

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Writ Petition No.18560 of 2014

Between:

1. Union of India rep. by its Secretary, M/o Water Resources,
Shram Shakti Bhawan, New Delhi and 4 others

...Petitioners

And

- 1) Ch.Prakasha Rao and another

...Respondents

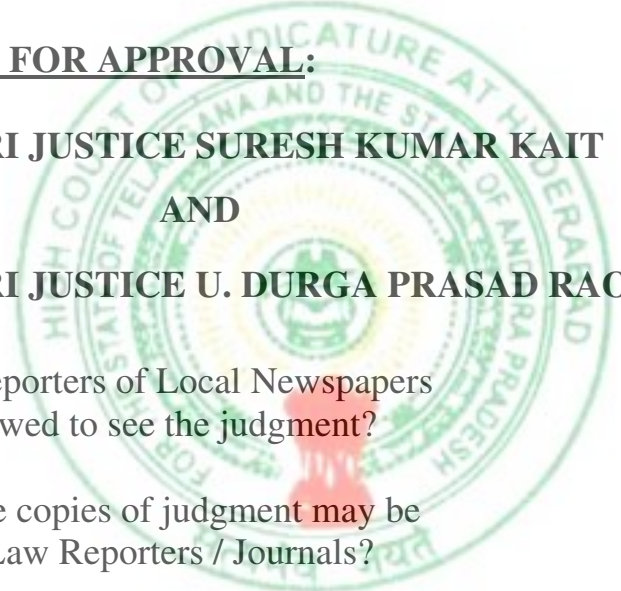
DATE OF JUDGMENT PRONOUNCED: 11.07.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

- 
1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND**

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! Counsel for petitioners : Sri B.Narayana Reddy

^ Counsel for Respondent No.1 : Sri G.Pavana Murthy

^ Counsel for Respondent No.2 : —

< Gist:

> Head Note:

? Cases referred:

1) (1993) 2 SCC 174

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

Writ Petition No.18560 of 2014

ORDER: (oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 21.08.2013 passed in O.A.No.713 of 2012 whereby the petition under Section 19 of Administrative Tribunals Act, 1985 filed by 1st respondent was allowed.

2) Learned counsel appearing on behalf of petitioners submits that since upto the period 30.03.1974 the 1st respondent was a Contributory Provident Fund (CPF) beneficiary and the remaining period of his service as a permanent Government servant comes to only 3 years and 7 months, which is less than the 10 years qualifying service, therefore he is not entitled to pro-rata pension. He further submits that petitioners have complied with the order of the Tribunal in O.A.No.742 of 2010 by its order dated 23.12.2012 giving reasons why pro-rata pension has been denied to the 1st respondent.

3) We note the petitioners have passed the order dated 23.02.2012 as under:

“2 (i) A permanent government servant with not less than 10 years qualifying service on absorption in public undertaking was eligible for pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under government till the date of absorption.....

In your case, the length of your service as a permanent Government servant, as determined / upheld in the said Order of the Hon'ble Tribunal, was the period from 6.2.1967 to 1.11.1977. After excluding the period upto 30.03.1974 therefrom (during which you were a CPF beneficiary and hence were not entitled to pensionary benefits in respect thereof as mentioned in para-2(i) above) the remaining period of your service as a permanent Government servant comes to only 3 years 7 months which is less than 10 years qualifying service as a permanent Government Servant, the same being a requirement laid down for the grant of pro-rata pension in the aforesaid Government of India office memorandum as reproduced above. You are, therefore, not entitled to any pro-rata pension under the said office memorandum in respect of the period 31.03.1974 to 01.11.1977 as well."

4) The 1st respondent joined in Central Water Commission in the Technical Training Centre, Nagarjuna Sagar Dam as Work Charged Store Attendant on 13.09.1963. He was confirmed in the post of Mazdoor (Work charged) with effect from 06.02.1967. Thereafter, he was transferred in public interest from Technical Training Centre, Nagarjuna Sagar Dam to the office of the Chief Engineer, Baira Siul Hydel Project, Surangani P.O., District Chamba, Himachal Pradesh and he was given TTA and advance pay of that purpose by Deputy Director (CWPC) vide letter dated 16.03.1974 whereby it is clearly stated that 1st respondent is a permanent Government servant as Work Charged Mazdoor. Accordingly, he joined the said project on 30.03.1974. Thereafter, he requested the petitioners to retain his lien in CWC Directorate. He was informed by the petitioners vide letter dated 16.01.1975 that the question of retaining his lien is under consideration. While so, in November, 1977, Baira Siul

Hidel Project was taken by the National Hydro Electric Power Corporation Limited (NHPC), a Public Sector Undertaking and the 1st respondent was posted in Chamera H.E.Project Stage II, Chamba District, Himachal Pradesh under NHPC from where he retired from service on attaining the age of superannuation on 30.06.2000.

5) Thereafter, the 1st respondent filed an application before the petitioners on 14.12.2002 claiming that he was entitled to previous service in Technical Training Centre, Nagarjuna Sagar Dam and requested to settle the pension with effect from 30.06.2000 with interest as early as possible.

6) At last, the 1st respondent approached the Tribunal through O.A.No.742 of 2010 which was disposed of vide order dated 07.07.2011 by recording that 1st respondent has to be treated as Central Government employee from 06.02.1967 to 01.11.1977 and in case he is entitled for pension as per other relevant rules he has to be paid pro-rata pension for that period.

7) In compliance of the order of the Tribunal dated 07.07.2011 passed in O.A.No.742 of 2010, the petitioners passed an order dated 23.02.2012 in which pro-rata pension was denied on the ground that upto 30.03.2004 the 1st respondent was a Central Provident Fund beneficiary and not entitled to pensionary benefits and the remaining period of his service as a permanent Government servant comes to only 3 years 7 months which is less than the 10 years qualifying service as a permanent Government servant.

8) Rule 37 of Central Civil Services (Pension) Rules, 1972, which entitles the 1st respondent for retirement benefits, reads as follows:

“37. Pension on absorption in or under a corporation, company or body— A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him”.

9) In a similar case in O.A.No.950 of 1987, in the case of *T.S.Assudani vs. Union of India and others*, the Principal Bench of the Tribunal vide its order dated 03.07.1989 decided in favour of the applicant therein by extending benefits of the Family Pension Scheme 1971.

10) The 1st respondent has relied upon certain judgments and stated that his case is covered by the judgment of the Honourable Supreme Court in the case of *T.S.Thiruvengadam vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and others*¹ wherein the Honourable Supreme Court held as under:

“ The object of bringing into existence the revised terms and conditions in the Memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the

¹ (1993) (2) SCC 174

applicability of the revised Memorandum only to those who are absorbed after the coming into force of the said Memorandum, would be defeating the very object and purpose of the revised Memorandum and contrary to fair play and justice.

There is no substance in the contention that the revised benefits being new it could only be prospective in operation and cannot be extended to employees who were absorbed earlier. It is no doubt correct that the Memorandum dated June 16, 1967 is prospective which only means that the benefits therein can be claimed only after June 16, 1967. The Memorandum, however, takes into consideration the past event that is the period of service under the Central Government for the purposes of giving pro-rata pension. Whoever has rendered pensionable service prior to coming into force of the Memorandum would be entitled to claim the benefits under the said Memorandum. Restricting the benefits only to those who were absorbed in public undertakings after June 16, 1967 would be arbitrary and hit by Articles 14 and 16.

The appellant was permitted to be absorbed in the Central Government public undertaking in public interest. The appellant as such, shall be deemed to have retired from Government service from the date of his absorption and is eligible to receive the retirement benefits. It is no doubt correct that the retirement benefits envisaged under Rule 37 are to be determined in accordance with the Government orders but the plain language of the Rule does not permit any classification while granting the retirement benefits.”

11) It is not out of place to mention here that the object of bringing into existence the revised terms and conditions in the memorandum dated 16.06.1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption to Public Sector undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after coming into force of the said memorandum would be defeating the very object of revised memorandum and contrary to fair play and justice.

12) In addition to above, para-3(b)(i) of DOP&T OM No.28-10/84-Pension Unit, dated 29.08.1984, which reads as under:

“(b) Autonomous Body where the Pension Scheme is not in operation.

(i) A permanent Central Government employee borne on pensionable establishment on absorption under such Autonomous Body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of Finance, O.M.No.26(18) E.V.(B)/75, dated the 8th April, 1976 (Order (4)), as amended from time to time.”

13) Rule 37(1) of CCS (Pension) Rules, 1972 mentions that a Government servant, who has been permitted to be absorbed in Central Government Public Undertakings, deemed to have been retired from service from the date of such absorption and eligible to receive retirement benefits in accordance with the orders of the Central Government applicable to him. In the office memorandum dated 16.06.1967 of the Government of India, quoted by the petitioners in para-5 of their reply affidavit and also relied upon by the Supreme Court in its order supra, reads as under:

“ A permanent Government servant with not less than 10 years qualifying service on absorption in public undertaking was eligible for pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under Government till the date of absorption. The pension was to be calculated on the basis of average emoluments immediately before absorption.”

14) Rule 17 of CCS (Pension) Rules, 1972 reads thus:

“17. Counting of service on contract -

(1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the

same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either :-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service ; or

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.”

15) In view of the above, we have no hesitation to say the 1st respondent was the permanent Government servant from 06.02.1967 to 01.11.1977 including the period upto 1974 when he was a Contributory Provident Fund beneficiary. Though Rule 17 relates to service on contract, the principle is that if he has been drawing CPF then he can opt to refund the CPF and opt for including that service as pensionary service. Therefore, taking the totality of the rules, Government instructions and the order of the Principal Bench of the Tribunal passed in O.A.No.950 of 1987, dated 03.07.1989 and the judgment of the Honourable Supreme Court in *T.Thiruvengadam*'s case (1 supra), we find no infirmity or perversity in the order passed by the learned Tribunal dated 21.08.2013 in O.A.No.713 of 2012.

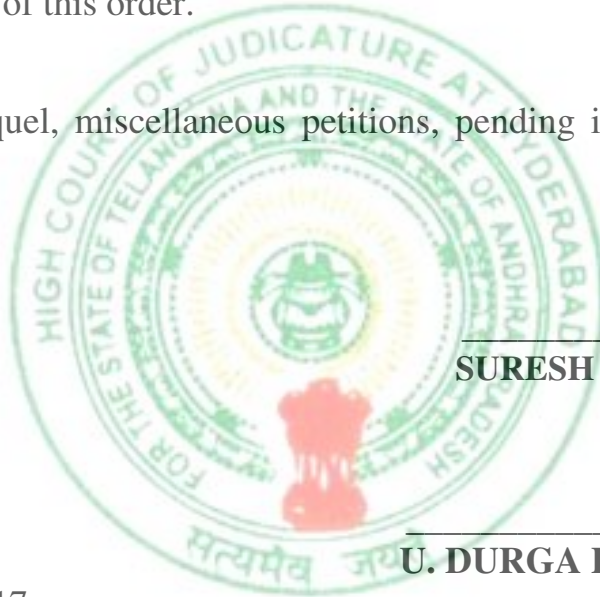
16) Finding no merits in the writ petition, accordingly it is dismissed.
No costs.

17) We note learned Tribunal directed the petitioners to seek option from the 1st respondent and if he agrees to refund to the Government the

monetary benefits, referred to above, then he should be granted pro-rata pension rendered as a Government service from 06.02.1967 to 01.11.1977.

18) At this stage, learned counsel appearing for 1st respondent submitted that 1st respondent has already submitted the option form on 14.10.1976 which is evident from page-123 of vacate petition—WVMP No.635 of 2016. Accordingly, petitioners are directed to sanction the pro-rata pension to the 1st respondent within four (4) weeks from the date of receipt of copy of this order.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 11.07.2017
Murthy/SCS