

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition (TR) no.5110 of 2017

ORDER:

This writ petition, under Article 226 of the constitution of India, is filed seeking verbatim the following relief:

“....to declare the action of the respondents I not sanctioning and releasing pensionary benefits to the applicant consequent upon the orders passed by the Hon'ble Tribunal in O.A.No.6988 of 1996 dated 14.09.1999 which was confirmed by the High Court in W.P.No.16029 of 2000 dated 19.07.2010 by keeping the matter pending in the guise of correspondence between respondents 1 to 4 as being arbitrary, illegal, unjust and violation of Article 14 and 300-A of the Constitution of India and consequently hold that the applicant is entitled to have his pension fixed in the category of attender and above with all consequential benefits duly refixing his pay and allowances in terms of subsequent pay revision with an interest of 18% per annum from the date of due to the date on which actual payment is made and pass such other order.”

2. I have heard the submissions of *Mrs. Y.L. Svakalpana Reddy*, learned counsel appearing for the writ petitioner; and, of the learned Government Pleader for Higher Education (TS) appearing for the respondents. I have perused the material record.

3. From the pleadings, submissions made and the contents of the material documents placed on record, the following facts and chronological events are discernable:

The writ petitioner was appointed, on 01.11.1984, in the 4th respondent college, as a part time Gardener-cum-Attender on a consolidated pay. After he rendered seven years of service, his service was converted into Class IV (Last Grade Service), with effect from 05.09.1990, by allowing him the time scale, in the light of G.O.Ms.no.193. However, as he was not paid the increments after

regularization, he filed a representation before the 4th respondent. The said respondent passed an order, on 07.11.1983, stating that the petitioner is not entitled to get the benefit under G.O.Ms.no.193 for the reason that he was appointed as a part time contingent employee on consolidated pay. The petitioner challenged the said order of the said respondent before the Andhra Pradesh Administrative Tribunal, Hyderabad, (hereinafter referred to as 'Tribunal', for brevity) by filing O.A.no.6988 of 1996. The Tribunal, having observed that the service of the petitioner though regularized by way of irregular interpretation of G.O.Ms.no.193, held that he had fulfilled two ingredients, which are required for regularization of his services under G.O.Ms.no.212, that is, the requirement of minimum service of five years and the requirement of continuing to work on the cut-off date fixed in the said GO. And, accordingly, allowed the said OA, by orders, dated 14.09.1999, and directed the respondents to regularise his services and to release periodical increments within three months from the date of its order. In fact, the operative portion of the said order, dated 14th September, 1999, passed by the Tribunal in the said O.A.no.6988 of 1996 filed by the petitioner herein and another against the respondents 3 & 4 herein & others, reads as under:

“ In the result, the O.A is allowed with a direction to the respondents to complete the exercise of regularising the services of the applicants and also release the periodical increments within three months from the date of this order. No costs.”

Assailing the said orders, the unsuccessful respondents filed W.P.no.16029 of 2000. By an order, dated 19.07.2010, a Division Bench of this Court dismissed the writ petition and confirmed the above said orders of the Tribunal in the aforesaid O.A.no.6988 of 1996. The said

orders have become final. However, the respondents have not implemented the said orders of this Court. It appears that the petitioner gave number of representations to the respondents for implementation of the above said orders, but the same were not considered. The petitioner retired from service, on 31.01.2015. Thereafter, complaining against the inaction of the respondents concerned in implementation of the above said orders, the petitioner filed O.A.no.6260 of 2015 before the Tribunal. On 13.11.2015, the Tribunal granted the following interim order in the said OA:

“INTERIM RELIEF: Pending disposal of the O.A., the respondents are directed to regularise the services of the applicant and fix pension and pensionary benefits of the applicant in pursuance of the Memo No.16357/1E/A1/2010, dated 12.12.2014 and Proceeding Rc.No.200/A4/2014, dated 07.04.2015 and pass appropriate orders within a period of eight weeks from the date of receipt of this order.”

The petitioner, having obtained the aforesaid interim order, approached this Court by filing W.P.no.36514 of 2016 and sought implementation of the said orders. The petitioner was obliged to file the above writ petition as the Tribunal ceased to have jurisdiction in respect of the State of Telangana, since 15.09.2016. A Division Bench of this Court disposed of the said W.P.No.36514 of 2016, by an order, dated 07.02.2017. The operative portion of the said order reads as follows:

“The writ petition is accordingly disposed of directing the respondent authorities to implement the order dated 13.11.2015 passed by the Tribunal in O.A.No.6260 of 2015 and regularise the services of the petitioner and fix his pension and pensionary benefits as directed by the Tribunal. This exercise shall be completed expeditiously and in any event, not later than six weeks from the date

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

However, the respondents failed to comply with the said orders of this Court. Therefore, the petitioner filed contempt case in C.C.no.1558 of 2017 and the same is pending. This writ petition in WP (TR) no.5110 of 2017 is taken on file by this Court in view of the Tribunal ceasing to have jurisdiction over the State of Telangana and on the transfer of the O.A.no.6260 of 2015 to this Court in the said circumstances. At that stage, the respondents filed vacate stay petition in this writ petition, that is, WP (TR) no.5110 of 2017 requesting this Court to vacate the interim order passed in O.A.no.6260 of 2015, that is the present WP (TR) no.5110 of 2017.

4. When the vacate stay petition came up for consideration, it is represented by the learned counsel for the petitioner and the learned Government Pleader for Higher Education that instead of the vacate stay petition, the writ petition may be heard and disposed of on its merit.

5. In this background, the undisputed facts borne out by the record may be summed up as follows:

By an order, dated 14.09.1999, passed in O.A.no.6988 of 1996 the Tribunal directed the respondents to complete within three months from the date of the said order, the necessary exercise of regularizing the services of the petitioner and also release the periodical increments. The said order has become final after the writ petition in W.P.no.16029 of 2000 filed by the unsuccessful official respondents was dismissed by this Court by an order, dated 19.07.2010. In view of the said orders, the official respondents were required to complete the above exercise,

within three months from the date of the said order. Therefore, the respondents are obliged and are bound to regularize the services of the petitioner and release periodical increments. For non-implementation of the said orders in the O.A.no.6988 of 1996 which were confirmed by this Court in W.P.no.16029 of 2000 on 19.07.2010, the petitioner filed O.A.no.6260 of 2015 before the Tribunal. On 13.11.2015, the Tribunal granted an interim relief directing the respondents to regularize the services of the petitioner and fix pension and pensionary benefits in pursuance of the Memo, dated 12.12.2014, and proceedings, dated 07.04.2015, and pass appropriate orders within a period of eight weeks from the date of receipt of the said order. It is pertinent to note that the petitioner retired from service on 31.01.2015. For implementation of the said interim orders of the Tribunal, which became final, the petitioner filed W.P.no.36514 of 2016 before this Court. A Division Bench of this Court, by an order, dated 07.02.2017, allowed the said writ petition and directed that the necessary exercise be completed expeditiously and in any event, not later than six weeks from the date of receipt of copy of the said order. Despite the above said orders in favour of the petitioner passed from time to time, there was inaction on the part of the respondents/ State. Therefore, the petitioner filed C.C.1558 of 2017 before this Court complaining wilful disobedience of the orders of this Court in W.P.no.36514 of 2016. Only after such initiation of contempt proceedings, the vacate petition has been filed and the 2nd respondent passed the impugned order. Be it restated that this Writ Petition (TR) is taken on file on transfer of O.A.no.6260 of 2015 to this Court in view of the Tribunal ceasing to have jurisdiction over the State of Telangana. Be that as it may.

6. In the counter, the 3rd respondent, that is, the Regional Joint Director of Intermediate Education, while not disputing the chronology of events and the orders in various proceedings, which are stated by the writ petitioner, he has submitted that as per the orders of this Court, a detailed report was submitted to the Commissioner of Intermediate Education, Telangana State, Hyderabad, vide office proceedings, dated 02.12.2015, for further orders in the matter and that in turn, the Commissioner of Intermediate Education, Telagana State, Hyderabad, in letters, dated 05.01.2015 & 26.08.2015, submitted a detailed report with a request to regularise the service of the petitioner and that in that regard, orders are awaited from the Government. However, in the present vacate stay petition, supported by the counter affidavit of the Commissioner of Intermediate Education, it is stated that the Government in their memo, dated 15.07.2017, has requested the Commissioner to pass appropriate orders. It is further stated in the counter to the following effect: 'The case of the petitioner has been examined keeping in view the Government Orders; and, it is clear that the petitioner is not eligible for fixation of the pension and pensionary benefits and regularization of service as per G.O.Ms.no.112, Finance and Planning Department, dated 23.07.1997; that as per the said GO, one should have put in continuous service of ten years and be continuing, as on 25.11.1993, in service to be eligible for regularization of services; that the petitioner did not fulfil the required conditions; and, as such, he is not eligible for regularization of his services; hence, the petitioner's request for regularization of services is not feasible of compliance; and, hence, appropriate orders have been issued to the petitioner, vide Proceedings Rc.No.OP.1/ 3698/ 2010, dated 28.02.2017.' It is also stated in the counter affidavit that if the case of the petitioner

is considered it will have a cascading effect on the policies of the Government and would create an unhealthy precedent. However, as rightly contended when the orders granted in favour of the writ petitioner have become final after the dismissal of the writ petition by a Division Bench of this Court and as this Court further directed for implementation of the orders in O.A.no.6260 of 2015 on the file of the Tribunal, it is obvious that the aforesaid order of the 2nd respondent, dated 28.02.2017, rejecting the case of the petitioner is one passed in clear violation of the various orders of the Tribunal and this Court, which are all referred to supra. This is not a case, where the respondents are required to consider the case of the petitioner and pass appropriate orders exercising power and discretion vested in them. However, this is a case, where respondents are required to implement without demur the order in favour of the petitioner, which has become final and which is in fact directed to be implemented. Therefore, the said order, which was passed by the 2nd respondent during the pendency of the writ petition stating that the petitioner is not entitled to the relief in terms of G.O.Ms.no.112, Finance and Planning Department, dated 23.07.1997, is unsustainable both under facts and in law and hence, is liable to be ignored as allowing it to stand would amount to encouraging an act performed in violation of the various orders of the Tribunal and this Court. Therefore, the said order of the 2nd respondent rejecting the case of the petitioner shall not come in the way of granting the relief to the petitioner in the light of the aforesaid series of orders pursuant to which the petitioner is entitled to the relief.

7. On the above analysis, this Court holds that the respondents 1 to 4 can be directed to do the needful in due compliance of the orders, dated 14.09.1999 in O.A.no.6988 of 1996, which are confirmed by this

Court in W.P.no.16029 of 2000, dated 19.07.2010, and the further orders referred to supra, as such a course would remedy the injustice done to the petitioner and sub-serves the ends of justice.

8. In the result, the writ petition is allowed as prayed for. As a sequel, and as already directed by this Court, the respondents 1 to 4 are directed to implement the order, dated 13.11.2015, passed by the Tribunal in O.A.No.6260 of 2015 and regularise the services of the petitioner and fix his pension and pensionary benefits as directed by the Tribunal and this Court, however, within a week from the date of receipt of a copy of this order. Since the contempt case is pending adjudication, this Court has not expressed any opinion as to whether complained acts of the respondents concerned are contumacious or not.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.



M. SEETHARAMA MURTI, J

10.08.2018

Note:- Issue CC by 17.08.2018
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