

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.1022 of 2011

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DATED : 20.07.2016

Between:

Md. Khalid,S/o.Md. Ismaial,
Aged 65 yrs, Occu : Retd. Employee,
R/o.H.No.4-19-18,
Hasan Nagar, Mahmood Nagar,
Rajendranagar Mandal, Ranga Reddy District.

.. Petitioner

AND

Regional Labour Commissioner (Central) and
Appellate Authority under P.G.Act, 1972,
CITD Office, Shivam Road, Hyderabad & 3 others.

.. Respondents

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The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.1022 of 2011

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ORDER:
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The petitioner was initially appointed on contingent basis on 08.10.1974 and worked in the said capacity till 30.04.1985. On 01.05.1985, he was appointed as Cleaner on regular basis and, in the said capacity, he retired from service on attaining the age of superannuation on 30.06.2006.

2. However, while settling the retirement benefits to the petitioner, the competent authority computed 50% of the service rendered by the petitioner in contingent service, towards computation of retirement benefits, such as pension and gratuity. Aggrieved by the denial of full service for the purpose of settlement of gratuity, petitioner invoked the jurisdiction of competent authority under the Payment of Gratuity Act, 1972 (for short 'the Act'). The original authority allowed the claim of the petitioner and consequently directions were issued. Aggrieved thereby, the employer-Geological Survey of India, filed appeal before the appellate authority under the Act, vide Appeal No.01 of 2007. The appellate authority agreed with the contentions urged by the appellant and allowed the appeal. Aggrieved by the decision in Appeal No.01 of 2007, this writ petition is filed.

3. Heard learned counsel for the petitioner and learned Standing counsel for the respondents.

4. Learned counsel for the petitioner contends that until the petitioner's appointment on regular basis, he was in contingent

employment and was governed by the provisions of the Act and in terms of the Act, petitioner is entitled to the benefit of extending total service rendered by him and it is not permissible for the employer to restrict the application of benefits, flowing out the provisions of the Act under any circumstances, even by relying on the provisions of CCS (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules').

5. Learned Standing counsel submits that in terms of the provisions of the Pension Rules, on regular appointment, petitioner was brought into pensionable establishment and while computing service for the purpose of pension and other retirement benefits, 50% of the service rendered by him in contingent establishment was computed. On the issue of computation of service rendered on contingent basis, Government of India issued instructions as early as 14.05.1968, which envisages computation of 50% of the service and in terms thereof, the service rendered by the petitioner in contingent establishment was counted. He therefore, supports the decision of the appellate authority.

6. It is not in dispute that the petitioner was in contingent establishment till 30.04.1985 and only from 01.05.1985 he became a regular employee. After becoming regular employee, the petitioner is governed by the provisions of Pension Rules. While determining the benefits flowing out of Pension Rules, it is permissible for the employer to compute the previous service rendered before becoming permanent/regular. As per the instructions of Government of India, the service rendered prior to his regular appointment was taken note of and 50% of the service is computed for the purpose of arriving at pension and other retirement benefits including gratuity. The Pension Rules are applicable to government servants and they deal with various benefits flowing out of the service rendered to the Government, after the retirement including payment of monthly pension and gratuity.

7. Though the Pension Rules do not envisage computation

of past service, in order to give weightage to the service rendered to the Government prior to regular appointment, 50% of the past service is also counted. Computation of past service is for extension of monthly pension as well as gratuity. If the claim of the petitioner is accepted, it would amount to treating the past service differently for two different purposes i.e., (1) for the purpose of determination of pension and; (2) for the purpose of gratuity. Petitioner cannot seek to apply computation of full past service for Gratuity and 50% for pension. No provision is brought to my notice which enables persons like petitioner to claim differential computation of service. Pension Rules grant monthly pension and service Gratuity. Since the provisions of the Pension Rules are more beneficial, and the said Pension Rules shall alone be applicable to the government servants, they have to be applied in all respects.

8. Furthermore, it is not disputed by the learned counsel for the petitioner that if the service from 01.05.1985 alone is computed, the petitioner is not having minimum service of 20 years to get full pensionary benefits and it would be disadvantage to the petitioner, if he opts out of counting of the contingent service for the purpose of retirement benefits.

9. Having regard to these facts, I do not see any error in the decision arrived at by the appellate authority under the Act warranting interference of this Court and accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO, J

20th July, 2016
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