

*** HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO**

+ WRIT PETITION No. 12128 OF 2006

% 05-07-2017

1. The Director General
CPWD, Nirman Bhavan,
New Delhi

2. The Executive Engineer [E]
Hyderabad Central Elect.Divn.No.II,
CPWD, Nirman Bhavan,

3. The Pay & Accounts Officer,
CPWD, SZ-II, Ministry of Urban
Development, 1st Floor, E-Wing,
Rajaji Bhavan, Basant Nagar,
Chennai.

... Petitioners

Vs.

§ K.S. Rao, Rtd. Executive Engineer [Electrical]
R/o. Flat No. 207, H.No. 80-3-721/1/2,
Nirmal Nivas, Yellareddyguda,
Hyderabad.

... Respondent

! Counsel for the Petitioners : Sri I. Koti Reddy

Counsel for the Respondent: Dr.P.B. Vijay Kumar

< Gist:

> Head Note:

? Cases referred:

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

[Special Original Jurisdiction]

WEDNESDAY THE FIFTH DAY OF JULY
TWO THOUSAND AND SEVENTEEN

PRESENT
HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No. 12128 OF 2006

Between:

The Director General,
CPWD Nirman Bhavan,
New Delhi & Ors.

... Petitioners

V/s.

K.S. Rao, Retired Executive Engineer [Electrical]
Flat No.207, H.No. 8-3-721/1/2, Nirmal Nivas,
Yellareddyguda, Hyderabad

... Respondent

Counsel for the Petitioners

:

Sri I. Koti Reddy

Counsel for the Respondent

:

Dr. P.B. Vijay kumar

The court made the following:

:

[order follows]

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
A N D
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No. 12128 OF 2006

ORDER : (*Oral, Per the Hon'ble Sri Justice Suresh Kumar Kait*)

This writ petition is filed by the petitioners invoking the inherent jurisdiction of this Court under Article 226 of the Constitution of India seeking writ of certiorari, calling for the records, pertaining to the order dated 16/3/2006 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in O.A.No. 1118 of 2004 and to quash the same as illegal, arbitrary, unconstitutional and to declare the same as *void abinitio* and to pass such other suitable orders as this Court may deem fit and proper in the circumstances of the case.

2. Heard the learned counsel appearing on behalf of the petitioners and Dr.P.B. Vijay Kumar, learned counsel appearing on behalf of the respondent.

3. Vide the present writ petition, the petitioner assails the order dated 16/3/2006 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A.No. 1118 of 2004, whereby the O.A. filed by the respondent was partly allowed by directing the petitioners to fix the

pay of the respondent notionally with effect from 31/3/1996 in the promotional post and to revise the pension in accordance with the notional pay fixation, within a period of two months from the date of receipt of a copy of the aforesaid order. It is further directed that the respondent is entitled to all the consequential benefits except the arrears of salary from the deemed date of promotion i.e., 31/3/1996.

4. The case of the respondent/applicant before the Tribunal was that the petitioner No.1 herein issued orders promoting 86 Assistant Engineers as Executive Engineers as per orders of the Principal Bench of C.A.T. New Delhi passed in O.A.No. 1461 of 1997 dated 18/8/1997 and the respondent herein was promoted to the grade of Executive Engineer [Electrical] vide Office Order No. 202 of 1999 [No.30/10/99-EC.Vol-1 dated 03/11/99] issued by the Directorate General of Works, Central Public Works Department, New Delhi, on regular basis in the pay scale of Rs.10,000-325-15,200/- duly stating therein that separate orders will follow regarding dates of regular promotion along with others. The respondent herein was placed at serial No.29 of the said Office Order dated 3.11.2-1997. The petitioner No.1 had communicated orders vide

Office Order No.212/2001 dated 27/9/2001 intimating the deemed date of the regular promotion of the respondent herein as 31/1/1996.

5. The petitioner No.2 herein fixed the pay of the respondent herein at Rs.10,975/- per month with effect from 31/3/1996 in the pay scale of Rs.10,000-325-15,200/- and forwarded the same to the petitioner No.3 herein to revise his pension on the basis of his pay fixation as Executive Engineer vide Office Order No. 9 (11) 2003/HCED.II/EC.I/2699 dated 13/12/2001. It was also stated therein that since the officer (respondent herein) did not join the promotional post of Executive Engineer on 31/3/1996, no arrears should be paid to him. Thereafter, the respondent herein made a representation dated 11/11/2003 to the petitioner No.2 herein with a copy to the petitioner No.3 on 15/2/2002, wherein he mentioned that similar other officers in the CPWD have been paid arrears from the deemed date of promotion to the actual date of assuming the charge. The said representation was rejected by the petitioner No.1. The representation of the respondent herein dated 22/4/2002 was examined in the office of the petitioner No.1 and it was found that the extant rules and the instructions of the

Government on the subject i.e., Rules 33 and 34 of CCS [Pension] Rules, 1972 and the principle of “no work no pay” do not allow either to consider pay fixed notionally nor not actually drawn, for determining the ‘emoluments’ and ‘average emoluments’ for the purpose of pension and other retirement benefits or payment of pay and allowances attached to a post if no actual assumption of the charge of the post takes place. Accordingly, the claim of the respondent herein was rejected and he was informed vide O.M. dated 09/6/2004. Being aggrieved, the respondent herein approached the Central Administrative Tribunal.

6. The case of the respondent herein before the Tribunal was that the petitioners cannot deny the fixation of his pay with effect from the deemed date of his promotion i.e., 31/3/1996 and payment of arrears that fell due till the date of his retirement. In this context, the counsel for the respondent has drawn attention to paragraph No.11 of the counter reply filed by the petitioners wherein it has been categorically mentioned by the petitioners that the case of Sri G. Ramachandran, who is similarly situated employee as the respondent herein was considered by the petitioner No.1 in consultation with the administrative Ministry

i.e, Ministry of Urban Development, Department of Personnel and Training and Department of Pension and Pensioners' Welfare and he was given regular promotion to the next higher grade of S.E. [E] notionally w.e.f. 31/3/1993. The DOPT and DOP and PW had advised in his case that under FR-17 and principle of 'no work no pay', the officer is therefore not entitled for arrears of pay and allowances on the basis of his notional promotion. However, he was entitled for revision of pensionary benefits with reference to his notionally revised pay on the date of his superannuation. It was also mentioned therein that on the basis of this advice, necessary instructions in respect of Sri G.Ramachandran were issued by the petitioner No.1, vide Office Memorandum, dated 29/10/2003. It was further mentioned by the petitioners in para No.12 of the their counter reply that based on this advise, the petitioners took a decision in the case of present respondent and a number of other officers [Sri K. Raghunathan, M.M. Abdulla kutty] who were also promoted vide Office order dated 3/11/1999 after their superannuation and whose representations in this regard were pending with the petitioners that in terms of FIR-17 and the principle of

‘no work no pay’ all such officers would not be entitled to arrears of pay and allowances for the period of their notional promotion.

However, their pension and other retirement benefits would be revised with reference to notionally revised pay as on the date of retirement.

Accordingly, instructions were issued by the petitioner No.1 herein to the concerned controlling officers for dealing with the cases of these officers

and in the case of the respondent herein. This was done vide letter

dated 10/11/-011-2003 read with order dated 27/11/2003, which are annexed as Annexures – R/4 and R/5 to the counter reply.

7. The present writ petition is filed on the ground that the learned Tribunal failed to properly apply Rules 33 and 34 of the CCS [Pension] Rules, 1972. In the present case that was relied upon properly by the pension authority to raise objection to re-fixation of the monetary and pensionary benefits to the respondent herein on his notional promotion after retirement. Rule 34 of the CCS [Pension] Rules, 1972 reads that “average emoluments” for the purpose of pension shall be determined with reference to the emoluments drawn by Government servant during the last ten months of his service. Further, note 1 below of Rule 34 reads

that any increase in pay (other than the increments) referred to in Note 3 below the same Rule which is not actually drawn, shall not form part of his emoluments. The respondent was not entitled to the actual pay of the notional promotional post granted after retirement because he never assumed the duties of the notional promotion post.

8. Learned counsel appearing on behalf of the petitioners submits that the learned Tribunal failed to appreciate that in terms of Department of Personnel and Training [DOPT]'s OM.No.22011/4/98-Estt(D), dated 12/10/1998, consideration of retired employees for promotion was only for the specific purpose to identify the correct zone of consideration and not for giving them actual promotion, as they have already retired and that the retired officials have not right for actual promotion.

9. The issue before this Court for consideration is “whether the respondent is entitled to get his pay fixed w.e.f. 31/3/1996 and entitled to arrears, if the pay is so fixed in the promotional post when the respondent has not shouldered the higher responsibility of his promotional post?”

10. It is pertinent to note here that in O.A.No. 679 of 2003, vide orders dated 08/1/2004, a direction was issued to the petitioners to consider the representation dated 22/4/2002 of the respondent. At that time the petitioners did not point out about the mistake and no action has been taken to rectify the same. It is also the case of the petitioners that the petitioners modified the orders of promotion in respect of one Sri K. Raghunathan, who is similarly placed, was given promotion erroneously as Executive Engineer [Civil] on regular basis.

11. In addition to above, similarly situated employee, Sri M.M. Abdulla Kutty, Retired Executive Engineer [Electrical], who filed O.A. before Central Administrative Tribunal, Ernakulam Bench. The said O.A. was allowed vide orders dated 08/09/2004 directing the petitioner therein as under :

"In the result, we allow the application and order as follows:

- a) Annexure A-1 is set aside to the extent it denies the applicant and benefit of arrears of pay and allowance with effect from 31/3/1995.*
- b) A-2 is set aside and we declare that the applicant would be entitled to revision of pension and gratuity as there would be a change in the emoluments consequent on the removal of restriction imposed by the last paragraph of A-1.*

- c) *A-3 is set aside;*
- d) *The arrears of pay and allowances for the period from 31/3/1995 to 31/3/1996 as per fixation ordered in A-1 would be paid to the applicant and consequential revision of pension and other retrial benefits would be carried out within a period of three months from the date of issue of these orders. There would be no interest liability on the respondents for delayed payment. No order as to costs."*

12. It is not in dispute that the order dated 08/9/2004 passed in O.A.No. 656 of 2002 was challenged by the petitioner therein before High Court of Kerala at Ernakulam Bench in WP [C] No. 9576 of 2005 and the same was dismissed, vide orders dated 23/3/2005.

13. Being aggrieved, the petitioner therein has taken up the matter to the Hon'ble Supreme Court in SLP.[Civil] CC.No.4396 of 2006 from the judgment and order dated 23/3/2005 in WP.No. 9576 of 2005 of the High Court of Kerala at Ernakulam. However, the same was dismissed, vide orders dated 05/7/2006. It is also not in dispute that the case of M.M. Abdulla Kuttay as stated has been implemented.

14. At this stage, the learned counsel appearing on behalf of the petitioners has relied upon the judgment dated 22/7/2014 passed by the High Court of Delhi at New Delhi in WP [C]. 840 of 2003 [GURBAAZ SINGH & ORS. V/s. UOI & ORS.] and WP [C] 858 of

2003 [CENTRAL ENGINEERING SERVICES ASSOCIATION V/s. UOI & ORS.] and the Office Order No.30/30/2016-EC.1 (B)/EW-1, Government of India, Ministry of Urban Development [Works Division], dated 08/06/2017. We have gone through the judgment relied upon by the learned counsel for the petitioners and the aforesaid Office Order, which have no bearing to the facts of the present writ petition.

15. In view of the facts recorded above and the facts and circumstances of this case, we find no illegality and perversity in the order dated 06/3/2005 passed by the learned Tribunal, in O.A.No. 1118 of 2004, consequently we confirm.

16. Finding no merit in the present petition, accordingly the same is dismissed.

17. Before parting with this order, the learned Tribunal issued directions vide order dated 16/3/2005, however, till date the directions have not been complied with, more than twelve years have passed since then. Therefore, we hereby direct the petitioners to comply the order dated 16/3/2006 passed by the Central Administrative Tribunal,

Hyderabad in O.A.No. 1118 of 2004 within six weeks from the date of receipt of a copy of this order, failing which the petitioners shall be liable to pay interest @ 12% per annum on delayed payment.

17. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE U. DURGA PRASAD RAO



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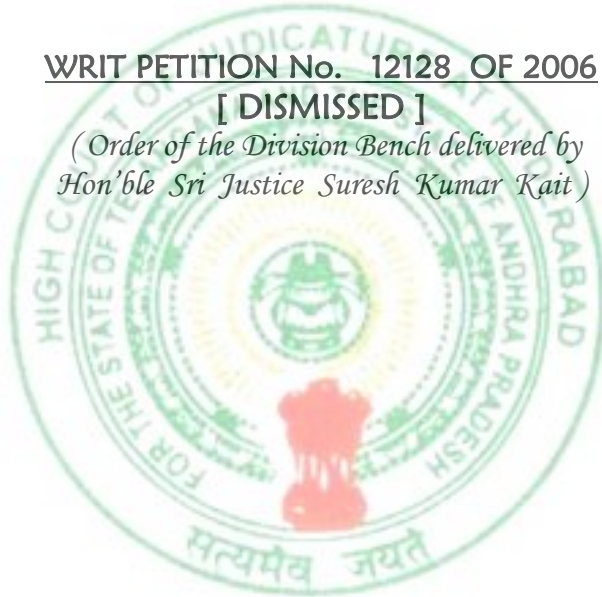
**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE JUSTICE U. DURGA PRASAD RAO**

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WRIT PETITION No. 12128 OF 2006

[DISMISSED]

*(Order of the Division Bench delivered by
Hon'ble Sri Justice Suresh Kumar Kait)*



Date. 05-07-2017
Court Master: I s L
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