

*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

+WRIT PETITION No. 34269 of 2016

% 20-10-2016

The Commissioner of Police, Vijayawada City,
Vijayawada, Krishna District, and two others .. Petitioners

Vs.

\$ A. Vanamala Rao and 25 others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : The Government Pleader for
Services (AP)

^ Counsel for respondents 1 to 25: Mr. P. Narasimha

^ Counsel for 26th respondent : NONE

? CASES REFERRED : ----



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION No. 34269 of 2016

Between:

The Commissioner of Police, Vijayawada City,
Vijayawada, Krishna District, and two others .. Petitioners

Vs.

A. Vanamala Rao and 25 others .. Respondents

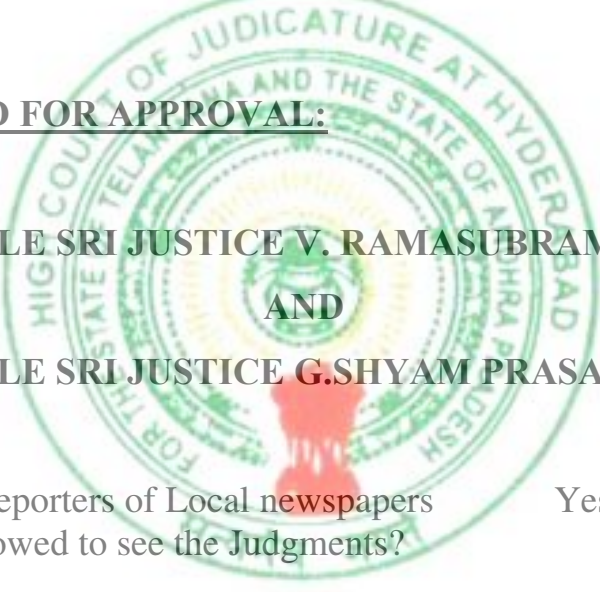
DATE OF JUDGMENT PRONOUNCED: 20.10.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

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

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 34269 of 2016

ORDER: (Per VRS,J)

The State has come up with the present writ petition, challenging an order passed by the Andhra Pradesh Administrative Tribunal, allowing the application filed by the un-official respondents herein and setting aside the orders of recovery passed against them.

2. Heard the learned Government Pleader for Services (AP) appearing for the petitioners, and Mr. P. Narasimha, learned counsel for the un-official respondents.

3. Admittedly, the un-official respondents herein were appointed in the year 2004 as Constables in the Armed Reserve Police. In the year 2008, when a direct recruitment to the post of Civil Police Constables was conducted, the un-official respondents appeared for the selection. They were selected and appointed in the year 2009.

4. After such appointment, the un-official respondents made a representation for fixation of their pay, in terms of Fundamental Rule 22(a) (iv) of the Andhra Pradesh Fundamental Rules read with

Rule 26 (1) of the A.P. Revised Pension Rules, 1980. Upon a consideration of the rule position, the Commissioner of Police, who is the 1st petitioner herein, passed a detailed order, dated 22.06.2011, granting the un-official respondents pay protection. For some of them, the protection was with reference to pay, leave as well as pension. For the others, who were appointed on or after 01.09.2004, the protection was confined only to pay and leave, as a Contributory Pension Scheme had already come into existence on that date. However, none of the un-official respondents were granted protection of their seniority and rightly so.

5. After more than a year of the grant of the benefit of pay protection, the very same Commissioner of Police issued show-cause-notices in August, 2012, on the basis of a clarification issued by the Chief of Office, on the ground that the Rules do not provide for protection of pay to those appointed to a post carrying stipend. The representations given by the un-official respondents were rejected and orders of recovery passed, forcing them to go before the Tribunal and the Tribunal allowed the applications, on the basis of an earlier order passed in O.A.No.806 of 2007.

6. The contentions of the learned Government Pleader for Services (AP), while assailing the order of the Tribunal, are two-fold, namely,

(a) that the issue was not covered by the decision of the Tribunal in O.A.No.806 of 2007, and (b) that the Rules do not provide for the grant of pay protection, when the appointment was to a post carrying stipend and not a scale of pay.

7. We have carefully considered both the submissions.

8. Though apparently the issue raised in O.A.No.806 of 2007 related to the application of the Contributory Pension Scheme, the actual issue framed by the Tribunal in O.A.No.806 of 2007 hinged upon the very same question that has now fallen for consideration. This can be demonstrated by re-producing Paragraph-3 of the order of the Tribunal in O.A.No.806 of 2007, dated 06.06.2007, which reads as follows:

“Now, the point for consideration is, whether the applicants are eligible for counting the past service rendered in APSP Battalion prior to their appointment as Civil Police Constables for the purposes of pay protection, leave and pension and for Revised Pension Rules of 1980?”

Therefore, the first contention of the learned Government Pleader for Services may not be correct.

9. Insofar as the second contention is concerned, the rule position is very clear. The Andhra Pradesh Fundamental Rules contain a provision in Fundamental Rule 22, as to how the initial substantive

pay of a Government servant should be fixed on a time scale of pay, when he is appointed substantively to a post. Clause (iv) of sub-rule (a) of Fundamental Rule 22 reads as follows:

“The pay of a regular Government servant (not appointed under emergency provisions) when appointed directly to another post, under the Government on selection by the A.P. Public Service Commission, shall be fixed in the new post at a stage which is not lower than the pay drawn by him in the earlier post.

Provided that if there is no stage in the pay scale of the new post, the pay shall be fixed in the new post at the stage next below the pay protecting the short fall, if any, as personal pay to be absorbed in future rise in pay on account of grant of increment or otherwise;

Provided further that the benefit shall be confined to the Government employees only. The employees working in Central Government, Universities, Aided Institutions, etc., who are appointed to the Government service on selection by the Andhra Pradesh Public Service Commission or District Selection Committee, are not eligible for the benefit provided under sub-clause (iv) of this rule.”

10. It appears that the petitioners have mixed up what is found in the preamble portion of Fundamental Rule 22 with what is found in Clause (iv) of sub-rule (a). It is true that the preamble to Fundamental Rule 22 begins, by saying that the initial substantive pay of a Government servant, who is appointed substantively to a post on a time scale of pay, should be regulated in the manner prescribed thereunder. But, Clause (iv) simply deals with the method of fixation of pay of a regular Government servant when appointed directly to

another post under the Government on selection by the Andhra Pradesh Public Service Commission. There is no reference to the expressions “*time scale of pay*” and “*stipend*”. Therefore, the whole basis, on which the 1st petitioner sought to initiate proceedings for re-fixation of pay and recovery, is completely flawed.

11. There were two conditions that are required to be satisfied for a person to claim the benefit of Clause (iv) of sub-rule (a) of Fundamental Rule 22. These conditions are (1) that he should be a regular Government servant not appointed under emergency provisions, and (2) that he should have been appointed directly to another post under the Government on selection by the Andhra Pradesh Public Service Commission. Both these conditions are satisfied by the un-official respondents in this case. They were regular Government servants from 2004 till 2009 and they were not appointed under emergency provisions. In the year 2009, they were appointed directly to another post under the Government on selection by the Andhra Pradesh Public Service Commission. Therefore, as a matter of right, the un-official respondents are entitled to have their pay fixed in the new post at a stage which is not lower than the pay drawn by them in the earlier post. This aspect has been lost sight of by the petitioners, which has led to this un-necessary litigation.

Therefore, we find nothing wrong in the order of the Tribunal. Hence, the Writ Petition is dismissed.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

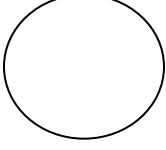
V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

20th October, 2016

Note: L.R. copy be marked.
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