

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 841 of 2010

Date :12.12.2017

Between :

K Nagaraja Rao S/o K Hanumantha Rao  
60 yrs  
R/o 3-10-26/7/A, RTC Colony, Ramantapur, Hyderabad

Petitioner

And

A.P.S.Ware Housing Corporation,  
Nampally, Hyderabad  
Rep by its Managing Director

Respondents

The Court made the following:



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## ORAL ORDER:

Heard learned counsel for petitioner and learned standing counsel for respondent corporation Mr. K Satya Srinivasa Rao.

2. After being sponsored by the employment exchange on selection, petitioner was appointed as Technical Assistant by order dated 16.8.1978. His initial appointment was on a consolidated salary of Rs.450/- per month. In terms thereof, petitioner joined service on 23.8.1978. Pursuant to the decision taken by the Board of Directors in the 82<sup>nd</sup> meeting dated 19.5.1978 to absorb all the temporary assistants working on consolidated salary, petitioner was absorbed as Technical Assistant Grade II vide order dated 19.5.1981. On attaining the age of superannuation, petitioner retired from service on 31.5.2007. By the time he retired from service, he was working as Regional Manager. The limited grievance in the present writ petition is against nonpayment of gratuity for the period of service rendered by him from 23.8.1978 to 19.5.1981. It appears, petitioner was paid gratuity amount for the period of service rendered from 20.5.1981 till he retired. However, on the date of retirement itself or soon thereafter petitioner made application praying to compute the service rendered by him till 19.5.1981 also. Said request was rejected by order dated 3.4.2008. Thereafter, this writ petition is filed.

3. Learned counsel for petitioner submits that petitioner was appointed on consolidated salary of Rs.450/- per month after undergoing regular process of selection. Therefore he has to be treated as regular employee from the date of initial appointment. At any rate, his services were regularized in the year 1981. Therefore, in accordance with the provision contained in Regulation 4 of the A.P. State Warehousing

Corporation Employees Gratuity Fund Regulations, 1974, petitioner is entitled to compute the service rendered by him between 23.8.1978 to 19.5.1981 towards gratuity and the said amount has to be paid to him whereas denial of the same is illegal.

4. Only defense of the respondent to deny the gratuity amount is on the ground that the petitioner was earlier working on consolidated pay of Rs.450/- and not entitled to compute the service rendered by him on consolidated pay.

5. To appreciate the respective contentions, it is useful to extract Regulation 4 to the extent necessary:

**“4. Gratuity payment**

- b). ‘Pay’ means the monthly pay last drawn.
- c). Services means the services commencing from the date on which the employee begins to draw his pay in Corporation service and must be continuous and loyal and faithful service in the opinion of the Management. Discontinuous services unless condoned by the Management will not count for gratuity. Temporary service followed by permanent service without any break will also qualify for the purpose of Gratuity.”

6. According to the definition of ‘Pay’ in Regulation 4 (b), pay means monthly pay last drawn, that means on the date of retirement the pay drawn by the employee. According to the provision in sub Regulation (c) the requirements are, the employee must be drawing pay; service must be continuous; and temporary service should be followed by permanent service without any break. In the case on hand, the temporary service was followed by permanent service and there was no break in between. Thus, the primary requirements of sub Regulation (c) are fulfilled.

7. The only issue for consideration is whether the consolidated pay drawn by the petitioner before regularization of his services would disentitle him to claim that service for the purpose of computation of

service for gratuity in terms of Regulation 4. From the terminology used in sub Regulation (c) it is clear that no distinction is made on drawing of consolidated pay or scale pay. What is required is drawing of pay in the corporation service. As per the appointment order, petitioner was appointed on consolidated salary of Rs.450/- per month. Therefore petitioner satisfied requirement of sub Regulation (c) in all respects.

8. It is appropriate to note that gratuity is paid for the satisfactory service rendered by the employee. Based on the length of service rendered, proportionate gratuity amount is determined and credited to the account of the employee at the end of the service. It is not in dispute that petitioner has rendered satisfactory service. Therefore for the service rendered by him he is entitled for determination of the gratuity. His service commenced in the respondent corporation on 23.8.1978 and continued till he retired from service, though, initially on the temporary basis and subsequently on regular basis.

9. It is illegal to deny the service rendered prior to regularization only on the ground that he was drawing consolidated salary. A right accrued to the petitioner to draw gratuity based on the service rendered cannot be denied on mere technicalities as sought to be projected by the respondent. More so, petitioner was appointed after undergoing regular process of selection. It being a valuable right vested in employee it has to be granted invariably unless the employee is disqualified from computation of service by express decision or provision of law governing the service. On a conspectus reading of Regulation 4 coupled with primary right vested in employee to claim gratuity for the service rendered by him, the decision of the respondent corporation to deny the temporary service towards computation of gratuity is ex-facie illegal.

10. Accordingly, the writ petition is allowed. The respondents are directed to compute the gratuity payable to the petitioner from 23.8.1978 to 19.5.1981 and to pay the amount arrived at within a period of two months from the date of receipt of copy of this order. Since, petitioner was illegally denied gratuity for the subject period, he is entitled to 6 % simple interest per annum from the date of due till the amount is paid. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:12.12.2017  
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