

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

* * * *

WRIT PETITION No.8201 OF 2016

Between:

The State of Andhra Pradesh, rep. by its
Secretary, Finance & Planning (FW.Admin.II)
now as Special Secretary, Finance (HR.VI-SA/TFR)
Department, A.P. Secretariat Buildings, Hyderabad
and others.

.. Petitioners

And

M. Raja Rao, s/o. Late Laxman Rao,
and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 17-03-2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

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|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether their Lordship wish to
see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

*THE HONOURABLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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VERSUS

\$ M. Raja Rao, s/o. Late Laxman Rao,
and another.

... Respondents

! Counsel for Petitioners: Government Pleader for Services (A.P)

^Counsel for Respondent No.1: Mr. D.Y.Karunakar Dayanidhi.

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? CITATIONS:

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.. Respondents

Counsel for the Petitioners: Government Pleader for Services (A.P)

Counsel for the Respondent No.1: Mr. D.Y.Karunakar Dayanidhi.

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This Court made the following:

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ORDER:

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This writ petition is filed for Certiorari to quash order, dated 13.08.2015, in O.A.No.2675 of 2014 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

We have heard the learned Government Pleader for Services (A.P.) appearing for the petitioners and Sri D.Y.Karunakar Dayanidhi, learned counsel representing respondent No.1, the alleged caveator.

Respondent No.1 was appointed temporarily as Junior Auditor in the office of the District Audit Officer, State Audit, Anantapur on daily wage basis, after he was sponsored by the Employment Exchange under proceedings Rc.No.586/A1/1986, dated 12.07.1986. Thereafter, he was absorbed as Junior Auditor against regular vacancy on 04.08.1990. His services were regularized in the said cadre and he was further promoted to the post of Senior Auditor and has retired from service on attaining the age of superannuation on 31.01.2011. Even before the retirement, he made a representation on 20.01.2011 to the petitioners, requesting them to count the temporary service rendered by him in the cadre of Junior Auditor prior to his absorption. As no order was passed on his representation, he has approached the Tribunal by way of the abovementioned O.A. On consideration of the rival pleas of the parties, the Tribunal has allowed the O.A by the impugned order. Feeling aggrieved thereby, the petitioners filed this writ petition.

Rules 13 and 14 of the Andhra Pradesh Revised Pension Rules, 1980 (for short, 'the Rules') deal with the qualifying service of a temporary employee for the purpose of payment of pension. These Rules read as under:

"13. Commencement of qualifying service: Subject to the provisions of the rules, qualifying service of a

Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that –

(a) in the case of a Government servant in a Class IV service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th November, 1960, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

14. Conditions subject to which service qualifies: (1)

The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression service means service under the Government and paid by the Government from the Consolidated Fund of the State but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by the Government.”

From the above reproduced Rules, it is clear that qualifying service of a Government servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, subject to the exceptions contained in clauses (a) and (b) of Rule 13 of the Rules. A temporary employee shall further satisfy the conditions stipulated in Rule 14 of the Rules for counting his temporary service for pensionary benefits. Under this Rule, unless his duties and pay are regulated by the Government or under the conditions determined by the Government,

such service was not qualified for pension. The meaning of the word “service” under sub-Rule (1) of Rule 14 of the Rules is explained in sub-Rule (2) thereof, as per which the service is under the Government and the salary is paid by the Government from the Consolidated Fund of the State, but the same does not include the service of a non-pensionable establishment, unless such service is treated as qualifying service by the Government.

In the case on hand, it is not in dispute that the duties of respondent No.1 and his pay were regulated by the Government. Further it is also not in dispute that respondent No.1 was paid by the Government from the Consolidated Fund of the State and that the post is a pensionable one. Therefore, the Tribunal has rightly come to the conclusion that temporary service of respondent No.1 shall be counted as qualifying service for the purpose of pension under the abovementioned Rules.

The learned Government Pleader for Services has advanced two objections in this regard against the order of the Tribunal. One is that there are different sub-heads under which payment of salaries under Consolidated Fund is made and that the sub-head under which respondent No.1 was paid salary during temporary service cannot be considered for the purpose of counting the qualifying service for pension. We are afraid we cannot accept this submission, for sub-Rule (2) of Rule 14 of the Rules does not distinguish among various sub-heads of Consolidated Fund for the purpose of considering the qualifying service. The other contention raised by the learned Government Pleader is regarding the delay in respondent No.1 approaching the Tribunal for the relief. Though the Tribunal has not specifically considered this aspect, we could find from the O.A filed by

respondent No.1 that he has explained the purported delay in paragraph (f), which reads as under:

“It is further respectfully submitted that the applicant made a representation while he was in service i.e., on 20.01.2011 to all the concerned authorities of his department i.e., to the Regional Dy. Director of State Audit, Kurnool, Director of State Audit, AP, Hyderabad and to the Secretary to the Government for Finance (F.W. Admin.II) department, Hyderabad, A.P, wherein while explaining his case for counting his four years daily wage service (i.e., 12.07.1986 to 04.08.1990) for the purpose of his pensionary benefits, requested to count his four years daily wage service for the purpose of his pensionary benefits. The Government of AP by way of reminder dated 26.03.2011 also asked the Director of State Audit, AP Hyderabad to furnish his remarks in the matter on 26.03.2011. Thereafter due to acute ill health he could not pursue the matter further; but on 08.12.2013 he made a representation under Right to Information Act, 2005 seeking information on what action was taken in his case. As there was no response so far nor any action was taken so far on his case, he is constrained to approach this Hon’ble Court by way of filing this O.A.”

From the explanation offered by respondent No.1, we are convinced that he was agitating his claim even before he has retired from service and, at one point of time, even the Government of Andhra Pradesh has also invited remarks from the Director of State Audit on the claim of respondent No.1. In our opinion, when respondent No.1 is otherwise entitled to the relief in law, he cannot be denied the same merely on the ground of some delay in his approaching the Tribunal for redressal of his grievance.

For the above-mentioned reasons, we do not find any merit in this writ petition and the same is, accordingly, dismissed.

As a sequel to the dismissal of the writ petition,

WPMP.No.10414 of 2016 filed by the petitioners for interim relief stands disposed of as infructuous.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

17.03.2016

Note: L.R copies

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