THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

<u>WRIT PETITION NO.23199 OF 2013</u>

<u>O R D E R</u>

(*Per Hon'ble Sri Justice Sanjay Kumar*)

The State of Andhra Pradesh and its authorities in the Education Department filed this writ petition aggrieved by the order dated 21.06.2012 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, 'the Tribunal'), in O.A.No.12424 of 2009. The said O.A. was filed by the 1st respondent herein assailing the proceedings dated 04.07.2008 of the Regional Joint Director of Intermediate Education, Andhra Pradesh, withholding a sum of Rs.2,33,450/- from the gratuity and a sum of Rs.96,277/- from the earned leave encashment of the 1st respondent's deceased husband. By the order under challenge, the Tribunal allowed the O.A. and directed release of the withheld amounts as prayed for within a time frame. Hence, this writ petition.

By order dated 06.08.2013, this Court granted interim suspension of the order passed by the Tribunal. W.V.M.P.No.3465 of 2014 was filed by the 1st respondent to vacate the aforestated order.

Heard the learned Government Pleader for Services (Andhra Pradesh) for the petitioners and Sri M.Kesava Rao, learned counsel for the 1st respondent.

The husband of the 1st respondent worked as the Principal, Government Junior College for Girls, Visakhapatnam. He died in harness on 13.06.2005. Having paid some amounts to the 1st respondent after the death of her husband, the Regional Joint Director of Intermediate Education, Andhra Pradesh, issued the impugned proceedings dated 04.07.2008 ordering recovery of a sum of Rs.96,277/- from his earned leave encashment and a sum of Rs.2,33,450/- from his gratuity. Aggrieved thereby, she filed the subject O.A. before the Tribunal.

The authorities contested the O.A. before the Tribunal by filing a counter. Therein, they admitted that no disciplinary proceedings were initiated against the 1st respondent's husband while he was in service. Taking note of this fact, the Tribunal allowed the O.A. and directed the authorities to release the amounts withheld.

The learned Government Pleader for Services would contend that the Tribunal failed to take note of Rule 9(7) of the Andhra Pradesh Revised Pension Rules, 1980 (for brevity, 'the Rules of 1980') and the order under challenge therefore warrants interference.

Sri M.Kesava Rao, learned counsel, would however dispute the applicability of the said provision on facts.

Rule 9(7) of the Rules of 1980 reads as under:

> '(7) Even though a Government servant has retired from service and was not before his retirement charge sheeted or called upon to explain why a pecuniary loss caused to the Government (or a local authority) due to his negligence, while he was in service, should not be recovered from him, the Government if they are satisfied that the loss is due to him, shall recoup the pecuniary loss besides all Government dues (or local authority dues) from the Retirement Gratuity. For this purpose, it shall not be necessary to get the consent of the Government servant or the consent of the members of his family in the case of a deceased Government servant, as the case may be. In such cases, it shall be indicated in the sanction clearly the amount of Retirement Gratuity admissible, a stated amount which shall be deducted from the retirement Gratuity on account of Government dues or local authority dues or loss sustained by the Government servants due to

negligence and the net amount of Retirement Gratuity payable to the retired Government servant.'

The aforestated provision postulates that despite a Government servant retiring from service without being charge-sheeted or being called upon to explain why pecuniary loss caused to the Government or a local authority due to his negligence should not be recovered from him, the Government, if it is satisfied that the loss was due to him, would still have the power to recoup the pecuniary loss apart from all Government dues or local authority dues from the retirement gratuity of such Government servant. The provision further reads to the effect that for this purpose, it would not be necessary to get the consent of the Government servant or the consent of the members of his family, in case he died. The provision ends with the mandate that in such cases, the sanction should indicate clearly the amount of retirement gratuity admissible, the stated amount which has to be deducted therefrom on account of the Government dues or local authority dues or the loss sustained by the Government servant's negligence and the net amount of retirement gratuity payable to him.

Though the learned Government Pleader is correct in asserting that this provision permits withholding of amounts from the retirement gratuity even without disciplinary proceedings being initiated against the Government servant prior to his retirement or death, the procedure prescribed therein would have to be scrupulously adhered to while withholding such amounts on account of the pecuniary loss caused to the Government due to the negligence of such Government servant. The Government must first record its satisfaction that such loss was, in fact, caused by the Government servant's negligence and accord sanction for recovery. Without such satisfaction and sanction preceding withholding of the amount, the same would be rendered wholly illegal.

In the present case, it appears that the Commissioner of Intermediate Education addressed letter dated 06.12.2007 to the Accountant General, Andhra Pradesh, forwarding the revised pension papers of the 1st respondent's husband, wherein he stated as under:

> 'During the depth inspection, it was found that an amount of Rs.3,29,727/- misappropriated/loss caused to the Government by the deceased Principal'.

He therefore requested that an amount of Rs.2,33,450/- should be withheld from the death-cum-retirement gratuity payable to the 1st respondent and to issue an authorization at an early date under intimation to his office.

There is no explanation forthcoming as to why the withholding of amounts from the 1st respondent's husband was restricted to Rs.2,33,450/- when the loss was assessed at Rs.3,29,727/-.

Further, the learned Government Pleader fairly conceded that there was no sanction order passed by the Government, as posited under Rule 9(7) of the Rules of 1980.

Mere communication by the Commissioner of Intermediate Education to the Accountant General's Office is wholly insufficient to press into service Rule 9(7) of the Rules of 1980. There was no application of mind by the Government, let alone satisfaction being recorded by it, on any pecuniary loss being caused to the Government by the negligence of the 1st respondent's husband. In effect, there was no legal basis to support the withholding of the gratuity and leave encashment dues of the 1st respondent's husband.

Withholding of the amounts by the authorities from the retirement gratuity and the leave encashment dues of the 1st respondent's husband was therefore totally without legal authority.

On the above analysis, this Court finds no reason to interfere with the order passed by the Tribunal holding to this effect. The writ petition is devoid of merit and is accordingly dismissed. Interim order dated 06.08.2013 shall stand vacated. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

N.BALAYOGI, J

1st MARCH, 2017

Svv