

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No. 384 of 2017

Date :27.7.2017

Between :

R. Danamma W/o R Lakshminarayana
56 years R/o H NO. 11-12-3/13 NSP Road,
Near Nirmala Uday School
Khammam

Petitioner

And

The Government of AP,
Rep by its Principal Secretary, I & CAD Department
Secretariat, Hyderabad & others

Respondents

The Court made the following:



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ORAL ORDER:

Husband of the petitioner was employed as contingent employee in the year 1978. While working as contingent employee, he died on 17.2.1985. Petitioner earlier filed O.A. No. 2287 of 2012 on the file of the A.P. Administrative Tribunal seeking declaration of action of the respondents in not fixing and paying the family pension, though petitioner is eligible for the same, as illegal and consequently sought for direction to fix and pay family pension. Said O.A. was disposed of by order dated 28.3.2012 granting liberty to the petitioner to make a fresh representation within a period of two weeks from that date and on receipt of such representation, direction was issued to the second respondent to consider and pass appropriate orders. In response to the direction issued, representation was submitted by the petitioner. Considering the said representation, Executive Engineer Sathupally passed orders on 8.10.2012 rejecting the claim of the petitioner for fixing her family pension on the ground that deceased employee did not put in adequate length of service to consider his services for deemed regularization as per G.O.Ms.No. 118 dated 18.8.1999. Aggrieved thereby, petitioner filed O.A No. 2052 of 2013 challenging the said proceedings and sought for consequential direction to fix and pay family pension along with interest on arrears as per the A.P. Revised Pension Rules, which is transferred to this Court.

2. Heard learned counsel for petitioner and learned Government Pleader for Services –II (TS).

3. Learned counsel for petitioner submitted that husband of the petitioner worked for more than 6 years before he died; he was eligible for consideration for regularization of his services and G.O.Ms No. 118 dated

18.8.1999 scheme is applicable and thus ought to have been granted family pension treating the services rendered by her husband as deemed to have been regularized in accordance with G.O.Ms No. 118 dated 18.8.1999 and G O Ms No. 212 dated 22.4.1994.

4. To appreciate his contentions, it is relevant to note that scheme of regularization was notified for the first time in the year 1994 prescribing 5 years minimum service to be completed to acquire eligibility for consideration of regularization. Vide orders in G.O.(P).No.112 dated 23.7.1997 scheme of regularization is also extended to part time employees who have completed 10 years of service. As there was continuous demand for consideration of such of those claims of family members whose bread winner was working with the Government, fulfilled the eligibility as per the scheme of regularization but formal order of regularization was not granted before the death, to extend the benefits of regularization and terminal benefits flowing there from and responding to such demand, Government issued orders in G.O. Ms No. 118 dated 18.8.1999. The scheme of regularization notified vide G.O. Ms No. 212 dated 22.4.1994 and G.O.(P). 112 dated 23.7.1997 has statutory backing of A.P. (Regularisation of Appointments to Public Services and Rationalisation of Staff Pattern and pay Structure) Act, 1994 (Act 2 of 1994). G.O.Ms No. 118 dated 18.8.1999 is applicable only with reference to scheme of regularization. G.O. Ms No. 212 dated 22.4.1994/G.O.(P) No.112 dated 23.7.1997 read with G.O.Ms.No.118 dated 18.8.1999 do not say that scheme is applicable retrospectively and operates to claim of the petitioner, which relates to 1985.

5. Petitioner's husband was treated as contingent employee. Government issued orders from time to time which necessitated conversion of contingent establishment posts into regular establishment on completion of 5 years of existence of contingent post treating the

requirement as permanent. After such conversion a person working in the contingent post can be considered for regularization. Thus, if at all there is valid claim, it ought to relate back to situation obtaining in the year 1985 and earlier with reference to conversion of contingent post into regular post and consideration of post of husband of the petitioner for regularization, as per then Government orders in force but not with reference to G.O.Ms No. 212 / G.O.(P) 112 / G.O.Ms No. 118. As the claim made by the petitioner in substance relates to the year 1985, by the time O.A.No 2287 of 2012 was instituted it was more than 27 years and by the time this O.A is instituted and considered it is more than 32 years. Unless a declaration is given that contingent/work charged establishment post ought to have been converted as a regular post and husband of the petitioner was eligible, no direction for grant of family pension can be issued and no such declaration can be granted at this distance of time. Thus, this Court is not inclined to exercise equitable jurisdiction to grant relief as sought for by the petitioner.

6. Accordingly the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 27.7.2017
TVK

P NAVEEN RAO,J

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