorded above. Writ Petition is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 28.7.2016
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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