

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.13651 of 2014

ORDER: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

"To declare the proceedings vide letter bearing No.(1) SWC/Gratuity/Accts./2013-14, dated 07.12.2013 withholding the amount of Rs.6,23,839/- (2) SWC/Accts./E.L.Encashment/2013-14, dated 07.12.2013 withholding the amount of Rs.4,36,474/-, (3) SWC/A2/PLI/2012-13 dated 07.12.2013 withholding the amount Rs.69,455/-, (4) SWC/A7/PF/482/2013-14, dated 09.12.2013 after deducting of Rs.1,731/-, retirement benefits, i.e., gratuity, part of provident fund, encashment of earned leave, PLI for the years 2012-13 and withholding of all retirement benefits around an amount of Rs.11,31,471/-, as illegal, arbitrary and unconstitutional and violating Articles 16 and 19 of the Constitution of India."

2. It is stated in the petition that the respondent is a statutory corporation and its activity is to acquire and build godowns for storage of agriculture products and other products and the petitioner was appointed as Junior Assistant in the respondent-corporation on 19.09.1985 and rendered service in various places throughout Andhra Pradesh and during his service, he had been promoted as Godown Keeper on 19.02.1990 and further promoted as Warehouse Manager Grade-III on 19.09.2002 and thereafter, retired on 30.06.2013 as Warehouse Manager Grade-II. It is also stated that the Regional Manager verified the stocks on 18.01.1994 and found that there is shortage of 130 M.Ts., i.e., 2600 bags of RCF Urea in the godown of FB at Warangal and then the respondent-corporation suspended the

petitioner along with another Warehouse Manager and appointed enquiry officer to conduct departmental enquiry and as per the enquiry report dated 16.08.1994, the respondent reinstated the petitioner on 16.12.1995 with stoppage of two annual increments without cumulative effect. Subsequently, the respondent-corporation filed a Civil Suit vide O.S. No.304 of 1996 on the file of the Principal Senior Civil Judge at Warangal for recovery of Rs.9,97,552-45 ps, which includes interest @18% per annum on the principal amount of Rs.6,79,770/- upto the date of suit filed by the corporation, and also with future interest @18% per annum on the principal amount from the date of petition till the date of realization and the same was decreed on 18.04.2001 with costs. The respondent did not choose to file any execution proceedings. The respondent calculated huge interest on decree amount and withheld huge pensionary benefits, instead of recovering principal amount from the salary, though the petitioner was in the service from April 2001 to 2013. The department has already punished the petitioner with stoppage of two annual increments, without cumulative effect, withholding the retirement benefits comes under double jeopardy, which is bad in law. It is stated by the petitioner that after his retirement, there is no pension facility in A.P.State Warehousing Corporation. Then the petitioner submitted two representations to the respondent-corporation to release his withheld amount, i.e., Rs.11,31,471/-, but there was no response from the respondent-corporation. It is stated by the petitioner that the amount of gratuity is exempted from attachment in execution proceedings as per the Payment of Gratuity Act, 1972, but the respondent-corporation has not followed the same. Therefore, the petitioner has no efficacious alternative remedy, except to approach this

Court seeking the aforesaid relief under Article 226 of the Constitution of India.

3. The respondent-corporation filed counter stating that after departmental enquiry was conducted, charges were framed and after proving guilt, the petitioner along with another Warehouse Manager were dismissed from the service and on appeal, the appellate authority had reinstated the petitioner to duty, but confirmed the punishment of dismissal from service in the case of another Warehouse Manager. It is further contended that criminal action was also initiated against the petitioner and another, after completion of disciplinary action, a civil suit in O.S. No.304 of 1996 was filed before the Principal Senior Civil Judge, Warangal for recovery of loss sustained to the respondent-corporation and the same was decreed. It is further contended that the petitioner had retired from the service on 30.06.2013 and he was also served with a notice on 26.04.2007 directing him to remit his share of decretal amount i.e., Rs.9,97,562/- and future interest at 18% per annum, but he neither remitted the said amount nor gave a reply in his defence. Instead, the petitioner preferred an appeal vide A.S. No.1845 of 2007 before this Court. The share of the petitioner, including interest, as per the trial Court's order is Rs.10,39,675/- and the said amount is withheld by the respondent-corporation. It is stated that the payment of gratuity is being governed by the Andhra Pradesh State Warehousing Corporation Employees Gratuity Fund Regulations, 1974 which were framed under Section 42 of the Warehousing Corporation Act, 1962 (Central Act 58 of 1962) duly following the ceiling limit and method of calculation prescribed in the payment of Gratuity Act, 1972. In accordance with the Regulation 6 of the above Regulation, the respondent-corporation at its

discretion can adjust the amounts due to the Corporation from the payment of gratuity payable to the employee on retirement or otherwise. In the instant case, the respondent-corporation has only withheld an amount of Rs.11,31,471/- (i.e., Rs.4,36,474/- towards EL/HPL encashment, Rs.69,445/- towards PLI amount for the year 2012-13, Rs.6,23,839/- towards Gratuity and Rs.1,713/- towards P.F.). Finally, the respondent-corporation prays to dismiss the writ petition.

4. The petitioner filed reply affidavit stating that at the time of malpractice, he was not present at Warangal godown and as per the instructions of his Godown Manager, he left to attend other fertilizers transactions at Gorrekunta godowns, he went to Gorrekunta godown which is far away from the main godown and in his absence, the H&T Contractor, Sri Ch.B.V.Murali Krishna and Sri G.Satyanarayana, Warehouse Manager, both colluded and diverted 130 Mts. of Urea from 163.950 Mts available in godown and after coming back to Warangal godown from Gorrekunta godown during late hours in the evening, as per the instructions of his superior officer, he made entry in the register and the responsible officer also made entries in the ledgers. It is further stated that gratuity is statutory right of the employee which is not recoverable in any court proceedings and as per the respondent-corporation gratuity Regulation No.6 clearly envisages that it applies to the employees who had been convicted for criminal offence or has been dismissed for dishonesty or misconduct in the corporation and not for the retired employees.

5. Smt. Suvarna Jaya Sree, learned counsel for the petitioner, would submit that without any justification or authority, the respondent-corporation had withheld the gratuity of the petitioner and as per the

provisions of Section 60 of the Code of Civil Procedure, 1908 (for short, 'CPC'), stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund shall not be liable to be attached and the respondent-corporation is unjust and without authority had withheld the said amount and, on account of which, the petitioner has been put to lot of mental agony and in financial crises and the petitioner has no efficacious alternative remedy under law and ultimately, prays to allow the writ petition as prayed for.

6. On the other hand, learned Standing Counsel for the respondent-Corporation would submit that the petitioner has indulged in diversion of 2600 bags of RCF Urea kept in the godown of FB at Warangal and a departmental enquiry was conducted, two increments were withheld and a criminal case is also pending and the respondent-corporation obtained a decree in O.S. No.304 of 1996 on the file of the Principal Senior Civil Judge, Warangal, on 18.04.2001 against the petitioner and another in respect of loss caused to it and since the petitioner was retired from service on 30.06.2013, the respondent-corporation issued a notice on 26.04.2007 to him directing to remit his share in decretal amount, which comes to Rs.9,97,562/- with interest @ 18% per annum, but the petitioner failed to remit the said amount and preferred an appeal in A.S. No.1845 of 2006 before this Court and the same is pending. Therefore, as per the impugned proceedings, the petitioner is not entitled for his gratuity amount at this stage and ultimately, prayed to dismiss the writ petition.

7. It is an admitted fact that the petitioner was an employee of the respondent-corporation and while working as Godown Keeper, he

was suspended from service due to some malpractice and thereafter, he was reinstated on 16.12.1995 with stoppage of two annual increments, without cumulative effect and finally, he retired from service on 30.06.2013 as Warehouse Manager Grade-II. It is also not in dispute that the petitioner and another suffered a decree for damage caused to the respondent-corporation in O.S. No.304 of 1996 on the file of the Principal Senior Civil Judge at Warangal and the petitioner preferred an appeal in A.S. No.1845 of 2007 before this Court and the same is pending. It is also not in dispute that the respondent-corporation has initiated criminal proceedings against the petitioner and another.

8. In view of the contentions putforth, the point that arises for determination is, whether the respondent-corporation is entitled to withhold the retirement benefits of the petitioner?

9. The contention of the respondent-corporation is that under Regulation 6 of the Andhra Pradesh State Warehousing Corporation Employees Gratuity Fund Regulations, 1974, the Corporation has the power and authority to withhold the retirement benefits. Therefore, it is appropriate to extract the said Regulation as under:

"No member of the staff can claim any relief under these regulations as a matter of right. Gratuity shall not be paid to any employee who has been convicted of criminal offence, or has been dismissed for dishonesty or misconduct in the Corporation. Any amount that may be due to the Corporation by any member of the staff on account of any advance made or loans given or any other account shall be adjusted at the discretion of the Corporation from Gratuity and only the balance, if any, paid."

10. Under the above Regulation, the Corporation has power and authority to withhold the gratuity of the employees where they were

convicted or dismissed from service on account of their dishonesty or misconduct. The allegation is that there is a criminal case pending against the petitioner. There is no mention by the respondent-corporation that the petitioner was convicted for a criminal offence, the pendency of a criminal case against the petitioner would not empower the corporation to withhold the gratuity, etc. Therefore, the contention of the respondent-corporation fails.

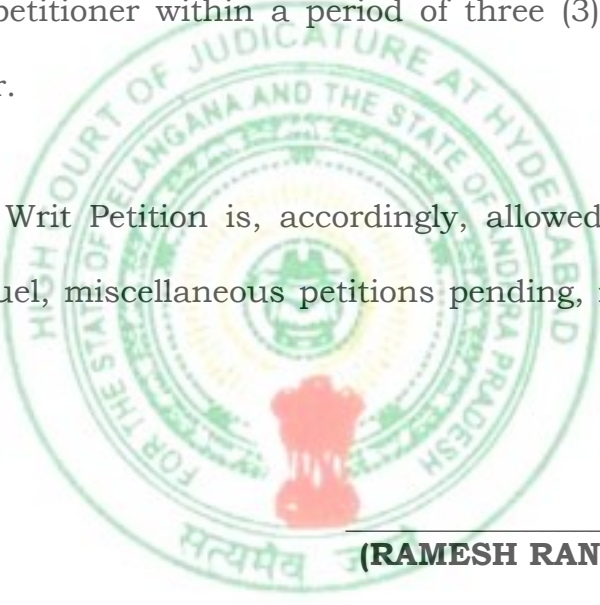
11. It is also contended that a decree was passed in O.S. No.304 of 1996 by the Principal Senior Civil Judge, Warangal, against the petitioner and another. Aggrieved by the said judgment and decree, the petitioner has preferred the appeal in A.S. No.1845 of 2006 before this Court. These facts are not in dispute. There is no order of the Court attaching the retirement benefits of the petitioner, even to attach the retirement benefits of the retired employee, there are restrictions under Section 60 of CPC. The retired employees have got certain safeguards under Section 60 of CPC. The gratuity and other retirement benefits cannot be attached pending the suit for recovery of money or in execution of a decree. It is apt to refer the decision of the Hon'ble Supreme Court in **Radhey Shyam Gupta v. Punjab National Bank and another**¹, wherein it is held that even the pensionary benefits and gratuity converted into FDRs cannot be attached.

12. It is evident from the record that the respondent-corporation, without any authority or order of the Court in pending appeal, has withheld the pension and other retirement benefits of the petitioner, in the circumstances, the petitioner has rightly invoked the jurisdiction of the Court under Article 226 of the Constitution of India, as there was no

¹ AIR 2009 SC 930

efficacious alternative remedy available to him under other law. Though the petitioner was retired from service on 30.06.2013, till date, his gratuity and other pensionary benefits are not released without any justification or authority, the same are withheld. Therefore, the petitioner is entitled for the withheld amounts, i.e., Gratuity, EL Encashment, Productivity Linked Incentive (PLI) and Final Settlement of Provident Fund, with interest @ 6% per annum from the date of his retirement. Consequently, the impugned proceedings are set aside. The respondent-corporation shall pay the gratuity and other retirement benefits to the petitioner within a period of three (3) months from the date of this order.

13. The Writ Petition is, accordingly, allowed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.



(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: - -2017

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