

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.20488 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the writ petitioner, a retired employee of Southern Power Distribution Company of Andhra Pradesh Limited ('APSPDCL', for brevity), is filed impugning the action of the Chairman & Managing Director of APSPDCL and the Divisional Engineer (Operation), Guntur, in not considering the services rendered by the petitioner as NMR Head Mazdoor from 02.02.1970 to 18.06.1977 for the purpose of determining his pension and pensionary benefits on par with similarly situated employees as per Proc. No.S.O.O (CGM/HRD) Ms.No.97, dated 25.07.2006, T.O.O (Addl. Secy. Per) Ms.No.129, dated 11.07.2006 and R/w Memo No. CGM/HRD/ DS/ AS-III/ PO/ JPO(p)/ A1/ D.No.1031/ 07, dated 17.07.2007, as illegal, unjust, arbitrary, discriminatory and in violation of Articles 14, 16 & 21 of the Constitution of India and requesting to consequently to direct the respondents to count the service rendered by the petitioner as NMR Head Man Mazdoor, during the aforesaid period for payment of pension and pensionary benefits.

2. I have heard the submissions of *Sri V.Narasimha Goud*, learned counsel appearing for the petitioner and of *Sri K.Naganna*, learned counsel representing Smt. J.Koteswari Devi, learned Standing Counsel appearing for the respondents. I have perused the material record.

3. From the pleadings of the parties and the submissions made before this Court, the facts that emerge for consideration, in brief, are as follows:

The petitioner rendered service from 02.02.970 to 17.06.1977 having joined as NMR Head Man Mazdoor. The services of the petitioner were regularized as a Helper, on 18.06.1977. He was promoted as Assistant Wireman, on 04.05.1981; as Assistant Lineman, on 16.04.1984; and, as Line

Inspector, on 31.01.1997. The petitioner retired from service, on 30.06.2005, while working under the Divisional Engineer (Operation), the 2nd respondent. A.P Transco, vide M.S.No.129, dated 11.07.2006, issued orders to count the services of NMR staff of Operation & Maintenance (O & M) and take the said service into account for pension and pensionary benefits in respect of the employees, who are in service as on the date of the said order, i.e., 11.07.2006. The 1st respondent-APSPDCL adopted the said scheme of AP Transco. However, since the petitioner retired from service, on 30.06.2005, that is, prior to the date of the said orders, 11.07.2006, the benefits conferred by the said order were not extended to the petitioner despite his request and legal notice, dated 25.07.2007.

3.1 According to the petitioner, denying the benefit of the said orders to the petitioner and non-consideration of his request by the respondents is arbitrary and not tenable and that the respondents are not entitled to treat the same category of employees in different manner by pick and chose method and cannot illegally deny the benefits extendable to the petitioner and that their said action is in violation of Articles 14, 16 and 21 of the Constitution of India. According to the further contentions of the petitioner, the respondents' establishment issued proceedings in Memo No.CGM/ HRD/ DS/ AS-III/ PO/ JPO(p)/ A1/ D.No.1031/ 07, dated 17.07.2007, extending the benefits given in the earlier proceedings, dated 25.07.2006 and 08.01.2007, to similarly situated employees, who are in service as on 01.02.2006; but, no reasons are forthcoming for denying the same benefits to the employees like the petitioner, vide modified memo. The petitioner also submits that due to non-extension of the benefit to the petitioner, he is not getting full pension and that if the service rendered by him as NMR during the period from 02.02.1970 to 17.06.1977 is taken into consideration, he would be entitled to full pension.

3.2 As already noted, according to the respondents, the benefits conferred by proceedings, dated 11.07.2006, were applicable to the employees, who are in service as on 11.07.2006 and, therefore, the writ petition is not maintainable. The respondents further contend that in the facts and circumstances and in view of the orders, dated 11.07.2006, NMR service of the petitioner from 02.02.1970 to 17.06.1977 could not be taken into consideration for fixing his pension and pensionary benefits, since his case is not covered within the purview and ambit of the said orders.

4. Learned counsel for the petitioner and *Sri K.Naganna*, learned counsel representing Smt. J.Koteswari Devi, learned Standing Counsel appearing for the respondents made submissions in line with the respective pleadings of the parties.

5. The main contention of the petitioner is that similar benefits were extended to similarly placed employees and that the respondents' establishment issued proceedings in Memo No.CGM/ HRD/ DS/ AS-III/ PO/ JPO(p)/ A1/ D.No.1031/ 07, dated 17.07.2007, extending the benefits given in the earlier proceedings dated 25.07.2006 and 08.01.2007 to similarly situated employees, who are in service as on 01.02.2006; but, no reasons are forthcoming for denying the same benefits to the employees like the petitioner, who are in service as on 30.06.2005. His specific contention is that there are no valid and tenable grounds for treating the same category of employees differently and the said discrimination is arbitrary, illegal and violates the provisions of the Articles of the Constitution of India. In the counter, it is stated that orders were issued, on 17.7.2007, extending the benefits given in the earlier proceedings, dated 11.07.2006 to the employees who are in service as on 01.02.2006 and that the benefits are not extendable to the petitioner, who retired on 30.06.2005, nothing else is stated. The law is fairly well settled that if the respondents fail to support the action of

classification on the touchstone of the principle that the classification is reasonable and having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. Solely on the ground that the petitioner retired earlier and some retired later, the respondents are treating the same category of employees differently and no reasons, much less, valid reasons are forthcoming for such classification and discrimination and the respondents could not substantiate by urging a single acceptable and persuasive reason for this discrimination or division amongst the same category of employees. When the petitioner stated in his pleadings that similar benefits were extended to similarly placed employees, the said averment is not denied in the counter of the Divisional Engineer (Operation) filed on behalf of the respondents. In the light of the said fact, it appears that the choice of the date is capricious or whimsical in the facts and circumstances of the case. Payment of pension is no longer treated or considered an act of bounty by the employer. Under the Constitution of India, right to public assistance in old age has been recognized as one of the predominant State Policies as per Article 41 of the Constitution of India. The respondents could not show that classification or discrimination is based on any discernible rational principle. The respondents could not show that classification in the impugned order, which distinguishes the persons like the petitioner from those who are in service as on 01.02.2006 has rationale nexus to the object achieved by the said order and that the classification is founded on an intelligible differentia which distinguishes such persons that are grouped together from those that are left out of the group. On the above analysis, this Court finds that the respondents ought not to have refused to take into consideration the service rendered by the petitioner as NMR from 02.02.1970 to 17.06.1977 for the purpose of fixation of pension and pensionary benefits based on the order, dated 11.07.2006, wherein, the classification solely on the ground that some retired earlier and some retired later clearly appears to be not based on any

intelligible differential. In that view of the matter, the writ petitioner is entitled to the relief claimed in the writ petition.

6. In the result, the Writ Petition is allowed as prayed for and the respondents are directed to consider the services rendered by the petitioner as NMR Head Man Mazdoor from 02.02.1970 to 17.06.1977 and re-fix his pension and pensionary benefits and pay him the arrears of monetary benefits within three months from the date of receipt of a copy of this order without any interest. It is made clear that in case the respondents fail to pay the arrears of pension payable to the petitioner, the same shall carry interest @ 6% per annum from the date of expiry of the said three months period till the date of payment or realization.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this writ petition shall stand closed.

20th April, 2017

NOTE: Issue C.C. by 22.05.2017.
(B/O)
RAR

M. SEETHARAMA MURTI, J

