

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.18441 OF 2001

ORDER:

Petitioner, who worked as Executive Engineer (Civil) in the respondent-University, filed this Writ Petition seeking the following reliefs:

“ ... (i) declaring the action of the respondent in not fixing the pay of the petitioner in the scale of Rs.12000-420-18300 in the revised pay scales in the category of Executive Engineer is illegal and arbitrary; (ii) declare the action of the respondent in not extending the additional charge allowance at 1/10th of the minimum scale of in the scale of Rs.16400/- for the period from 14.3.1996 to 2.2.1998 is illegal and arbitrary; and (iii) consequent direct the respondent to fix the scale of pay of the petitioner at Rs.12000-420-18300 from 01.01.1996 with all consequential benefits; (iv) direct the respondent to pay the additional charge allowance at 1/10th in the scale of pay of Rs.16400/- for the period from 14.3.1996 to 2.2.1998 and pass such further or other orders as the Hon'ble Court deems fit and proper in the circumstances of the case.”

Brief facts of the case are that the petitioner was appointed as Junior Engineer on 30.10.1976 and was promoted as Assistant Engineer in the year 1977 and later as Executive Engineer (Civil) on 22.01.1991. While so, he was placed under additional charge of University Engineer on relieving of one Bhaskara Rama Rao on 13.03.1996. The petitioner held the additional charge of University Engineer from 14.03.1996 to 02.02.1998. As per Rule 30 (i), Section-II, Chapter III of the Non-Teaching Employees terms and conditions of Service Rules, an officer, who performs additional duties, is entitled to additional charge allowance @ 1/10th of the Minimum of Scale of Pay attached to the Additional Post. Accordingly, the petitioner was paid additional charge allowance @ 1/10th of the minimum of scale of pay attached to the post of University Engineer i.e.Rs.4500-7300 vide letter dated 19.07.1996. Due to personal reasons, the petitioner took voluntary retirement from service on 03.02.1998. The University Grants Commission

has notified the revision of pay scales w.e.f.01.01.1996. The University vide notification dated 16.11.1998 notified that the University has decided to extend the revised pay scales. The University also issued notification dated 30.11.1998 for obtaining option forms from the officers working in Group-A cadre. The notification dated 16.11.1998 existing pay scales and revised pay scales were shown in respect of Grade-A officers, who were in service. However, in respect of Grade-A officers, who were not in service as on the date of issuance of notification dated 30.11.1998, revised pay scales were not implemented on the premise that the clarification was sought from the University Grants Commission. Since the non-teaching employees were fixed in the revised scales of pay as notified in the letter dated 16.11.1998, the petitioner made a representation to the respondent-University stating that he is eligible for fixation of his pay in the scales of Rs.12000-420-18300 instead of Rs.12000-375-18000. The respondent issued proceedings dated 15.12.2000 fixing the pay scale of the petitioner at Rs.12750/- in the scale of Rs.12000-375-18000 w.e.f.01.01.1996 and arrears were also paid vide order dated 18.01.2001 in the pay scale of Rs.12000-375-18000. Petitioner claims that he is entitled to the pay scale of Rs.12940/- instead of Rs.12750/-. However, instead of rectifying the fixation of pay of the petitioner, his revised retrial benefits were released to the petitioner vide order dated 30.03.2001 fixing the pay of the petitioner at Rs.12000-375-18000 and difference of encashment of leave salary vide proceedings dated 17.04.2001. The petitioner being aggrieved by non-fixation of his pay in the scale of Rs.12940, he filed the present writ petition.

Petitioner further claims that though he is entitled for additional charge allowance @ 1/10th of minimum scale of pay attached to the post of University Engineer in the revised pay scales payable to the University Engineer, but he was paid in the pre-revised scales of Rs.4500-7300 instead of revised scales of Rs.16400-22400. Petitioner claims that he is entitled to 1/10th of pay in the scale of pay of Rs.16400/- for the period from 14.03.1996 to 02.02.1998 after deducting 1/10th pay paid in the pre-revised scales of Rs.4500/-. Being aggrieved by the pay anomaly in fixation of pay scale in the revision of pay scales corresponding to the pre-existing and pre-revised scales and non-payment of 1/10th of the additional charge allowance in the revised pay scales applicable to University Engineer, this writ petition is filed.

The respondent filed a counter stating that the University, pending clarification from the University Grants Commission, fixed the pay scale of the petitioner in the corresponding V Pay Commission Engineering Service scales of Central Engineering Departments i.e. 10000-325-15200. Petitioner also agreed for the same vide letter dated 21.01.1999. Accordingly, his pay was fixed in the pay scale of Rs.10000-325-15200 by order dated 31.03.1999 whereas the petitioner relying on the notification dated 30.11.1998 issued by the University, through his letter dated 02.07.1999 requested the University to fix his pay at corresponding V Pay Commission scales at Rs.12000-420-18300. Earlier to it, the University issued proceedings dated 30.11.1998 seeking options from the existing non-teaching Group-A officers to avail the revised pay scales pending clarification from UGC/MGRD, however, the University sought for undertaking by furnishing indemnity bond to

the effect that any excess payment made, shall be deducted from the salaries of the concerned officers, who availed the option. The petitioner furnished indemnity bond. In order to ensure that the petitioner shall not be subjected to financial hardships, the University as an interim measure has fixed his pay scale at Rs.12000-375-18000 as per the Central Civil Services (Revising Pay Rules, 1997) instead of fixing at Rs.10000-325-15200, which was initially agreed by the petitioner whereas the University Grants Commission through its letter dated 11.04.2002 communicated the pay scales of engineering staff to the University wherein the pay scale of Executive Engineer was fixed at Rs.10000-325-15200. In view of the same, the petitioner was paid excess amounts by allowing pay scales of Rs.12000-375-18000 as per the Central Civil Services (Revising Pay Rules, 1997). Hence, the petitioner is bound to refund the excess amounts paid to him by the University. Petitioner was put additional charge of the post of University Engineer for which he is entitled to 1/10th pay of the minimum scale of pay attached to the post of University Engineer in accordance with rule 31 of the non-teaching employees' terms and conditions of service rules. Accordingly, he was paid. Hence, the petitioner is not entitled for any relief in this writ petition.

Smt.K.Udayasri, learned counsel for the petitioner, would contend that while the petitioner was placed under additional charge of University Engineer in place of Sri Bhaskara Rama Rao, who relieved of his duties w.e.f.13.03.1996, he was paid additional charge allowance w.e.f.14.03.1996 as per rule 30 (i) Section-II, Chapter-III of Non-Teaching Employees terms and conditions of Service Rules, @ 1/10th of the pay attached to the said post. Petitioner is entitled for 1/10th of the minimum scale of pay

attached to the post of University Engineer of Rs.14500-17300. The University Registrar issued a notification dated 30.11.1998 to extend the revised pay scales to the existing Group-A officers, who are on active service, as on the date of notification. In respect of the employees who were not in service as on the date of notification, the University sought clarification from the MHRD/UGC and pending clarification the University sought for option with an undertaking that excess amount, if any paid, shall be deducted from their salaries. The petitioner was eligible for fixation of pay scales @ Rs.12000-420-18300 instead of Rs.12000-375-18000 and further he was paid additional charge allowance @ 1/10th of the minimum scale of pay of University Engineer in the pre-revised pay scales of Rs.4500 to 7300/- instead of revised pay scales of Rs.16400-22400. Learned counsel would further submits that the pay of one Sri Upender Rao, Director Computer Centre, who was drawing the pay scale of Rs.4500-7300, was fixed at Rs.16400-22400 though he retired from service prior to implementation of the revised pay scales. Therefore, the petitioner is eligible for fixation of pay scale at Rs.12000-420-18300 instead of Rs.12000-375-18000. Petitioner is also entitled for additional charge allowance @ 1/10th of minimum scale of pay attached to the post of University Engineer and the revised scales of pay applicable to the university Engineer @ Rs.16400-22400 whereas the petitioner has been paid 1/10th of pay scale of pre-revised scale of Rs.16400/- for the period from 14.03.1996 to 02.02.1998, which is illegal and arbitrary. Petitioner is entitled to be fixed his pay in the scale of Rs.12000-420-18300 and entitled for 1/10th of additional charge allowance towards additional charge allowance in the

minimum scale of pay of University Engineer in the revised pay scale of Rs.16400-22400.

Per contra, the learned Standing Counsel appearing for the University would contend that the petitioner's pay scale was fixed in the pay scale of Rs.10000-325-15200 as per the V Pay Commission Engineering Services Scales of Central Engineering Department. As agreed by the petitioner vide letter dated 21.01.1999, he was provisionally allotted the pay scale of Rs.10000-325-15200. The University has issued notification dated 30.11.1998 asking the option of the existing non-teaching Group-A Officers to avail the revised pay scales, pending clarification from the UGC/MHRD, to extend the revised pay scales of Rs.12000-725-18000. The University had taken indemnity bond from the petitioner to refund the excess amount, if any paid, in the revised pay scales pending clarification from the UGC. The UGC through letter dated 11.04.2002 communicated the pay scale of engineering staff to the University wherein the pay of the Executive Engineer was fixed at Rs.10000-15200. Thus, the petitioner was wrongly fixed in the pay scale of Rs.12000-725-18000 and he has drawn excess amount. The petitioner is not entitled for the revised pay scales as notified through notification dated 30.11.1998 since he was retired from service as on the date of notification.

No reply is filed by the petitioner to the counter filed by the respondent-University.

In the facts and circumstances of the case and in considered view of this Court, as on the date of issuance of notification dated 30.11.1998, which is issued in continuation of the notification dated 16.11.1998, the revised pay scales are extended to the existing Group-A officers, who are on active service as on the date

of notification dated 30.11.1998. However, pending clarification from the UGC/MHRD, options were received from the non-teaching officers, who are not listed in the MHRD letter dated 11.06.1998 in respect of Group-A officers, who are not in the University service, and new revised pay scales were extended subject to clarification from the UGC. However, the UGC vide letter dated 11.04.2002 communicated to the University the scales of Engineering Staff wherein the pay scale of the Executive Engineer was fixed at Rs.10000-15200 as per V Pay Commission Engineering Service pay scales of Central Engineering department, which is binding on the petitioner. Thus, the petitioner was wrongly fixed at the pay scale of Rs.12000-375-18000 as per the Central Civil Services (Revised Pay Rules, 1997) instead of fixing at Rs.10000-325-15200 and the petitioner received excess amount than entitled and as such he is liable to refund the excess amount paid by the University. Petitioner is not entitled for revised pay scale as notified by the University in the notification dated 30.11.1998 as he was not in the active service as he took voluntary retirement on 03.02.1986. Therefore, I see no illegality or irregularity in the action of the respondent-University to interfere under Article 226 of the Constitution of India. Hence, the writ petition is dismissed.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

13.07.2018
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