HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.762 of 2017

Date : 18.7.2017

Between :

B Damodar S/o B Shekharaiah
66 years Retired Executive Engineer
Irrigation Department Warangal
R/o H NO. 1278 Road No. 63/!,
Jubilee Hills
Hyderabad Petitioner

And

The Govt of AP
Rep by its Prl Secretary I & CAD Department
Secretariat, Hyderabad and others

Respondents

The Court made the following:

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ORAL ORDER:

Petitioner retired from service on attaining the age of superannuation on 31.7.2005 as Executive Engineer. After his retirement, his retirement benefits were settled and monthly pension is being paid to the petitioner continuously. While in service or after retirement disciplinary action was not initiated against the petitioner. Petitioner is aggrieved by the proceedings dated 30.3.2013 issued by the Superintending Engineer I & CAD, Irrigation Circle, Warangal/ third respondent herein holding that there was huge loss caused to the Government on purchase of stationery within a short period during the years 2003-2004 in Irrigation Division, Warangal running into Rs.26.50 lakhs. It appears, Vigilance enquiry was conducted and report submitted by the Director General, (Vigilance and Enforcement) holds loss to the exchequer to the tune of Rs.26.50 lakhs. The Government decided to apportion the loss caused among the officers who worked at that time, such as Superintending Engineer, Executive Engineer in Irrigation and Command Area Circle Office and other officers in the Divisional office. In the said manner an amount of Rs.1,78,570/- was earmarked to be recovered from the petitioner. Accordingly, final orders were passed on 30.3.2013 proposing to recover the said amount.

2. The basic facts noted above are not in dispute. Thus, the only question for consideration is whether the Superintending Engineer can affect recovery of alleged loss caused during the years 2003-2004 in the year 2013 ?

3. Once an employee retires from service, the relationship of master and servant ceases. However, Government exercise control over the retired employees also in view of its obligation to pay retirement benefits, monthly pension and family pension. It reserves to itself power to recover from the former employees to recoup loss caused and to take disciplinary action against

them for the misconduct committed by them before retirement and after the retirement.

4. Concerning all the aspects of retired employees, Rules are formulated known as 'Telangana Revised Pension Rules, 1980'. These Rules regulate relationship between the Government and its former employees. Rule 9 enables taking disciplinary action and imposing appropriate punishment on pending disciplinary proceedings at the time of retirement or proceedings initiated within the time prescribed in the Rules, after retirement. For the purpose of determining whether disciplinary proceedings/criminal prosecution is pending, sub Rule 6 of Rule 9 explains what is meant by pending departmental proceedings and judicial proceedings. Sub Rule 7 is introduced by way of amendment carried out on 21.12.2002. This provision enables recovery of loss caused to Government on account of negligence of the ex-government servant while he was in service.

5. Rule 9 prescribes initiation of disciplinary action, if the same is not already initiated while in service, if the incident on which disciplinary proceedings are sought to be initiated after retirement pertaining to period within four years prior to retirement. Thus, no disciplinary proceedings can be initiated against petitioner for an incident relating to years 2003-2004. The order impugned does not even contemplate initiation of disciplinary proceedings or recovery as a consequence to the disciplinary proceedings already taken up. It proceeds as if loss is caused to the Government and same should be recovered.

6. Only provision that is available to recover the loss caused to the Government from the retired employee from the retirement benefits is under sub Rule 7 of Rule 9. However, plain reading of sub Rule 7 of Rule 9 would show that such recovery can be affected only if pecuniary loss caused to the Government is identified by due process and such loss can be recovered from the gratuity payable. In the instant case all the retirement benefits including gratuity

were settled and petitioner is drawing monthly pension all along. Thus, under Rule 9, no recovery can be affected from the petitioner.

7. Further more, the order of recovery is passed by the Superintending Engineer who is not competent to recover from retired employee. It is only the Government which can take such steps against former employee under Pension Rules. Thus, order under challenge is not sustainable on the aforesaid grounds and is accordingly set aside.

8. It is made clear that the order is set aside only on the ground that under the Pension Rules, the Superintending Engineer, acting on behalf of the employer cannot order for recovery from former employee. However, this order does not preclude the Government from taking action against the petitioner as warranted under law.

9. Subject to above, writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 18.7.2017
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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