

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21340 of 2007

ORDER:

This Writ Petition under Article 226 of the Constitution of India came to be filed seeking the following relief:

“ ... to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus to declare the action of the respondents in not releasing the retirement benefits and the arrears of salary from November, 2004 to July, 2005 due to the petitioner as illegal, arbitrary and contrary to Section 13 of the Payment of Gratuity Act, 1972 and the By-laws relating to the service conditions of the employees of the P.A.C.S. also violative of Article 14 of the Constitution of India and consequently direct the respondent to release the retirement benefits due to the petitioner and arrears of salary from November, 2004 to July, 2005 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

No representation on behalf of the respondents. Even on earlier occasion also i.e. on 28.02.2017 there was no representation on behalf of the respondents.

Heard the learned counsel for the petitioner and perused the affidavit filed in support of the writ petition as well as the counter affidavits.

The averments made in the affidavit filed in support of the Writ Petition would show that initially petitioner was appointed as Secretary in K.J.Puram PACS in the year 1979. Thereafter, in the year 1989 he was transferred to Mulkapalli PACS. The petitioner claims to have discharged his duties to the satisfaction of his superiors and ultimately retired from service on 31.07.2005 on attaining the age of superannuation. On the date of his retirement, the Person-In-Charge

Committee passed a resolution for payment of retirement benefits to the petitioner vide Resolution No.1. As the benefits were not released, petitioner made a representation to the said Committee on 13.09.2005, for payment of salary from November, 2004 to July, 2005 as well as leave encashment, gratuity and provident fund. Likewise, the petitioner also claims to have made representations on 24.12.2005, 05.04.2006, 09.08.2006, 16.10.2006 and 08.11.2006. It is further averred that vide Proceedings in Rc.No.2117/2005-B dated 17.11.2006, the 2nd respondent directed the Society to consider the representations made by the petitioner. *In spite* of the same, no action has been taken. Further, on 09.05.2007, when the petitioner brought the same to the notice of the 2nd respondent, he issued proceedings dated 28.05.2007 directing the Society to pay the retirement benefits to the petitioner. However, no amounts were paid to the petitioner. Aggrieved by the non-compliance, petitioner got issued a legal notice to the Society on 22.07.2007. *In spite* of it, the Society failed to release the amounts to the petitioner. The inaction on the part of the respondent-Society is the subject matter of challenge in the present Writ Petition.

On 09.10.2007, while admitting the writ petition, this Court issued a direction to the respondents to release the gratuity amount to the petitioner, as per his eligibility, within a period of four weeks from the date of receipt of a copy of said order.

Seeking to vacate the said order, WVMP No.1739 of 2008 came to be filed by R-3-Society disputing the averments made in the affidavit filed in support of the writ petition. It is further contended that as per clause 9 of service by-laws of the Society, petitioner is entitled for Rs.42,920/- towards gratuity which was paid to the petitioner by way of demand draft No.127046 dt.03.06.2008, by securing the same by way of

loan from District Co-operative Central Bank, Visakhapatnam. It is further urged that as regards payment of arrears of salary from November, 2004 to July, 2005, due to its bad financial position, the Society is not in a position to pay the same.

Respondent No.2 also filed a counter affidavit stating that as soon as they received a copy of the interim order passed by this Court on 19.10.2007, they issued direction to the 3rd respondent vide Rc.No.2117/2005 dated 02.01.2008 to implement the interim orders of this Court. However, no compliance was reported by the 3rd respondent *in spite* of several reminders.

On 25.06.2010 learned Government Pleader appearing for R-2 represented before this Court that they have already contacted R-3 on the claim of the petitioner and the Secretary of R-3-Society has given an undertaking to pay the amounts due to the petitioner as early as possible preferably within a period of four weeks therefrom. However, till date the respondents failed to pay except the gratuity amount.

From a reading of the counters referred to above, it is clear that the 3rd respondent-Society is due to pay amounts to the petitioner, however, due to its bad financial position, the amounts could not be paid to the petitioner, to which he is entitled for. It is brought to the notice of this Court that though this Court on 09.10.2007 directed release of the gratuity amount to the petitioner, only a part of the amount was paid, pursuant to the Contempt Case filed by the Writ Petitioner herein.

Having regard to these circumstances and the admissions made by the respondents in their respective counter affidavits, this Court is

left with no other option except to direct the 3rd respondent-Society to pay the amounts due to the petitioner.

Accordingly, the Writ Petition is disposed of directing the 3rd respondent-Society to pay the amounts due to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No costs.

JUSTICE C. PRAVEEN KUMAR

07.03.2017
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