THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.25807 of 2006 and 27296 & 27264 of 2007

COMMON ORDER:

In these writ petitions, the common grievance of the writ petitioners, who are former employees of the 2nd respondent, Khammam District Co-operative Marketing Society Limited, is non release of retiral benefits and non payment of gratuity and arrears of salary in view of the instructions in the Memo No.23027/2004/M1, dated 31.03.2005, issued by the 1st respondent, the Registrar of Co-operative Societies & Commissioner for Co-operation, Andhra Pradesh.

2. Since the facts are more or less identical and the issues involved for resolution are also identical, the three writ petitions are being disposed of by this common order.

3. I have heard the submissions of Smt. K. Udaya Sri, learned counsel appearing for the writ petitioners in all the three writ petitions, learned Government Pleader for Cooperation representing the 1st respondent, and Sri Kowturu Pavan Kumar, learned standing counsel representing the 2nd respondent. I have perused the material record including the additional material papers which are permitted to be filed *vide* orders in W.P.M.P.No.171708 of 2016 in W.P.No.25807 of 2016.

4.1 In W.P.No.25807 of 2006, the facts, which are peculiar to the case of the writ petitioner, are as follows: - 'He joined as a Junior Assistant in the 2nd respondent Society, on 24.12.1970. He opted for voluntary retirement, on 22.05.2006, on medical grounds. The managing committee in its meeting held, on 22.05.2006, accepted his request for voluntary retirement. He was permitted to retire voluntarily and was relieved from duty, on 31.05.2006. In the relieving letter, it was stated that the retirement benefits would be settled and paid after obtaining permission from the Registrar of Co-operative Societies.'

4.2 Insofar as the petitioner in W.P.No.27296 of 2007 is concerned, the facts peculiar to his case are as follows: - 'He joined in the 2nd respondent Society as a Junior Assistant, on 29.04.1967. He worked as a Junior Assistant during his entire service. He retired from service on superannuation, on 30.06.2006.'

4.3 In W.P.No.27264 of 2007, the facts, which are peculiar to the case of the writ petitioner, are as follows: - 'He joined in the 2nd respondent Society as a Salesman, on 06.08.1968, and was working as Assistant Business Manager as on 30.06.2006, the date of his retirement on superannuation.'

5. The common contentions of the petitioners in support of their common request for setting aside the impugned memo of the 1st respondent and for directing the respondents to pay to them all the retiral benefits etcetera as claimed in the writ petitions, in brief, are as follows:

The impugned memo was illegal and was issued without jurisdiction. The 2nd respondent informed the petitioners that they are not eligible for retirement benefits, in view of the memo, which is impugned, and as the Society is not running on sound lines, and as a direction was also given that they are not eligible for retirement benefits and as it was also directed that if any employee goes to the Court, the same should be contested. Taking advantage of the memo, the 2nd respondent is not releasing the retiral benefits & gratuity and is not paying the arrears of salary due to the petitioners. The 2nd respondent alleges that as per a policy decision, the 1st respondent restrained the 2nd respondent from settling the amounts of the employees who have either retired or voluntarily retired from service. The said action of the respondents is irrational and arbitrary. As per provisions of the byelaws of APSE Act, all the employees, who have put in a service of more than five years, are entitled to payment of gratuity. The 2nd respondent Society is having independent financial resources for meeting the commitment towards payment of gratuity. No disciplinary proceedings are pending against any one of the writ petitioners as on the date of filing of the writ petitions. Hence, the writ petitions are filed.

6. The case of the respondents as stated in counters, in brief, is as follows:

Pay fixation of the petitioners and others by implementing Section 116(c) of A.P.C.S Act is pending. The gratuity is not finalised. The said provision of law came into effect from 25.04.2001. Pay and allowances of the employees shall not exceed 2% of the working capital or 30% of the gross profit, whichever is less. The 2nd respondent Society is running in losses. Section 116(c) could not be implemented as pay fixation will have to be done on the basis of profit. Keeping in view the interests of the employees of the Society, the 2nd respondent Society had paid some amount from the Society's account subject to pay fixation under Section 116(c) of the Act. Meanwhile, the 1st respondent issued Circular, dated 31.03.2005, directing the 2nd respondent Society not to release the gratuity amount since financial position of DCMs is not on sound lines. 2nd respondent Society is still incurring losses. The latest audit report for the year 2005-06 shows loss to a tune of Rs.65,99,718/-. The contention of the petitioners that they are entitled to gratuity as per bye law no.18 is not correct. After pay fixation, the retirement benefits will be settled. All the adverse allegations in the writ petition are false.

7. Be it noted that in W.P.No.25807 of 2006, this Court, while admitting the writ petition, on 10.09.2007, granted the following interim order:

> 'There shall be an interim direction to the 2nd respondent to release the voluntary retirement benefits, including the gratuity, to the petitioner as per his eligibility, without reference to the Memo dated 31.3.2005 within a period of two (02) weeks from the date of receipt of a copy of this order.'

Similar interim orders were also granted to the writ petitioners in the remaining two writ petitions. During the pendency of the writ petitions, they were also paid some amounts towards their claims is not in dispute.

However, for non compliance of the interim order in W.P.No.25807 of 2006, a contempt case was filed. Subsequent to the contempt case, the petitioner therein was paid Rs.1,75,827/- is not in dispute.

Be it further noted that before filing the writ petitions, all the petitioners made representations for release of their retiral benefits. The counter of the 2nd respondent would show that as the 2nd respondent Society is running in losses, the pay fixation could not be done and that the retiral benefits & the arrears of salary were not paid. In the counter it is also stated that gratuity is not finalised. However, insofar as gratuity is concerned it is also specifically stated in the counters that the contention of the petitioners that as per bye law 18 they are entitled for gratuity is not correct. Be that as it may.

8. As per the calculations of the petitioners and the figures submitted to this Court, at the hearing, the following are the amounts due and payable under various heads to the petitioners in the respective writ petitions.

W.P.No.27264 of 2007

Salary due from April, 2000 to June, 2006	4,24,610/-
Gratuity	3,77,728/-
Leave amount for 2 months	44,216/-
Cash Deposit	1,000/-
Amount yet to receive	8,47,554/-
Paid amount	3,21,000/-
Amount due	5,26,554/-

W.P.No.27296 of 2007

Salary due from April, 2000 to June, 2006	9,02,348/-
Advance took	4,10,922/-
Balance salary due	4,91,426/-
Gratuity for 39 years	3,19,000/-
Leave amount for 2 months	29,000/-
Cash security	1,000/-
Amount yet to receive	8,40,426/-
Paid amount	3,07,180/-
Amount due	5,33,246/-

W.P.No.25807 of 2006

Component	Period		Paid	Actual to be paid	To be paid
	From	To			
Salary	01.05.2000	31.05.2006 upto retirement	(A) 4,56,637/-	(B) 8,36,968	
Paid through court	(B-A-C) = 2,04,4504		(C) 1,75,827/-		204504
Gratuity				2,78,258/-	2,78,258/-
VRS			Not paid	6,71,510/-	6,71,510/-
CSD				1,000/-	1,000/-
			6,32,464	17,87,736/-	11,55,272/-

9. Learned counsel for both the sides advanced arguments in line with the pleadings of the parties referred to supra.

10. I have bestowed my attention to the facts and submissions. A perusal of the material record including the additional material papers would disclose that after these writ petitions are filed by the petitioners, the 2nd respondent Society released retiral benefits & gratuity to similarly placed employees by fixing their pay in regular pay scale and such persons received regular salaries till they retired from service. It is not disputed before this court that the petitioners, who are similarly placed, stand on the same footing. The copies of the relevant pages of the service registers of such similarly placed employees, which are obtained by having recourse to the provisions of the Right to Information Act, 2005, are placed on record.

11. The resolutions of the Society also show that it was resolved that 2005 PRC vide G.O.213, dated 27.03.2005 shall be made applicable to the employees of the Society from 01.04.2008 and that the salaries shall be accordingly paid from 01.04.2008. It is also not disputed before this Court that while

considering the case of one Seetharamulu, who is similarly positioned as the petitioners, he was retrospectively paid the pay by fixing his pay in the time scale of Rs.2750-5960 with effect from 20.06.1994 and that his pay has been fixed at Rs.8400 in the time scale of Rs.5300-11300 with effect from 01.07.1998 and that he was granted subsequent increments and his pay was further revised and that, therefore, there is no reason to discriminate the petitioners and deny them the benefits which are being claimed in their respective writ petitions.

12. It is undisputed that subsequent to the filing of the writ petitions, as per G.O(P) No.213,. Finance (PC.I) Dept., dated 27.08.2015, and G.O(P) No.180, Finance (PC.I) Dept., dated 29.06.2006, the 2nd respondent has given unreduced and revised scales to Junior Assistant, V. Nageswar Rao, K. Raghava Raju and K. Saibaba, who are juniors to the writ petitioners herein and that the 2nd respondent Society has given effect to the said G.Os in the case of one Sk.Babujani, Attender, vide proceedings, dated 10.03.2011, and even sanctioned increments to S. Seetharamulu and paid salaries as per the said G.Os, but the same benefit is not being extended to the petitioners herein. In view of the undisputed fact that similarly placed employees of the 2nd respondent Society were given unreduced and revised scales and one such employee, S. Seetharamulu, was also given increments and promotions and was paid salary as per the Government Orders, the 2nd respondent Society cannot discriminate the petitioners in the matter of payment of the eligible pay scale and retiral benefits as per the said pay scale as well as the gratuity.

13. Viewed thus, this Court finds that the petitioners are entitled to the reliefs claimed in the respective writ petitions.

14. In the result, the Writ Petitions are allowed and the respondents are directed to pay the arrears of salary, if any, retiral benefits and gratuity after verifying the figures in the calculations furnished by the respective petitioners and also the correctness of the amounts already paid and the balance due and

payable to the respective writ petitioners. The necessary exercise in this regard shall be completed within two months from the date of receipt of a copy of this common order.

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

M. SEETHARAMA MURTI, J

01.06.2017
Vjl