

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.198 of 2017

% Date: 04-9-2018

1. T.Gangi Reddy (Died) S/o T.R. Kambi Reddy,
Aged 62 years, Occ: Upa Lokayuktha, R/o Hyderabad

2. Smt. T.Sudha Rani W/o Late T.Gangi Reddy,
Aged 53 years, Housewife, Residing in
Ministers' Quarters, Banjara Hills, Hyderabad
(2nd petitioner is brought on record as LR of the 1st petitioner
as per Court order dt.16-7-2018 in I.A.No.1/2018)

... Petitioners

Vs.

\$ 1. High Court of Judicature at Hyderabad for the
State of Telangana and the State of A.P.,
Hyderabad, Rep. by its Registrar (Admn.)

2. The Accountant General (A&E), A.P. & Telangana, Hyderabad-04

3. The Prl. Secretary, Finance Dept., Govt. of Telangana,
Secretariat Bldgs., Hyderabad

4. The Prl. Secretary, Finance Dept., Govt. of A.P.,
Secretariat Bldgs, Velagapudi, Guntur, Guntur Dist.
(R.3 & R.4 are impleaded as per Court order dt.30-01-2017
in WPMP No.1919/2017)

... Respondents

! Counsel for Petitioners: Mr. G.Vidyasagar, Sr. Counsel,
Rep. Mr. T.Nagarjuna Reddy

Counsel for Respondent No.1: Mr. Swaroop Oorilla,
Standing Counsel

Counsel for Respondent No.2: Mr. B.Narasimha Sarma

Counsel for Respondent No.3: Govt. Pleader for Finance
(Telangana)

Counsel for Respondent No.4: Govt. Pleader for Finance
(Andhra Pradesh)

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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Order: (per V.Ramasubramanian, J.)

A person, who was appointed as Upa-Lokayuktha, before his retirement from the State Judicial Service, came up with the above writ petition challenging the omission on the part of the respondents to sanction revised pension on the basis of a Revised Notional Last Pay Certificate in the Super Time Scale of Pay of District Judges. But during the pendency of the writ petition, the Officer died and hence his wife has come on record as the 2nd writ petitioner.

2. Heard Mr. G.Vidyasagar, learned Senior Counsel appearing for the petitioner, Mr. Swaroop Oorilla, learned Standing Counsel appearing for the High Court, Mr. B.Narasimha Sarma, learned counsel appearing for the Accountant General and the learned Government Pleaders for Finance appearing for the States of Telangana and Andhra Pradesh.

3. As stated above, the writ petition was filed originally by a judicial officer, seeking the benefit of revised pension. During the pendency of the writ petition he died and his wife has come on record as the 2nd petitioner. Therefore, we shall, hereinafter, refer to the officer as the original writ petitioner.

4. The original writ petitioner was appointed as a Civil Judge (Junior Division) in the year 1987 and was promoted

as Civil Judge (Senior Division) in the year 1995. Later, he was promoted as District Judge. He was due to retire on attaining the age of superannuation on 31-7-2014.

5. But before his retirement, he was appointed as Upa-Lokayuktha in the combined State of Andhra Pradesh under G.O.Ms.No.41, GAD, dated 12-02-2014.

6. In view of the said appointment, he was relieved from the post of Principal District and Sessions Judge on 14-02-2014 and he assumed charge of the post of Upa-Lokayuktha on 17-02-2015.

7. But the lien of the original writ petitioner continued in the State Judicial Service and hence the High Court issued proceedings dated 08-7-2014 notifying his retirement from service with effect from 31-7-2014.

8. The combined State of Andhra Pradesh was bifurcated with effect from 02-6-2014. At that time, recommendations for the grant of Super Time Scale of Pay to some Selection Grade District Judges were pending with the State. Therefore, after the bifurcation, the State of Telangana passed G.O.Ms.No.56, Law, dated 08-12-2015, approving the appointment of 6 Selection Grade District Judges including the original writ petitioner, as Super Time Scale District Judges. The appointment was with effect from 01-7-2014. Therefore, if the original writ petitioner had continued in the Judicial Service, he would have had the benefit of Super Time

Scale of Pay for a period of one month in July, 2014, up to the date of his retirement on 31-7-2014.

9. In fact, the High Court issued consequential orders on 23-12-2015 placing the original writ petitioner in the Scale of Pay of Rs.70290-76450. The High Court issued proceedings dated 07-01-2016 fixing the pay of the original writ petitioner at Rs.70,290/- with effect from 01-7-2014 under F.R. 22(a)(i). Pursuant to the said proceedings, a Revised Notional Last Pay Certificate was also issued on 04-02-2016 to the original writ petitioner in the Super time Scale.

10. Thereafter, the High Court addressed a communication dated 15-02-2016 to the Accountant General for revised pension proposals along with the Revised Notional Last Pay Certificate. But the Accountant General sought a clarification from the Government of India by their letter dated 23-02-2016 regarding the admissibility of the claim. The High Court, in turn, sent a letter of clarification dated 05-5-2016 to the Government of India pointing out that the original writ petitioner was entitled to the grant of annual grade increment with effect from 01-4-2014 on notional basis and the revision of pension consequent upon the fixation of pay in the Super Time Scale with effect from 01-7-2014. Though the Government of India seems to have accepted the same by their letter dated 29-4-2016, communicated to the Deputy Accountant General, nothing further happened.

Therefore, the original writ petitioner came up with the above writ petition.

11. The High Court has filed a counter affidavit supporting the case of the petitioners and also making it clear that the original writ petitioner had not resigned from the post of District Judge. In other words, the fact that his lien continued was affirmed.

12. The State of Telangana has filed a counter affidavit saying that they have no role to play in this regard.

13. The office of the Accountant General has filed a counter affidavit contending that as per the clarification received from the Government of India vide letter dated 29-4-2016, the service conditions of Judicial Officers and the service conditions of Upa-Lokayuktas are governed by separate set of rules and that therefore the original writ petitioner is not entitled to the benefit sought for.

14. From the pleadings, it is clear that the issue revolves around the letter of the clarification dated 29-4-2016 sent by the Government of India to the Deputy Accountant General. The said letter reads as follows:

“I am directed to refer to your letter No.PM/I/2015-16/172890 dated 23-02-2016 on the above subject and to clarify that the service conditions of a Judicial Officer and a Upa-lokayukta of a State are governed by separate set of rules, framed by the respective State Government. Shri T.Gangi Reddy would be entitled to pension and other retirement benefits up to his date of resignation as District & Sessions Judge as per provisions of Higher Judicial Service Rules. He will be entitled to pension for the service as Upa Lokayukta of A.P. under Rule 6(2)&(3) of the Andhra Pradesh Lokayukta and Upalokayukta (Conditions of Service) Rules, 1987.”

15. From the contents of the letter dated 29-4-2016 extracted above, it is clear that the original writ petitioner would be entitled to pension and other retirement benefits, up to the date of resignation as District Judge. But in the counter affidavit filed by the Registry of the High Court, it is made clear that the original writ petitioner did not resign. Therefore, the question to be decided is as to whether the service benefits of the original writ petitioner froze on the date on which he was relieved from the State Judicial Service.

16. As stated earlier, the original writ petitioner was appointed as Upa-Lokayukta of the State of Andhra Pradesh for a period of 5 years in terms of Section 5 of the Andhra Pradesh Lokayukta Act, 1983 under G.O.Ms.No.41, GAD, dated 12-02-2014, when he was serving as Principal District and Sessions Judge, Mahabubnagar. This Government Order reads as follows:

“In exercise of the powers conferred by sub-section (1) of Section 3 and sub-section (1) of Section 5 of Andhra Pradesh Lokayukta Act, 1983 (Act No.11 of 1983), the Governor of Andhra Pradesh is pleased to appoint Sri T.Gangi Reddy, Principal District & Sessions Judge, Mahabubnagar to be the Upa Lokayukta for the State of Andhra Pradesh for a period of five years from the date of his assumption of office.

The following appointment is notified:-

NOTIFICATION

Sri T.Gangi Reddy, Principal District & Sessions Judge, Mahabubnagar, is appointed as Upa Lokayukta for the State of Andhra Pradesh for a period of five years from the date of his assumption of office.”

17. Under F.R. 12A of the A.P. Fundamental Rules, a Government servant, on substantive appointment to any permanent post, acquires a lien on that post and ceases to hold any lien previously acquired on any other post. In this case, the original writ petitioner was appointed substantively to a post in the State Judicial Service and hence he acquired a lien on that post. The post of Upa-Lokayukta is a tenure post and hence the question of acquiring a lien on that post did not arise.

18. The lien so acquired by a Government servant under F.R. 12A can either be suspended under Fundamental Rule 14 or transferred under F.R.14B or terminated, in terms of F.R. 14A.

19. In this case, the lien of the original writ petitioner was not suspended under Rule 14, though under F.R. 14(a)(1), the State Government was entitled to suspend his lien on the permanent post of District Judge, when he was appointed in a substantive capacity to the tenure post of District Judge. Let us take a hypothetical case where the lien was suspended, in terms of F.R. 14. Even in such cases, such Government servant was entitled to come back. It is only in recognition of this right to come back, even in cases where the lien was suspended, that the High Court recommended the grant of Super Time Scale to the original writ petitioner and the Government accepted the same and issued orders in G.O.Ms.No.56, dated 08-12-2015.

20. The lien of the original writ petitioner on the post of District Judge was not terminated in terms of Rule 14A. At the most, this can be termed as a case of suspension of the lien in terms of F.R. 14(a)(1), though there is no order suspending the lien.

21. Once it is clear that even in the worst case scenario, this can only be taken to be the suspension of a lien, it follows as a corollary that the original writ petitioner is entitled to the benefits in true letter and spirit of G.O.Ms. No.56, dated 08-12-2015. The clarification issued by the Government of India on 29-4-2016, was neither here nor there. It merely stated the disentitlement of a person, who has resigned. It is not the case of either the Registry of this Court or the State Government that the original writ petitioner ever resigned. Therefore, even the clarificatory letter of the Government of India is in favour of the original writ petitioner.

22. Hence, the writ petition is allowed and the respondents are directed to settle all arrears within a period of 3 (three) months from the date of receipt of a copy of this order. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

04th September, 2018.Ak

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