

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION Nos.20691, 20700, 20701, 20702 and 21086 OF 2012

COMMON ORDER : (Per Hon'ble Sri Justice M.Ganga Rao)

Since a common issue is raised in all these writ petitions, they are taken up together for hearing and disposed of by this common order.

These writ petitions are filed seeking to quash the orders dated 16.03.2011 passed in O.A.No.9017 of 2008, dated 06.04.2011 passed in O.A.Nos.20700, 20701 and 20702 of 2012 and dated 30.03.2012 passed in O.A.No.1807 of 2012 by the Andhra Pradesh Administrative Tribunal (for short 'Tribunal') by issuing a Writ of *Certiorari*.

Brief facts in W.P.No.20691 of 2012:

Respondent was initially appointed as a Medical Officer on temporary basis vide proceedings in Rc.No.2GA/86 dated 16.12.1986 of the District Medical and Health Officer, Visakhapatnam, as per the orders issued by the Government vide G.O.Ms.No.809 dated 29.11.1986, and posted at Mandal Primary Health Centre, Munchingput Tribal Agency Area of Visakhapatnam District. He joined service on 18.01.1986 and was paid salary on daily honorarium basis. Thereafter, he was appointed as a Civil Assistant Surgeon vide orders dated 08.09.1992 issued by the second petitioner herein. Subsequently, his services were regularized as Civil Assistant Surgeon vide proceedings dated 16.09.1992 w.e.f.01.04.1990. The Government issued orders in G.O.Ms.No.24 dated 01.01.2002 allowing the scale attached to the

post of Civil Assistant Surgeon w.e.f.01.04.1990 to the Doctors, who were working on daily honorarium basis, including the respondent. Thereafter, the service rendered by the respondent from 01.04.1990 to 15.09.1992 was treated as regular service and he was paid salaries. But, the petitioners did not consider the service rendered by the respondent from 18.12.1986 to 31.03.1990 for pensionary benefits. Hence, the respondent made representations dated 17.12.2007 and 17.01.2008 stating that as per Rules 13 and 29 of the Andhra Pradesh Revised Pension Rules, 1980, (for short 'Revised Pension Rules') the service rendered by him on temporary capacity on daily honorarium basis shall also be counted for the purpose of pensionary benefits. *Vide* order dated 02.08.2008, the Director of Medical Education, A.P., Koti, Hyderabad, rejected his claim stating that the Government has examined his case in the light of the orders passed in O.A.Nos.11021 of 2002 dated 10.12.2002 and O.A.No.5342 of 2005 dated 17.11.2006; as per Rules 13 and 29 of Revised Pension Rules; also taking note that the Government filed W.P.No.19633 of 2005 before this Court against the order dated 10.12.2002 passed in O.A.No.11021 of 2002 by the Tribunal wherein this Court by order dated 20.09.2005 in WPMP No.24964 of 2005 suspended the order dated 10.12.2002 passed in O.A.No.11021 of 2002 and the said Writ Petition is pending for adjudication. Aggrieved by the same, the respondent filed O.A.No.9017 of 2008. The Tribunal having considered the issue in totality, considering Rules 13, 14 and 29 of Revised Pension Rules, following the orders passed in O.A.No.5342 of 2005 and O.A.No.11021 of 2002, vide order dated 16.03.2011, held that the respondent is entitled for consideration

of the period from 18.12.1986, the date on which he was initially appointed as a Medical Officer on daily wage basis, to 31.03.1990, the date on which his services as Civil Assistant Surgeon were regularized, as qualifying service for the purpose of pensionary benefits and accordingly directed the petitioners herein to treat the said period as qualifying service for the purpose of pension only as per Rules 13 and 14 of Revised Pension Rules, while setting aside the Government Memo dated 02.08.2008. Being aggrieved by the same, the Government is before this Court by way of the present Writ Petition.

Brief facts in W.P.No.20700 of 2012:

Respondent was initially appointed as a Civil Assistant Surgeon, on temporary basis, on 15.12.1986 by the Superintendent, Government Head Quarters Hospital, Srikakulam, as per the orders issued by the Government in G.O.Ms.No.809 dated 29.11.1986 and he was paid the salary on honorarium basis though he worked on full time basis. While working as such, he was appointed as Civil Surgeon on regular basis by the 2nd petitioner vide his orders dated 08.09.1992. Subsequently, the Government issued orders in G.O.Ms.No.24 dated 01.01.2002 allowing the scale attached to the post of Civil Surgeon with effect from 01.04.1990 to the Doctors, including the respondent, instead of allowing the scale from the date of his initial appointment i.e. from 15.12.1986. The respondent made a representation to treat the temporary service rendered by him from 15.12.1986 to 30.03.1990 i.e. till the date he was regularly appointed as Civil Surgeon, as qualifying service as was done in respect of others for pensionary benefits. Petitioners issued proceedings in Memo

No.12331/B2/2008.2 H.M. & F.W. (B2) Department, dated 29.08.2008 rejecting his request. Aggrieved by the same, the respondent filed O.A.No.20700 of 2012 and the same was allowed by the Tribunal vide impugned common order dated 06.04.2011 directing the petitioners to treat the above period as qualifying service for calculating the pension of the respondent. Questioning the same, Government filed this Writ Petition.

Brief facts in W.P.No.20701 of 2012:

Respondent was initially appointed as a Medical Officer on temporary basis on 22.01.1987 by the Superintendent, Government Heard Quarters Hospital, Srikakulam, as per the orders issued by the Government in G.O.Ms.No.809 dated 29.11.1986. He joined service on 22.01.1987 and he was paid the salary on daily honorarium basis. Thereafter, he was appointed as Civil Assistant Surgeon on regular basis by the 2nd petitioner vide orders dated 07.07.1992. Subsequently, the Government issued orders in G.O.Ms.No.24 dated 01.01.2002 allowing the scales attached to the post of Civil Assistant Surgeon with effect from 01.04.1990 to the Doctors including the respondent, who was appointed on temporary basis and paid salary on honorarium basis. According to the respondent, petitioners ought to have paid the regular scale attached to the post of Civil Assistant Surgeon from the date of his initial appointment i.e. from 22.01.1987 instead of 01.04.1990. Hence, he made a representation to the petitioners to treat the temporary service rendered by him from 22.01.1987 to 01.04.1990 as qualifying service for pensionary benefits and the same was rejected by the petitioners vide

proceedings in Memo No.12331/B2/2008.2 H.M. & F.W. (B2) Department, dated 29.08.2008. Aggrieved by the same, the respondent filed O.A.No.20701 of 2012 and the same was allowed by the Tribunal vide impugned common order dated 06.04.2011 directing the petitioners herein to treat the above period as qualifying service for calculating pension of the respondent. Questioning the same, Government filed this Writ Petition.

Brief facts in W.P.No.20702 of 2012:

Respondent was initially appointed as a Medical officer on temporary basis on 21.06.1987 by the Superintendent, Government Head Quarters Hospital, Srikakulam, as per the orders issued by the Government in G.O.Ms.No.809 dated 29.11.1986. She joined service on 21.06.1987 and she was paid the salary on honorarium basis. Thereafter, she was appointed as Civil Assistant Surgeon on regular basis by the 2nd petitioner vide orders dated 28.02.1991. Subsequently, the Government issued orders in G.O.Ms.No.24 dated 01.01.2002 allowing the scale attached to the post of Civil Assistant Surgeon with effect from 01.04.1990 to the Doctors including the respondent, who was appointed on temporary basis and paid salary on honorarium basis. According to the respondent, petitioners ought to have granted regular scale attached to the post of Civil Assistant Surgeon from the date of her initial appointment i.e. from 21.06.1987 instead of 01.04.1990. Hence, the respondent submitted a representation to the petitioners to treat the temporary service rendered by her from 21.06.1987 to 31.03.1990 as qualifying service for pensionary benefits and the same was rejected by the petitioners vide proceedings in Memo

No.12331/B2/2008.2 H.M. & F.W. (B2) Department, dated 29.08.2008. Aggrieved by the same, the respondent filed O.A.No.20702 of 2012 and the same was allowed by the Tribunal vide impugned common order dated 06.04.2011 directing the petitioners to treat the above period as qualifying service for calculating her pension. Questioning the same, Government filed this Writ Petition.

Brief facts in W.P.No.21086 of 2012:

The 1st respondent was appointed as Assistant Professor, Kakatheeya Medical College, on 27.08.1987 and was paid daily honorarium wages @ Rs.70/-. He worked as such up to 25.09.1992. Subsequently, he was appointed in a clear substantive vacancy as regular Assistant Professor through direct recruitment vide orders dated 26.09.1992. Later, he was promoted as Associate Professor in the month of July, 2000, he was further promoted as Professor in the month of December, 2000, and retired as Professor & Vice Principal of Osmania Medical College on 31.01.2012.

The 2nd respondent was appointed as Honorary Civil Assistant Surgeon on 21.07.1987, paid Rs.1500/- per month. His appointment was made against substantive and clear vacancy by the Selection Committee after following due procedure and he worked up to 21.10.1990 as Honorary Civil Assistant Surgeon. Later, he was promoted as regular Civil Surgeon Speciality in the month of February, 2001. He retired in the month of October, 2012.

The 3rd respondent was appointed as Honorary Civil Assistant Surgeon in District Hospital, Nizamabad, on 21.10.1987

and was paid daily wage @ Rs.50/-. He worked as such till 05.10.1993. Later, on 06.10.1993 he was appointed as regular Civil Assistant Surgeon and posted at Dichpally. On 01.06.1996 he was transferred to District Hospital, Nizamabad, and retired on 31.03.2010.

The 4th respondent was appointed as Honorary Civil Assistant Surgeon in PHC, Kubeer, Adilabad District, on 30.03.1988 on daily wage of @ Rs.50/- and he worked as such till 08.09.1992. Later, he was appointed as regular Civil Assistant Surgeon in Government Civil Hospital, Mudhol Mandal, Adilabad District, and retired on 31.12.2006.

The case of the respondents is that they were appointed as Assistant Professors/Civil Assistant Surgeons as per G.O.Ms.No.809 dated 29.11.1988 in clear vacancies on daily wage honorarium basis. Later, the Government issued orders in G.O.Ms.No.24 dated 01.01.2002 allowing the pay scales attached to the post of Civil Assistant Surgeons/Assistant Professors w.e.f.01.04.1990. They were allowed the scale with effect from 01.04.1990 instead from the date of their initial appointment. According to the respondents, as per G.O.Ms.No.44 dated 29.01.2000 the services of the persons, appointed in various categories, contract basis or direct recruitment, after formation of the Commissionerate, shall be absorbed duly regularizing the services with effect from the date of their joining duty and their service shall be taken into account for all purposes including seniority, probation, leave, special grade sanction of 8/16 years scales under automatic advancement scheme and also for the purpose of pensionary benefits. Hence, seeking that the

interregnum period from the date of their initial appointment till 31.03.1990 shall also be considered for the purpose of Special Grade sanction of 8/16 years scales under automatic advancement scheme and also for grant of pensionary benefits, the respondents filed the above stated OAs before the Tribunal, which were allowed by the Tribunal. Aggrieved by the same, the Government and its officials are before us.

We have heard the learned Government Pleader for Services (AP) appearing for the petitioners, Sri D.Prakash Reddy, learned senior counsel appearing for Sri C.Sai Reddy, advocate, and Sri T.Veerabhadra Reddy, learned counsel, for the respondents in W.P.Nos.20691, 20700, 20701 and 20702 of 2012, and W.P.No.21086 of 2012 respectively.

The learned Government Pleader would contend that the respondents were initially appointed as Medical Officers/Civil Assistant Surgeons/Assistant Professors on temporary and daily honorarium basis. Thereafter, their services were regularized. They were allowed the scale attached to the post of regular Civil Assistant Surgeons/Assistant Professors with effect from 01.04.1990, vide G.O.Ms.No.24 dated 01.01.2002. However, the grievance of the respondents is that they were ought to have been paid regular scale attached to the post of Civil Assistant Surgeons/Assistant Professors from the date of their initial appointment on daily honorarium basis. The service rendered by the respondents before they were appointed as regular Civil Assistant Surgeons/Assistant Professors was not counted for pensionary benefits and their representations for considering the said period as qualifying service for the purpose of pensionary

benefits with all consequential benefits was rejected on the ground that as per Rule 13 of Revised Pension Rules, the service rendered by the respondents on daily wage basis could not be counted, as the said Rule does not cover daily wage service of employees. The same was challenged by the respondents before the Tribunal. The Tribunal on erroneous appreciation of Rules 13, 14 and 29 of Revised Pension Rules and following its earlier orders in O.A.No.5342 of 2005 and O.A.No.11021 of 2002, passed the impugned orders directing the petitioners to count the service rendered by the respondents from the date of their initial appointment on temporary basis and on payment of daily honorarium basis till 31.03.1990, holding that said service comes within the ambit of Rules 13 and 29 of Revised Pension Rules. In fact, their service on honorary daily wage basis could not be counted for pensionary benefits. She would further contend that the respondents were appointed only on temporary basis and it does not confer any right for continuation or for future employment till they were regularly appointed and they were paid from consolidated fund of the State. Rule 13 of Revised Pension Rules stipulates that qualifying service of the Government Servant shall commence from the date he takes charge of the post to which he was first appointed either substantively or in an officiating or temporary capacity. According to her, Rule 13 does not include honorary service/daily wage service for the purpose of computation of qualifying service. She would further contend that Rule 14 of the Revised Pension Rules mandates computation of service as qualifying service only if employee is paid from the consolidated

fund of the State. Hence, the impugned orders of the Tribunal are liable to be set aside.

Per contra, the learned senior counsel would contend that initially the respondents were appointed as Medical Officers/Civil Assistant Surgeons/Assistant Professors, on temporary and daily honorarium basis. Later, their services were regularized with effect from 01.04.1990 and they were paid all the benefits from 01.04.1990 till the date on which their services were regularized. But the period from the date of their initial appointment on honorarium basis till 31.03.1990 was not taken as qualifying service for the purpose of pension and other benefits like automatic advancement scheme, etc. The representations submitted by the respondents for treating the said period as qualifying service for the purpose of pension and other benefits were rejected. Aggrieved by the same, the respondents filed O.As before the Tribunal and the Tribunal after considering Rules 13 and 29 of Revised Pension Rules and following its earlier orders in O.A.No.5342 of 2005 and 11021 of 2002 rightly allowed the O.A. directing the petitioners to treat the said period as a qualifying service. He would further contend that Rule 13 clearly says that the qualifying service of the government servant commences from the date he takes charge of the post to which he was appointed either substantively or in an officiating or temporary capacity. Further, the respondents were paid salaries from the consolidated fund of the State and they were rendering pensionable service from the date of their initial appointment on temporary basis, as required under Rules 13 and 14 of the Revised Pension Rules.

In support of his contentions, learned senior counsel relied on the decision rendered by a Division Bench of this Court in ***State of Andhra Pradesh and others vs. M.Raja Rao and another***¹ wherein this Court while dealing with Rules 13 and 14 of the Revised Pension Rules held that the temporary service rendered by the employee in the cadre of Junior Auditor prior to his absorption as Junior Auditor against regular vacancy shall be counted as qualifying service for the purpose of pension. Relying on the above decision, learned senior counsel submits that there is no illegality or irregularity in the impugned orders passed by the Tribunal warranting interference of this Court, the Writ Petitions are misconceived and liable to be dismissed.

In the facts and circumstances of the case and in our considered view, it is found that the respondents were initially appointed as Medical Officers/Civil Assistant Surgeons/Assistant Professors on temporary basis on payment of daily honorarium. Later, they were appointed as regular Civil Assistant Surgeons and were allowed to draw regular pay scales as per the orders of the Hon'ble Supreme Court in Civil Appeal No.4919 of 1989, W.P. (Civil) No.506 of 1988 & batch, vide G.O.Ms.No.24, Health Medical & Family Welfare (B2) Department dated 31.01.2002. But, the service rendered by the respondents on daily honorarium basis from the date of their initial appointment till 31.03.1990 was not considered for the purpose of pensionary benefits and the representations submitted by the respondents in that regard were rejected contrary to Rules 13, 14 and 29 of the Revised Pension Rules.

¹ 2016 (4) ALD 662 (DB)

For better adjudication of the *lis*, Rules 13, 14 and 29 of the Revised Pension Rules are extracted hereunder:

13. Commencement of qualifying service:- Subject to the provisions of the rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

14. Conditions subject to which service qualifies:- (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression service means service under the Government and paid by the Government from the Consolidated Fund of the State but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by the Government.

29. Addition to qualifying Service:- Every Government servant who at the time of retirement on superannuation, has put in a qualifying service of less than 33 years, shall be entitled to add to the qualifying service, for the purpose of pensionary benefits, the difference between 33 years and the qualifying service at the time of superannuation, such difference not exceeding three years:

From a conjoint reading of the above rules it can be easily concluded that the temporary service rendered by an employee shall also be counted as qualifying service for the purpose of pensionary benefits.

In similar set of facts, in ***M.Raja Rao***, the Division Bench of this Court held as follows:

“From the above reproduced Rules, it is clear that qualifying service of a Government Servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, subject to the exceptions

contained in clauses (a) and (b) of Rule 13 of the Rules. A temporary employee shall further satisfy the conditions stipulated in Rule 14 of the Rules for counting his temporary service for pensionary benefits. Under this Rule, unless his duties and pay are regulated by the Government or under the conditions determined by the Government, such service was not qualified for pension. The meaning of the word "service" under sub-rule (1) of Rule 14 of the Rules is explained in sub-rule (2) thereof, as per which the service is under the Government and the salary is paid by the Government from the Consolidated Fund of the State, but the same does not include the service of a non-pensionable establishment, unless such service is treated as qualifying service by the Government.

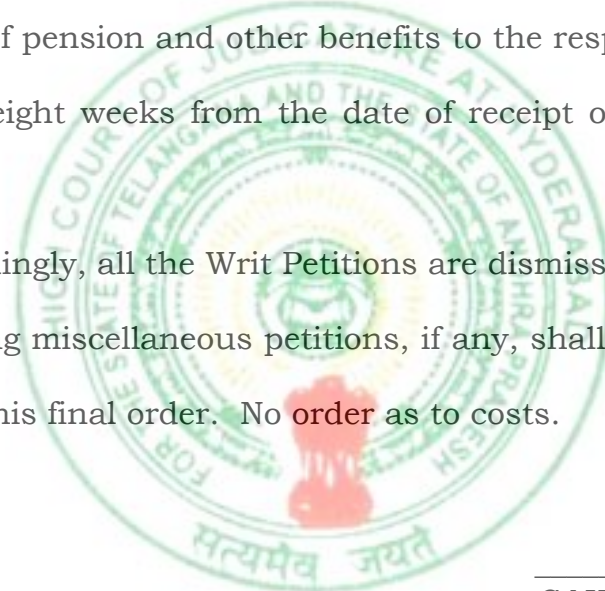
In view of the above, the contentions urged by the learned Government Pleader that as the respondents rendered temporary service from the date of their appointment till 31.03.1990, the same could not be counted for the purpose of pensionary benefits as per Rule 13 of the Revised Pension Rules as the respondents were not appointed either substantively or in an officiating or temporary capacity; and payment of daily honorarium would not come within the meaning of Rule 14 of the Revised Pension Rules as the service rendered by the respondents during the said period was purely on temporary basis and they were paid daily honorarium during the said period, they have no right to continue or for future employment, are unsustainable for the reason that the service rendered by the respondents from the date of their initial appointment till 31.03.1990 comes within the ambit of service under sub-rule (1) of Rule 14 of the Revised Pension Rules, as the said service was under the Government and daily honorarium was paid by the Government from the consolidated

funds of the State, the respondents rendered service in pensionable establishment. Therefore, the service rendered by the respondents on temporary daily honorarium basis till their regularization has to be counted as qualifying service for the purpose of pensionary benefits, special grade sanction of 8/16 years scales under automatic advancement scheme, etc.

For the reasons stated supra, we see no reason to interfere with the impugned orders passed by the Tribunal allowing the O.As. filed by the respondents respectively. The Writ Petitions are devoid of merit and liable to be dismissed. Petitioners shall pay the arrears of pension and other benefits to the respondents within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, all the Writ Petitions are dismissed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

20th November, 2018
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