THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No.131 of 2017

ORDER:

Petitioner retired from service on attaining the age of superannuation on 31.03.2006 while working as Electrician. He filed O.A.No.9394 of 2012 for declaration of the action of respondent Municipal Corporation in withholding an amount of Rs.3,30,000/- from his retirement benefits, despite inspection was done with regard to works done, as illegal, and consequently to direct respondent Municipal Corporation to release the withheld amount of Rs.3,30,000/- with interest.

The said O.A. is transferred to this Court.

In O.A. filed before the Andhra Pradesh Administrative Tribunal, Hyderabad, petitioner contended that the amount of Rs.3,30,000/- was illegally withheld; that he was not liable to pay any amount; that the work entrusted to him was completed; that he submitted adjustment bills to each advance within one month from the date of receipt of advance and that there were no pending bills from his side. Petitioner referred to the earlier O.As. filed by him. Reference was made to the direction issued by the Tribunal on 18.08.2010 in O.A.No.4999 of 2010 wherein the Tribunal directed respondents therein for conducting inspection on the spot i.e., the works executed by petitioner, and decide the question of amount repayable, if any, and pass necessary orders in the light of the representation made by petitioner on 26.04.2010. The Tribunal granted eight weeks time for implementation of the said direction.

Petitioner submitted that the Deputy Executive Engineer, Khammam Municipality, had conducted inspection on 15.11.2010 giving particulars about the work done by petitioner to a tune of Rs.4,29,732/- and also issued a certificate, which is enclosed to O.A. as page No.10. He contends that respondent Municipal Corporation is liable to pay Rs.3,30,000/- to petitioner and withholding of same is illegal.

In the counter-affidavit filed on behalf of respondent Municipal Corporation, it is asserted that petitioner was given advance amounts from time to time between 1997-98 to 2005-06, totalling to Rs.5,73,000/-, and the said amount is not accounted for. He was issued a notice on 28.08.2006 to remit an amount of Rs.3,37,950/- as he had not submitted the adjustment bills. It is contended that he has not submitted the adjustment bills nor remitted the amount. For release of pensionary benefits, petitioner applied for issuance of no due certificate. Accordingly, on 13.09.2007, no due certificate was issued stating that an amount of Rs.3,37,950/- is outstanding and anticipatory gratuity of Rs.1,87,500/- was not paid. It is further averred that an amount of Rs.1,87,500/- was recovered and credited to the concerned head of account. On 08.01.2008, a notice was issued to petitioner informing him that he has not submitted any adjustment bills for adjustment of advances. In response, petitioner submitted bills on 29.07.2008 for an amount of Rs.5,73,000/- without any certification. These bills were forwarded to Municipal Engineer, Deputy Executive Engineer and Municipal Assistant Engineer for scrutiny. They have also pointed out certain defects in the bills submitted by petitioner. The defects pointed out are shown in paragraph 6 of the counter-affidavit. In view of the said defects, the advances were not adjusted. It is contended that petitioner himself created the bills. Petitioner was given an endorsement on 01.08.2008 informing about the said defects and that the bills are not being approved by the competent authority. It is asserted that the amount withheld could not be paid to petitioner as he has not accounted for the same. With reference to the inspection conducted by Sri S. Eswar Prasad, Deputy Executive Engineer, on 15.11.2010, it was noticed that there was no clarity whether in which year the said works were executed by petitioner and petitioner has not given clarification.

Learned counsel for petitioner submits that the endorsement given by Deputy Executive Engineer after physical verification conducted by him on 15.11.2010 would substantiate the claim of petitioner that his work was executed and therefore he was entitled for payment of the said amounts and withholding of the amount is illegal.

It is seen from the averments in O.A. filed before the Tribunal that the applicant is placing reliance on the direction issued by the Tribunal and the endorsement dated 15.11.2010 is related to the direction issued by the Tribunal in O.A.No.4999 of 2010.

Having regard to the claim made by petitioner and the endorsement dated 15.11.2010 relied upon by him, learned Standing Counsel was directed to produce the original record. Learned Standing Counsel produced the record which contains the report of enquiry conducted by Sri S. Eswar Prasad, Deputy

Executive Engineer of Municipal Corporation on 16.09.2010. This report points out grave illegalities by petitioner in not accounting for the money advanced to him and the Deputy Executive Engineer observed that the amount of Rs.3,37,950/- is outstanding and petitioner is responsible for it. This report, according to the learned Standing Counsel, is pursuant to the directions of the Tribunal in O.A.No.4999 of 2010. After this report, petitioner was served with a speaking order dated 23.10.2010 made by the Commissioner of respondent Municipal Corporation, as directed by the Tribunal, directing him to submit certified copies of the bills with approval of concerned engineering officials so as to finalise the bills pending against him as pointed out by the Audit Department. This speaking order is not under challenge.

Learned counsel for petitioner fairly submits that after this speaking order, no further bills have been submitted by petitioner.

As seen from the record, physical verification was conducted by the very same Deputy Executive Engineer on 15.11.2010 and according to him, as per the record of the Municipal Corporation, there was no mention of amount in the said physical verification report and the amounts mentioned in the document, which is enclosed at page No.10 of O.A. paper book, are written by petitioner but not by Deputy Executive Engineer. In the counter-affidavit filed on behalf of the Municipal Corporation, it is clearly stated that there was no clarity that the said works were executed by petitioner and that petitioner was unable to give clarification on various works stated to have been executed, as listed out in the physical verification report/endorsement.

On perusal of the record, it appears that heavy reliance is placed by petitioner on the endorsement made by the Deputy Executive Engineer and petitioner has created a story for the purpose of securing the money withheld by the Municipal Corporation. Petitioner has not accounted for the money withheld by the Municipal Corporation and has not submitted certified copies of bills with regard to the claim of utilization of money, in spite of giving him sufficient opportunity and therefore, he is not entitled to refund of the money withheld by the Municipal Corporation. In this context, it is appropriate to note that under the provisions of Telangana Revised Pension Rules, the power vests in the competent authority to recover the money with regard to the alleged loss caused to the employer and thus power validly exercised to withhold the money to the extent of the amount of loss caused to the employer.

Having regard to the above findings, I see no error or merit in the claim of petitioner.

Writ petition is accordingly dismissed without costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

P. NAVEEN RAO, J

4th JULY, 2017.

kvni