

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NO.91 OF 2017

Date: 25.07.2017

Between:

Smt S.Niranjani W/op A.Shivaram, Aged about 72 years,
Retired Gr.I Matron, Govt. S.W. Girls Hostel, Malakpet-III,
Hyderabad, r/o. H.No.10-5-553, Tukaramgate,
North Lalguda, Secunderabad.

..... Applicant/Petitioner

and

The State of A.P., rep.by its Principal Secretary to Govt.
Social Welfare Department, Secretariat Buildings,
Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Petitioner retired from service as Matron Grade-I on attaining the age of superannuation on 30.06.1998. In the present writ petition, claim of the petitioner concerns treating the period of suspension from 01.07.1988 to 24.08.1989 as on duty and to grant other consequential benefits flowing there from.

2. The litigation has checkered history. Petitioner was placed under suspension on 01.07.1988. Similarly several other persons working in the Matron/Warden cadre and other categories in Social Welfare Department were placed under suspension and disciplinary proceedings were initiated. Petitioner was served with Charge Memo, dated 28.05.1994 alleging that she was involved in false claims of scholarships, mess charges. Subsequently, there were some amendments to the said Charge Memo. The disciplinary action meandered for a long long time without an end. After retirement, petitioner instituted O.A.No.5690 of 1999 before the Andhra Pradesh Administrative Tribunal (Tribunal) praying to grant retirement benefits by regularizing the period of suspension as on duty with attendant benefits including penal interest @ 18% p.a., by holding that the disciplinary proceedings were dropped and action of the respondents in not releasing the pension and retirement benefits as illegal.

3. On elaborate consideration of the issue, Tribunal, by order dated 18.08.2004, declared that inordinate delay in concluding the disciplinary proceedings has vitiated the entire disciplinary action and held that no further action can be taken against the petitioner

after lapse of nearly 16 years. Having come to the said conclusion, Tribunal directed the respondents to release all the pensionary benefits due to the applicant duly issuing the orders of dropping further action within a period of three months from the date of receipt of a copy of the order. The respondents were further directed to issue notice to the petitioner within a period of 15 days from the date of receipt of copy of the order treating the period of suspension as on duty and to regulate the same in accordance with the Rules. Aggrieved by the said decision, State preferred W.P.No.13663 of 2006. The said writ petition was dismissed by judgment dated 18.06.2007.

4. Consequent to the judgment of this Court, orders were issued dropping the disciplinary proceedings. However, respondents again resorted to fresh disciplinary action on the very same issue, in purported reference to some CBCID report. The consequent orders of the Government in G.O.Rt.No.545, Social Welfare (SER.III.2) Department dated 06.08.2013, was challenged by the petitioner in O.A.No.7214 of 2013 before the Tribunal. This O.A., along with three other OAs filed by similarly situated persons were heard and by common order, dated 16.02.2016, allowed the OAs setting aside G.O.Rt.No.545, dated 06.08.2013. In compliance of the judgment rendered by the Tribunal, Government issued G.O.Rt.No.215 Scheduled Castes Development (Ser.A2) Department, dated 28.04.2017, implementing the orders of the Tribunal. Thus, the issue of taking disciplinary proceedings has come to an end by virtue of these orders.

5. The claim of petitioner for regularization of period of suspension still subsists. As stated by learned counsel for petitioner, though in O.A.No.5690 of 1999 Tribunal directed to issue notice and to take consequential steps on regulation of period of suspension, no notice was issued to the petitioner and no decision is taken to regularize the period of suspension till date. In O.A.No.7706 of 2012, the Tribunal passed interim orders on 25.09.2014, directing the respondents to examine the case of the petitioner on par with similarly situated persons and if petitioner is similarly situated, extend the benefit of G.O.Ms.No.652 Social Welfare (SER.III.2) Department, dated 12.08.2011, to the petitioner by treating the suspension period as on duty. The said order of the Tribunal was challenged by the State in W.P.No.8078 of 2015 before this Court. In W.P.M.P.No.10662 of 2015 in WP No.8078 of 2015, by order dated 25.03.2015, this Court suspended the interim order by referring to the similar order passed in W.P.No.26372 of 2013.

6. Along with disciplinary proceedings, simultaneously, criminal proceedings were also initiated against the petitioner and others. Petitioner was accused in C.C.No.1 of 2011 on the file of Special Judge for Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement at Nampally, Hyderabad. Praying to quash the criminal proceedings, petitioner filed Criminal Petition No.10746 of 2015 before this Court, under Section 482 of Cr.P.C. This Court, by order, dated 26.03.2016, allowed the Criminal Petition and the proceedings in C.C.No.1 of 2011, were quashed. Thus, criminal proceedings are also no more pending against the petitioner.

7. Earlier, the claim of the petitioner for grant of regularization of the period of suspension was not considered on the ground that criminal case was pending against petitioner and until criminal case is disposed of, the period of suspension cannot be regularized. The same fact was also noticed by this Court in W.P.No.8078 of 2015 while granting interim stay on orders of Tribunal in O.A.No.7706 of 2012 (this writ petition). Now this hurdle is also removed.

8. Learned counsel for petitioner contends that after the judgment was rendered in O.A.No.5690 of 1999, co-employees also filed O.A.Nos.7825 and 7481 of 2008 before the Tribunal claiming similar reliefs. The Tribunal allowed the said OAs following the decision rendered in O.A.No.5690 of 1999. The said orders of Tribunal were implemented and the period of suspension of those persons was treated as on duty and all consequential benefits were granted. He, therefore, submits that not regularizing the period of suspension, even though disciplinary proceedings and criminal proceedings are set aside and similarly situated persons were granted benefits, amounts to arbitrary exercise of power and harassment to the retired employee.

9. The disciplinary proceedings initiated in the year 1994 are already set aside and no other disciplinary proceedings are pending. Criminal proceedings are also set aside and thus criminal proceedings are also not pending. It is also not in dispute that the period of suspension of co-employees, who are implicated in similar disciplinary action and criminal proceedings, were granted the benefit of regularization of period of suspension. Even though

Tribunal directed the respondents to cause notice on the petitioner regarding regularization of period of suspension, no such notice was issued and no action is taken on the issue of regularization of the period of suspension. The facts noted above are not disputed by the learned Government Pleader.

10. The employee, who retired from service on 30.06.1998, was denied of little more amount of pension and other retirement benefits for the last more than 19 years only because no decision on regulation of period of suspension from 01.07.1988 to 24.08.1989 is taken so far. There is no explanation forthcoming as to why such benefit is not extended, more so when similarly situated persons were granted benefit. Even after allowing the Criminal Petition No.10746 of 2015, no further steps are taken. The instructions furnished to the learned Government Pleader only reflect what happened before the Criminal Petition was allowed by this Court expressing their stand that since criminal case is pending, period of suspension cannot be regularized. This shows insincerity in dealing with service grievance of an employee by authorities holding positions of power. I see no justification for the respondents in not taking a decision as directed by the Tribunal in O.A.No.5690 of 1999 even after Criminal Petition was allowed quashing the criminal proceedings and denying benefit of service for the said period. This is a clear case of arbitrary exercise of power.

11. In the facts of this case and having regard to long drawn litigation and benefit granted to other employees, petitioner is entitled to treatment of period of suspension as on duty. Writ

petition deserved to be allowed and is accordingly allowed. Respondents are directed to regulate the period of suspension from 01.07.1988 to 24.08.1989 as on duty and grant all consequential benefits flowing there from including pay revision and revision of pension and shall settle the amounts payable to the petitioner within a period of two months from the date of receipt of a copy of the order.

12. Since there is inordinate delay in settlement of the claim and petitioner retired on 30.06.1998, I am of the considered opinion that justice and fairness requires awarding of interest at the rate of 8% per annum from the date the amounts were due on account of regulating the period of suspension as on duty. Therefore, respondents are directed to pay interest on the arrears of amount due from the date they are due, till the amount is paid.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 25.07.2017
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