

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.11974 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking a writ order or direction, more particularly, a writ in the nature of *Mandamus* declaring the action of the respondents in keeping the pension proposals pending even after a lapse of one year, without any valid reasons and without sanctioning the pension to the petitioner, as illegal, improper and void and consequently to direct the respondents to release the pension and pass such other orders as this Court deems fit and proper in the circumstances of the case.

2. I have heard the submissions of *Smt. A. Padma*, learned counsel for the petitioner and of *Sri M. Ravindra*, learned Standing Counsel for APEPDCL, appearing for the respondents. I have perused the material record.

3. The basic facts that emerge for consideration from the pleadings and submissions of the parties, in brief, are as follows:

The petitioner was appointed as a Junior Lineman (Trainee), on 09.07.1998 FN, and was later promoted as regular Junior Lineman in the time scale, on 09.01.1999. The petitioner joined, on 09.01.1999, as Junior Lineman, Operation Circle, Rajanagaram Division, East Godavari District. Later, he was promoted as Assistant Lineman, on 16.09.2002 FN, and again promoted as Lineman, on 05.05.2004; and, the petitioner joined, on 21.05.2004 AN, in the said promotion post. Thereafter, the petitioner retired from service, on 30.06.2005, having attained the age of superannuation. Except pension, all the terminal benefits have been extended to the petitioner.

3.1 In May 2005, the petitioner submitted a pension proposal through the Superintendent Engineer, Operation Circle, Rajahmundry, East Godavari

District, the 2nd respondent, to the Divisional Engineer, APEPDCL, Rajahmundry, the 3rd respondent, for payment of terminal benefits and regular pension. According to the petitioner, a representation, dated 07.07.2005, was also submitted to the Chief General Manager, HRD of APEPDCL, Visakhapatnam. According to the petitioner, there was no response and, therefore, on 20.12.2005, the petitioner submitted a representation to the respondents 1 and 2; and, a further representation, dated 09.01.2006, to the Chairman & Managing Director, APEPDCL, bringing to the notice of the said officers his difficulties and health condition. According to the petitioner, the superior officers of the respondent/ APEPDCL did not consider and process the request of the petitioner despite his repeated requests and representations. The grievance of the petitioner is that he should have been sanctioned a minimum pension as he has got minimum qualifying service and as he joined the Department even much earlier to 1998 and worked as Bill Collector during the periods from 01.06.1970 to 24.06.1970; from 06.11.1973 to 07.01.1974; and, from 08.01.1974 to 18.01.1974 in Electricity Revenue Office/ Rajahmundry and Samalkota. According to him, he also worked as Emergency Lineman and also as casual labourer from 22.04.1978 to 07.02.1979 at Central Stores, Bommuru and from 25.05.1979 to 31.01.1980 at Distribution/ Rajahmundry and from 22.05.1980 to 04.06.1980 at Bommuru. He filed WP No.4407 of 1993 and sought for appointment on regular basis and this Court by orders, dated 23.08.1986, directed to consider his request. After a long time thereafter, the petitioner was appointed as a Junior Lineman vide proceedings, dated 09.07.1998, and his services was later regularized, on 09.01.1999 as already noted. However, according to the respondents, as per the erstwhile APSEB Rules and A.P Revised Pension Rules, 1980, an individual who had completed qualifying service of ten years is only eligible for drawing pension; however, the petitioner is eligible for service gratuity as he has completed five years of qualifying service and accordingly, an amount of Rs.34,404/- was paid towards retirement gratuity;

however, no representation as claimed by the petitioner is received in the office of the respondents; the petitioner was informed accordingly *vide* Sanction Order in D.No.Adm/ C2/ 764/ 2005, Dt.06.07.2005; pension has not been sanctioned to the petitioner as there is no provision for sanction of pensionary benefits to individuals like the petitioner who have not completed the qualifying service of ten years.

4. In view of the facts and submissions, the short question is whether the petitioner is having qualified service for being considered to be eligible for pension.

4.1 The admitted facts are as follows: The petitioner submitted a representation requesting to sanction his pension duly taking into consideration the six months training period as qualifying service for calculation of pension as per TOO. GM.(IR)-Per) Ms.No.251, dated 29.01.2001. The Divisional Engineer, Operation, Rajahmundry, has submitted the revised pension proposals as per clarification issued in Memo No.HRD/ IR/ PO (Pension) F.No.331, dated 31.10.2008, duly adding three years of service weightage to 6 years 11 months and 21 days and by arriving at Gross Qualifying Service as 9 years 11 months and 21 days. Thus, even according to the respondents, the petitioner has a gross qualifying service of 9 years 11 months and 21 days, if the training period is added. When a clarification was sought as to whether the said length of service can be taken as ten years of service and pension can be sanctioned to the petitioner, who retired on 30.06.2005, on attaining the age of superannuation, a clarification was issued stating that the training period shall not be counted for pension as the petitioner retired from service on 30.06.2005 whereas T.O.O.Ms.No.7, dated 03.04.2009, was issued on 05.05.2009. Thus, eventually, the gross qualifying service of the petitioner was considered as 9 years 5 months 21 days. Regarding the service rendered during the period from 01.06.1970 to 24.06.1970, 06.11.1973 to 07.01.1994 and 08.01.1974 to

18.01.1974, since there are no entries in the Service Register, the said service spells are not taken into consideration. It is also the case of the respondents that even if the said service period of '2 months 13 days' is included, the qualifying service will be arrived at 9 years 8 months 5 days; and, it is less than 10 years and that therefore, the petitioner is not eligible for pension. The fact of the matter is that the petitioner worked as a casual labourer for 1 year 4 months and 29 days.

5. At the hearing, the petitioner produced service certificates issued by the Deputy Chief Accountant, Electricity Revenue Office, Rajahmundry, which was counter signed as true copy, on 02.03.1993, by the Assistant Divisional Engineer, Linemen Training Centre, A P State Electricity Board, Gajuwaka, Visakhapatnam, and also another certificate dated, 28.01.1974, issued by the Deputy Chief Accountant, E.R.O./ Samalkot showing that the petitioner worked in the respective offices as Bill Collector from 01.06.1970 to 24.06.1970; from 06.11.73 to 07.01.1974; and, from 08.01.74 to 18.01.74. Thus, it is evident from the said certificates that the petitioner rendered services during the above said periods is undisputed even though there are no such entries in his Service Register. It is not in dispute that the AP Revised Pension Rules, 1980 are applicable to the petitioner.

6. Having regard to the facts and circumstances, this Court on 13.02.2007, passed the following order in W.P.M.P.No.14890 of 2006:

“There shall be interim direction to the 2nd respondent to sanction pension and retiral benefits to the petitioner with immediate effect, as per his eligibility.”

7. In this background, it is necessary to refer to the decision in Devarakonda Sri Lakshmi v. Government of A.P and another¹, wherein the facts and the ratio are as follows: 'The petitioner therein was appointed as a Library Assistant in Sports Authority of A.P on consolidated pay of Rs.750/- per

¹ 2010 (2) ALD 165

month, *vide* proceedings of the 2nd respondent dated 23.03.1988. Subsequently, she was extended the scale of pay of Rs.910-30-1240-35-1625 with effect from 01.09.1992 in the post of Library Assistant. On 22.9.1997, she was promoted as Senior Assistant and ultimately she was retired from service, on 30.11.1997, on attaining the age of superannuation. She was not extended the retirement benefits including pension on the ground that she had rendered service which is less than the prescribed qualifying service of ten years and that she is only entitled to receive the service gratuity as per Rule 46 read with Rule 45(1) of the A.P. Revised Pension Rules, 1980; and, since the same was already paid to her, it was stated that there were no dues payable to her. However, she worked on consolidated pay earlier. Therefore, she contended that the same shall be taken into consideration for calculation of qualifying service. Her said contention was rejected as there is absence of specific orders by the Government relaxing the Pension Rules in her favour. Therefore, she filed writ petition before this Court. This Court considered various rules under the A.P Revised Pension Rules, 1980, and noted that the qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he was first appointed either substantively or in temporary capacity. This Court also noted that what is temporary capacity has not been specified and that the law is well settled that mere form of the order is irrelevant but the surrounding facts and circumstances shall be taken into consideration to find out the true character of the order and that when the services rendered by a temporary employee are followed by regularization of his service, there is no reason to exclude the period of temporary service for computing the qualifying service for the purpose of pensionary benefits. This Court also noted in the cited decision as follows:

“It is also relevant to notice that Rule 14 of the A.P. Revised Pension Rules, 1980 provides that the services of a Government Servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions

determined by the Government. Sub-rule (2) of Rule 14 further made it clear that the expression 'service' means that service under the Government and paid by the Government from the Consolidated Fund of the State." This Court further held that the true test is whether the services of the employee were regulated by the Government and whether he was paid from the Consolidated Fund of the State, any period of service which satisfies the above test shall be treated as qualifying service for the purpose of Rule 13. Accordingly, in the cited decision, the order impugned of the respondent was set aside with a direction to pass appropriate orders afresh with regard to the petitioner's claim for pensionary benefits keeping in view the observations made in the said order.

In view of the facts of the present case and the legal position obtaining, this Court is of the considered view that the petitioner's contentions merit consideration and accordingly, the writ petition deserves to be allowed.

8. In the result, the Writ Petition is allowed holding that the case of the petitioner satisfies the requirement of minimum ten years of qualifying service and, therefore, the petitioner is eligible for retiral benefits and pension. As a sequel, the respondents are directed to sanction pension and retiral benefits to the petitioner considering that the petitioner's minimum qualifying service as ten years.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

13th April, 2017
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