

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

WRIT PETITION No.10033 OF 2018

ORDER: *(Per Hon'ble Sri Justice Sanjay Kumar)*

The State of Andhra Pradesh and its officials filed this writ petition aggrieved by the order dated 17.04.2017 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.7263 of 2014.

The said O.A. was filed by the respondent herein assailing the proceedings dated Nil.07.2014 of the District Audit Officer, Office of State Audit, Kurnool, rejecting his claim for counting his service from the date of his initial appointment i.e., 09.10.1992. By the order dated 17.04.2017, the Tribunal set aside the rejection of the claim of the respondent-applicant for counting his temporary service from 09.10.1992 to 31.03.1997 and held that the same was liable to be counted for the purpose of pension and pensionary benefits. Consequential direction was issued to the authorities to do so, submit and process the pension papers and complete the process of release of pension and retiral benefits within a timeframe. Aggrieved thereby, the State and its officials filed the present writ petition.

By order dated 28.03.2018, this Court granted interim suspension of the order under challenge, being of the opinion that the issue of delay required to be looked into.

I.A.No.2 of 2018 was filed by the respondent-applicant to vacate the aforestated order.

Having heard the learned Assistant Government Pleader for Services, State of Andhra Pradesh, for the petitioners and Sri K. Kirthi Teja, learned counsel representing Sri Ravi Kondaveeti, learned counsel

for the respondent-applicant, we are of the opinion that the matter is amenable to final disposal at the stage of admission.

The respondent-applicant was appointed as a Chowkidar in the year 1992 upon due sponsorship through the Employment Exchange. The proceedings dated 01.10.1992 of the Assistant Director of Mines and Geology, Kurnool, are placed on record and perusal thereof reflects that the respondent-applicant was selected from amongst 40 candidates sponsored by the District Employment Officer, Kurnool, and appointed to one of the two posts of Chowkidars pursuant to the interview held by the Deputy Director of Mines and Geology, Kurnool. The appointment order also makes it clear that his appointment was not on daily wage basis or on contingency basis. This is clear from the fact that his appointment was made temporarily to the post of Chowkidar with the pay of Rs.740/- per month. It is an admitted fact that his services were regularised with effect from 01.04.1997 and his post was thereafter converted to that of an Attender. He worked upto 30.06.2014 and retired from service on that date having attained the age of superannuation. When he submitted his pension papers, the District Audit Officer, Office of State Audit, Kurnool, issued the proceedings dated Nil.07.2014 stating that his services should be counted only from 01.04.1997, being the date on which his services were regularised. It was this communication that was subjected to challenge before the Tribunal.

Having perused the material on record, the Tribunal opined that though the respondent-applicant was not given the time scale of pay at the time of his appointment, as he was paid only the minimum of the time scale, viz., Rs.740/- per month, his services were converted to that of an Attender with effect from 01.04.1997. He therefore rendered 17 years of

service from 01.04.1997 and 22 years of service from the date of his initial appointment, 09.10.1992. The Tribunal took note of Rule 13 of the Andhra Pradesh Revised Pension Rules, 1980 (for short, 'the Rules'), which provides for the services rendered even in a temporary capacity being taken into account for computing the qualifying service, and as the order of appointment dated 01.10.1992 made it clear that the appointment of the respondent-applicant was on temporary basis, it applied the aforesaid Rule and granted relief to the respondent-applicant by its order dated 17.04.2017.

Sri K. Kirthi Teja, learned counsel, would point out that it was only when the District Audit Officer, Kurnool, issued the proceedings in July, 2014 that the respondent-applicant came to know of the fact that the authorities did not want to take into account the service rendered by him from 09.10.1992 to 31.03.1997. Learned counsel would therefore assert that there was no delay on the part of the respondent-applicant in seeking relief. We find merit in this submission.

Though the learned Assistant Government Pleader would contend that the entry in the service register of the respondent-applicant was to the effect that he was appointed as a Chowkidar on daily wages, he has no answer as to why such a wrong entry was made in the Service Register contrary to the appointment order dated 01.10.1992. As the Service Register is maintained by the authorities themselves, it is not open to them to make a wrong entry in the Service Register contrary to the appointment order and take advantage of the same at a later date. Learned Assistant Government Pleader also does not dispute the fact that Rule 13 of the Rules would apply to the respondent-applicant, if his appointment is taken to be on temporary basis. That aspect being clear

from the proceedings dated 01.10.1992 of the Assistant Director of Mines and Geology, Kurnool, whereby the respondent-applicant was appointed, we find no grounds to deny him the benefit of such temporary service for the purpose of computing the qualifying service for pension and pensionary benefits. The order passed by the Tribunal therefore does not brook interference either on facts or in law.

The writ petition is accordingly dismissed. Interim order dated 28.03.2018 shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

Date: 06.09.2018
va



JUSTICE SANJAY KUMAR

JUSTICE M.GANGA RAO