

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16801 of 2014

ORDER: *(Per VRS,J)*

The Chief Executive Officer of the Zilla Praja Parishad has come up with the above writ petition challenging an order of the Andhra Pradesh Administrative Tribunal granting a concession to the first respondent herein, counting the period when he was out of employment, from 01.11.1981 to 23.01.1984 for all purposes including pay fixation under Note 2 to Fundamental Rule 26(a).

2. Heard Mr.Ravi Chimalapati, learned counsel for the petitioner, and Mr.T.V.Jaggi Reddy, learned counsel for the first respondent.

3. The first respondent joined in the Zilla Praja Parishad on 20.02.1981. He worked till 31.10.1981, after which he was relieved for want of vacancy.

4. Persons, who were similarly placed like the first respondent, approached the Tribunal. Pursuant to an order of the Tribunal, the first respondent as well as others were again taken back to duty on 24.01.1984.

5. After taking the first respondent back to service, the Government condoned the break in service, by issuing G.O.Ms.No.1002 dated 29.11.1967, for the purpose of pensionary benefits under Rule 27 (d) and Rule 28 of Revised Pension Rules, 1980.

6. In the case of the first respondent, a separate order was passed under G.O.Rt.No.1878 dated 15.12.2008, granting the benefit of condoning the break in service, for the purposes of Rule 27(d) and Rule 28 of the Andhra Pradesh Revised Pension Rules, 1980.

7. Not satisfied with such a benevolent action taken by the State, the first respondent sought condonation of break in service even for the purpose of pay fixation, in terms of Note 2 under Fundamental Rule 26 (a). Since the claim was not considered, the first respondent filed an application in O.A.No.1648 of 2010 and the same came to be allowed by the Andhra Pradesh Administrative Tribunal, on the short ground that another person by name T.Satyanarayana Murthy was extended similar benefits. Therefore, the Zilla Praja Parishad has come up with the above writ petition.

8. Admittedly, the first respondent was out of service from 01.11.1981 to 23.01.1984, only due to want of vacancy. When a person is out of employment for want of a vacancy, the break in service created on account of the same, may be condoned for the purposes of pensionary benefits. But, the same cannot be condoned for the purposes of pay fixation.

9. It is needless to point out that pay is always co-related to availability of a post and a vacancy. Fundamental Rule 26 (a) simply states that all duty in a post on a time-scale counts for increments in that time-scale. Note 1 under Fundamental Rule 26 (a) stipulates that an officiating government servant who

has no substantive appointment and who has been discharged from service cannot count non-continuous officiating service for increment in a time-scale. Note 2 under Fundamental Rule 26 (a) states that the break in service of an officiating government servant caused by his discharge under Rule 8 (a) (iii) of the State and Subordinate Service Rules shall be condoned so as to enable him to count for increments, the service prior to the break.

10. Fundamental Rule 26 (a) and 2 Notes thereunder, are extracted as follows:

“ F.R.26. The following provisions prescribe the conditions on which service counts for increments in a time-scale;

[(a) All duty in a post on a time-scale counts for increments in that time-scale;

Provided that for the purpose of arriving at the date of next increment, the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment.]

Note 1 :- An officiating Government servant who has no substantive appointment and who has been discharged from service cannot count non-continuous officiating service for increment in a time-scale.

Note 2 :- The break in service of an officiating Government servant caused by his discharge under Rule 8 (a) (iii) of the State and Subordinate Service Rules shall be condoned so as to enable him to count for increments the service prior to the break.”

11. The claim of the petitioner is pitched on Note 2 under Fundamental Rule 26 (a). Note 2 relates only to the counting of the services prior to the break. Note 2 does not relate to the period

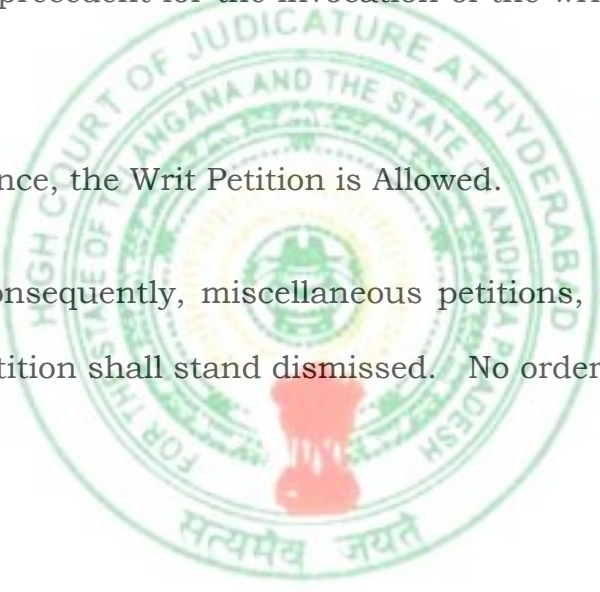
of break. But, unfortunately the same has been omitted to be taken note of by the Tribunal.

12. As we have indicated earlier, the sanction for the financial liabilities would always co-relate to the availability of a post. If there is a vacancy, the expenses on a post which is vacant, cannot be charged to any account under the Finance Code.

13. If persons like T.Satyanarayana Murthy and others have been granted a benefit in violation of the Rules, the same cannot be cited as a precedent for the invocation of the writ jurisdiction of this Court.

14. Hence, the Writ Petition is Allowed.

15. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

23rd November, 2017
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