

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

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**and**

**THE HON'BLE SRI JUSTICE M. GANGA RAO**

**Writ Petition No.14612 of 2014**

Between:

Mr. Nancharla Murali, S/o Jagannadham, aged about  
47 years, Occ: Stenographer (Gr.II), R/o 7-3-411/C,  
Vijayaanagar Colony-II, By-pass Road, Khammam

... Petitioner

Vs.

The High Court of Judicature of Andhra Pradesh,  
Represented by its Registrar (Administration),  
Hyderabad and another

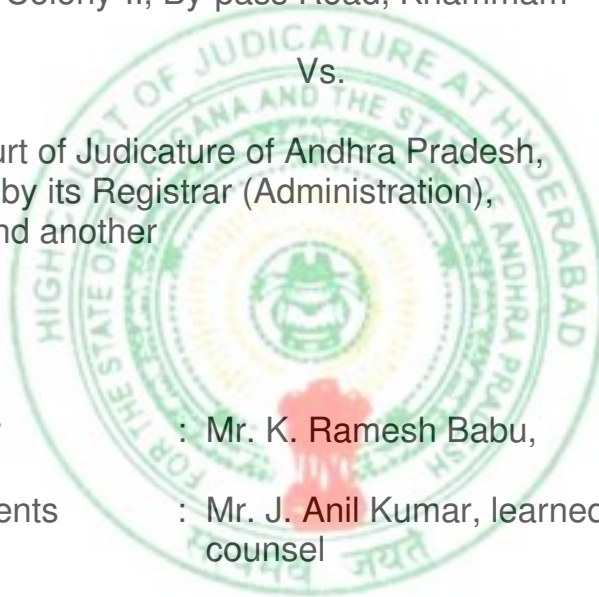
.. Respondents

For Petitioner

: Mr. K. Ramesh Babu,

For Respondents

: Mr. J. Anil Kumar, learned standing  
counsel



**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**HON'BLE SRI JUSTICE M. GANGA RAO**

**Writ Petition No.14612 of 2014**

**ORDER: (V. Ramasubramanian, J)**

The petitioner, who was appointed as Stenographer in the District Judiciary, has come up with the above writ petition, challenging the refusal of the 2<sup>nd</sup> respondent to accept his request for withdrawal of Voluntary Retirement.

2. Heard Mr. K. Ramesh Babu, learned counsel appearing for the petitioner and Mr. J. Anil Kumar, learned standing counsel for the respondents.

3. The petitioner was appointed as a Stenographer way back in the year 1987. It appears that ever since then, he has been suffering from one problem or the other and has been frequently on leave.

4. Eventually, the petitioner submitted an application on 15-02-2014 seeking to go on Voluntary Retirement with effect from 01-06-2014. The application for voluntary retirement was accepted by order dated 26-04-2014.

5. After the acceptance of the request for voluntary retirement, the petitioner made a request on 30-04-2014 for withdrawing the application for voluntary retirement. The request for withdrawal of the application for voluntary retirement was rejected by a memo dated 02-05-2014. Challenging the memo dated 02-05-2014, the petitioner has come up with the above writ petition.

6. While ordering notice in the writ petition, this Court seems to have granted an *ex parte* interim direction on 22-05-2014. By virtue of the said *ex parte* interim order, the petitioner continued in service even beyond 01-06-2014, the date on which the request for voluntary retirement ought to have come into effect.

7. But the tale of woes for the petitioner would not come to an end. It appears that the petitioner continued only up to 31-07-2016 and again made a request for voluntary retirement on 15-02-2017.

8. But we are not concerned in this case with what happened subsequent to the writ petition. The writ petition challenges a memo dated 02-05-2014 rejecting the request for withdrawal of the application for voluntary retirement. Therefore, we are obliged only to test the correctness of the memo dated 02-05-2014.

9. The petitioner relies upon G.O.Ms.No.33, General Administration (Service-D) Department, dated 04-02-2014. By G.O.Ms.No.33, dated 04-02-2014, two amendments were made to Rule 30 of the Andhra Pradesh State and Subordinate Service Rules, 1996. By one those amendments, the third proviso to sub-rule (a) was substituted. By the second amendment, sub-rule (b) was substituted in entirety.

10. Under the newly substituted sub-rule (b) of Rule 30, a person, who withdraws his resignation before the acceptance of his resignation takes effect, he should be deemed to be continuing in service. Therefore, the contention of the petitioner is that the moment he withdrew his request for voluntary retirement, before it was intended to take effect, he is entitled to continue by virtue of the amended Rule 30 (b) of the Rules.

11. But unfortunately, for the petitioner, Rule 30 deals with resignation from service. It does not deal with voluntary retirement applications. There is no specific provision in the Andhra Pradesh State and Subordinate Service Rules, 1996 with respect to voluntary retirement. Therefore, one may have to fall back upon the Fundamental Rules and not upon the State and Subordinate Service Rules.

12. As we have stated the only challenge to the impugned memo is of a Rule, which is not applicable to the case of the petitioner. Hence, the writ petition is liable to be dismissed.

13. But, we cannot simply dismiss the writ petition, without taking note of the effect of the interim order passed in this case. If there had been no interim order, the petitioner would be deemed to have been retired on 31-05-2014, but by virtue of the interim order he continued up to 31-07-2016. At the most, this period can be treated only as a period of extension of service, not liable to be counted along with the service rendered earlier for the purpose of terminal benefits.

14. If by virtue of an interim order passed by a Court, a person enjoys a benefit and the main case is eventually dismissed, normally the principle of restitution will have to be applied. If it is so applied, the benefits enjoyed by a person by virtue of the interim order could be returned. But in Service Law, a person works and earns his salary. Therefore, the question of refunding the salary paid during the period from 01-06-2014 to 31-07-2016 does not arise. But, the petitioner will also not be entitled to any bounty in the form of counting the said period for any purpose.

15. Therefore, the writ petition is dismissed. The petitioner shall be deemed for all purposes including the payment of terminal benefits and pensionary benefits, to have voluntary retirement with effect from 31-05-2014. The pay and allowances given to him from 01-06-2014 up to 31-07-2016, by virtue of the interim order passed, have been earned by him by working. Therefore, they cannot be recovered, but at the same time they will not also count for any purpose.

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

**V. RAMASUBRAMANIAN, J**

**M. GANGA RAO, J**

Date: 06-11-2017

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