

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 31983 of 2016

Date : 6.9.2018

Between:

D V RAMI REDDY S/o Venkat Reddy
aged 58 years Occ Ex Driver R/o Darugumalli Post and
Mandal Prakasam District

Petitioner

And

APSRTC REP BY VC MD HYD 2 OTHERS
Rep by its Vice Chairman Managing Director Bus Bhavan
Musheerabad Hyderabad & others

Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 31983 of 2016

ORAL ORDER:

Heard learned counsel for petitioner and learned standing counsel for respondent corporation.

2. Petitioner worked as driver. By order dated 23.2.2015, he was removed from service on the allegation of performing the duty in drunken condition. The said order of removal has become final. In the normal course, petitioner would have attained the age of superannuation on 30.6.2016.

3. This writ petition is filed alleging that other benefits to which petitioner is entitled are not paid, causing hardship and suffering to the petitioner. According to learned counsel for petitioner, petitioner is entitled to receive leave salary, gratuity, SRBS, salary and subsistence allowance arrears from 30.8.2014 till the date of removal. He would submit that there is inordinate delay in settlement of the dues as such petitioner is also entitled to interest for the delayed payment.

4. According to respondent corporation, petitioner is not entitled to receive gratuity amount as he was removed from service on the allegation of performing duties of driver in drunken condition, as per circular instruction of the respondent corporation and in view of provision contained in Section 4 (6) (b) (i) and (ii) of the Payment of Gratuity Act, 1972. It is further averred that Provident Fund amount and SBTF amount were already paid. With reference to SRBS amount, though cheque was drawn for an amount of Rs.44,091/-, petitioner refused to receive the same, as such, the amount was returned to the Secretary, SRBS on 14.2.2016. With reference to claim of payment of subsistence allowance after 30th August, 2014, learned standing counsel would submit that as petitioner did not cooperate in conducting enquiry, the subsistence allowance is withheld.

5. Each of the claims is considered in the following paragraphs.

6. The claim with reference to SRBS is not in dispute, what was alleged is that petitioner did not receive that amount, therefore first respondent is directed to draw the SRBS amount standing to the account of the petitioner along with interest accrued and pay the same within two weeks from date of receipt of copy of this order.

7. On claim for leave salary, though respondent asserts that as employee is removed from service, he is not entitled to leave salary, the issue is no more res-integra. The Division Bench of this Court in W.A.No. 640 of 2007 in the judgment rendered on 13.4.2015, held that even an employee removed from service is entitled to claim leave encashment in view of provision in Regulation 15-B of the Leave Regulations of APSRTC. Following the decision of the Division Bench, a learned single Judge of this Court also allowed W.P. No. 29158 of 2016. Thus, petitioner is entitled to encashment of leave amount accrued to his account. Therefore, first respondent is directed to release the leave encashment amount to the petitioner within a period of four weeks from the date of receipt of copy of this order.

8. On the claim for payment of gratuity, learned counsel for respondents, contends that in view of the provision contained in Section 4 (6) (b) (i) and (ii) of the Payment of Gratuity Act, 1972, petitioner is not entitled to gratuity.

8.1. Bare reading of the relevant provision in Section 4 makes it clear that ordinarily an employee is entitled to payment of gratuity on termination of his employment. Such benefits can be denied only if the conditions imposed in sub section 6 are attracted. In other words, sub section 6 carves out an exception from normal principle of payment of gratuity to an employee on termination of his employment. The termination of employment can be for various reasons including on the ground of misconduct. However, such employee can be denied payment of gratuity, if his conduct which resulted in terminating him was on account of his riotous or disorderly conduct or any other act of violations

on his part or for any act which constituted involvement of moral turpitude. However, even such conduct must be within the course of his employment.

8.2 It is not in dispute that none of these conditions are attracted to this case. Therefore, denial of gratuity is ex-facie illegal. First respondent is therefore directed to determine the amount of gratuity payable, add the statutory interest payable to him and thereon add 6 % simple interest per annum from the date of accrual of the amount till the date of payment and pay amounts within six weeks from the date of receipt of copy of this order.

9. Petitioner was under suspension till the order of removal was made. An employee under suspension is entitled to subsistence allowance during the course of disciplinary action until the proceedings are concluded either by way of termination of service or restoration of service. The subsistence allowance cannot be denied, unless a specific order denying the subsistence allowance is passed. On mere assertion that employee did not cooperate in conclusion of disciplinary proceedings denial of subsistence allowance during the period of suspension is illegal.

9.1. Regulation 20 of APSRTC (Classification, Control and Appeal) Regulations, deals with payment of subsistence allowance during the period of suspension. According to sub regulation 1 (i) subsistence allowance can be reduced by an express order passed by the competent authority for reasons duly assigned. According to Sub Regulation 1 (iii) if the period of suspension exceeds one year, it is within the competence of the competent authority to increase the subsistence allowance for subsequent period by an amount not exceeding 75 % of the salary so admissible, if in the opinion of the competent authority, prolongation of the suspension is due to reasons not directly attributable to the employee.

9.2 According to respondents, as stated in paragraph 5 (iv) of the counter affidavit, as per information furnished by enquiry officer, in spite of sending letters to the petitioner, petitioner did not attend to enquiry, therefore, an ex-parte enquiry was conducted and report was submitted. It is thus the stated contention of respondents that as petitioner himself is responsible for delay caused in concluding disciplinary enquiry, subsistence allowance was not paid after 29.12.2014.

9.3 As noticed above, Regulation 20 vests power in the competent authority to reduce or increase the subsistence allowance but no decision is made as required by Regulation 20 to reduce the subsistence allowance. Thus, without taking a decision as required by Regulation 20, subsistence allowance cannot be denied. Action of respondents in not paying the subsistence allowance for the relevant period is ex-facie illegal. Therefore, first respondent is directed to release subsistence allowance from 30.12.2014 till date of removal, within a period of six weeks from the date of receipt of copy of this order. As illegally subsistence allowance was denied to petitioner, petitioner is entitled to interest at the rate of 8 % for the period from the date of accrual of subsistence allowance till date of payment.

10. With the above directions, writ petition is disposed of. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:06-09-2018
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No. 31983 of 2016

Date : 6.9.2018