

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13414 of 2006

ORDER:

This writ petition is filed seeking to issue a writ of Mandamus declaring the proceedings No.AP.295/37686/AC.31/2005/222, dated 4.4.2005 of the 2nd respondent-Assistant Provident Fund Commissioner as illegal and arbitrary and to set aside the same. A consequential direction is also sought to direct the respondents to grant pension by counting continuity of service granted by this Court and pay arrears.

Heard Sri P.Govinda Rajulu, learned counsel for the petitioner and Sri Jogam Tejavath, learned standing counsel for the 2nd respondent.

It has been contended by the petitioner that he was initially appointed as Driver during the year 1968 and he was removed from service in the year 1972 on some irregularities. The petitioner had preferred an appeal and the appellate authority passed order reinstating the petitioner and the petitioner was accordingly reinstated into service in the year 1973. It has been further contended by the petitioner that he was again removed from service during the year 1984. Questioning the order of removal, the petitioner filed I.D and also writ petition and they were dismissed. Against the order in the writ petition, the petitioner filed W.A.No.1363 of 1991 and the said appeal was allowed on 13.9.1996 directing reinstatement of the petitioner with continuity of service.

Accordingly, the petitioner was reinstated into service in the year 1996 and retired from service on attaining the age of superannuation on 30.6.2004. The grievance of the petitioner is that for the service he was out of employment, he could not pay his contribution to Employees Pension Scheme. It has been further contended by the petitioner that when the Court had directed that he should be reinstated into service with continuity of service for all purposes, the period he was out of employment should be treated as period spent on duty and he is entitled for grant of pension under the Employees Pension Scheme, 1995. Now, the petitioner had expressed his willingness to contribute his contribution to the 2nd respondent for the period he was out of employment and permit him to come into Employees Pension Scheme, 1995.

Learned standing counsel appearing for the 2nd respondent had contended that the petitioner was a member of Employees Pension Scheme and he was removed from service even before the introduction of new scheme i.e. Employees Pension Scheme, 1995 and, hence, the case of the petitioner cannot be considered for admitting him into Employees Pension Scheme, 1995. The petitioner is entitled for grant of pro-rata benefits for the period he paid contribution.

Considering the submissions made by both the parties, this Court is of the opinion that ends of justice would be met, if the 2nd respondent-Assistant Provident Fund Commissioner is directed to consider the case of the petitioner in accordance rule 8 of the new Employees Pension Scheme, 1995.

Accordingly, the Writ Petition is disposed of directing the 2nd respondent to consider the case of the petitioner for admission into new Employees Pension Scheme, 1995 duly accepting his contribution for the period he was not on duty and if the petitioner is entitled for admission under the said scheme, the 2nd respondent is further directed to consider the case of the petitioner for payment of monthly pension in accordance with new scheme. It is also made clear that the case of the petitioner shall be considered on par with Sri V.Rajesham in whose favour such benefit was granted. No costs.

Miscellaneous petitions pending, if any, shall stand closed.



ABHINAND KUMAR SHAVILI, J

Date: 08/10/2018
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