

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.90 OF 2014

ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. The present writ petition is filed challenging the order dated 27.2.2013 passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.2070 of 2011.

2. Heard learned Government Pleader for Services-II appearing for the petitioners and Mr. Pushpinder Kaur, learned Counsel for the 1st respondent/applicant.

3. Brief facts of the case are as follows:

(i) The 1st respondent herein filed an application under Section 19 of the Administrative Tribunals Act, 1985 praying the Tribunal to quash the proceedings of the 3rd petitioner herein dated 6.2.2004 and to direct the petitioners herein to draw and pay arrears of pay and allowances with effect from 1.4.1991 to 7.6.1997 with the consequential benefits during service and after retirement and also to quash G.O.Ms.No.162 dated 28.10.1997 with respect to allowing pay with prospective effect i.e., from the date of issuance of G.O.

(ii) It is the case of the 1st respondent-applicant that he worked as Wireless Operator (SPP II), NSRSS Srisailem Dam and retired on 7.6.1997, and he opted to come under the revised pay scales of 1986 in terms of G.O.Ms.No.288, Finance & Planning dated 21.11.1986 and his pay was fixed at Rs.1,910/- in the time scale of Rs.1150-40-1510-50-2110 with effect from 1.7.1986 and subsequently, his pay was modified and fixed at

Rs.1,900/- in the time scale of Rs.1280-50-1780-60-2440 with effect from 1.7.1986. It is the case of the 1st respondent-applicant that the said modification is erroneous as he was already drawing Rs.1,910/-, and his pay should have been fixed at Rs.1,960/- which is the next higher stage. Further, it is stated that after completion of 22 years of service, the Superintending Engineer Circle vide proceedings dated 24.11.1995 appointed the 1st respondent-applicant to the post of SPP-II with effect from 1.4.1991 and he retired from service on 7.6.1997 voluntarily and subsequently, the 3rd respondent issued the proceedings dated 6.2.2004 stating that in view of G.O.Ms.No.162, dated 28.10.1997 fixation of the 1st respondent's pay to SPP-II post is only with prospective effect i.e., from the date of issuance of G.O. i.e., 28.10.1997 and since the 1st respondent-applicant retired from service on 7.6.1997 he will not be entitled to arrears of pay and allowances. It is the case of the petitioner that G.O.Ms.No.162, dated 28.10.1997 is intended to exempt the wireless operators, who are already in service from possessing the qualification in relaxation of the rules and he is entitled for arrears of pay and allowances from 1.4.1991 to 7.6.1997.

(iii) The writ petitioners herein filed a counter-affidavit before the Tribunal stating that when arrears bill was prepared in respect of the 1st respondent and it was presented to Pay & Accounts officer for arranging payment, the same was returned with remarks by stating that the Government while extending the revised pay scales 1986 in respect of wireless operator vide G.O.Ms.No.278 dated 16.8.1994 had not given any specific date from which date the wireless operators are to be given the benefit. In the counter, it has been further stated that the Government issued G.O.Ms.No.162, dated 28.10.1997 allowing pay fixation with

prospective effect i.e., from the date of issuance of G.O. and that the 1st respondent-applicant is not entitled for the benefit under the said G.O., as he retired from service voluntarily prior to issuance of the said G.O.

(iv) After considering the material on record, the Tribunal disposed of the O.A. with a direction to the writ petitioners to re-present the arrears bill and claim the bill and make payment to the applicant within a period of four weeks from the date of receipt of a copy of the order. Aggrieved by the same, the petitioners filed this writ petition.

4. Learned counsel for the 1st respondent contends that the 1st respondent was already granted exemption from possessing qualification, and the pay scales were extended to the 1st respondent-applicant and his pay had been fixed at Rs.1,960/- in the next higher stage, and the objection raised by the audit in respect of grant of terminal benefits is totally erroneous, and that the benefit which had already been granted to the 1st respondent-applicant cannot be taken away at the instance of an objection raised by the audit.

5. We have considered the rival submissions made by the parties. From the perusal of G.O.Ms.No.162, Irrigation and CAD (SER V) Department, dated 28.10.1997, wherein orders were issued for standardization of categories in the work charged establishment and fixation of pay scales of employees of work charged establishment, it is obvious that the existing Wireless Operators/Assistant Wireless Operators were exempted from possessing the qualification to bring them to the standardized scales and for further promotions. Para-5 (i) of the said G.O. reads as follows:

“(i) Exempting the Wireless Operators/Assistant Wireless Operators, who are in service as on the date of issue of G.O.Ms.No.278, Irrigation and CAD (SER V) Department, dated 16.08.1994, from possessing the qualification in relaxation of the said orders so as to bring them in to standardized scales; and

(ii) Allowing fixation of pay with prospective effect i.e., from the date of issue of this G.O.”

As seen from the above, Wireless Operators/Assistant Wireless Operators, who are in service as on the date of issuance of G.O.Ms.No.278 dated 16.08.1994 were exempted from possessing the qualification in relaxation of the said orders so as to bring them into standardized scales. Admittedly, the 1st respondent/applicant was in service as on 16.08.1994 and a plain reading of G.O.Ms.No.162 dated 28.10.1997 would come to the rescue of the 1st respondent/applicant. However, Para-5 (ii) of the said G.O. states that the allowing pay fixation will be with prospective effect i.e., from the date of issuance of the G.O. The only ground appears to be taken by the petitioners is that the 1st respondent was not in service as on the date of issuance of G.O.Ms.No.162 dated 28.10.1997, as the 1st respondent/applicant had retired from service on voluntary retirement basis on 07.06.1997. Since the benefit was already extended in respect of such of those Wireless Operators/Assistant Wireless Operators in the light of G.O.Ms.No.278, dated 16.08.1994, we do not see any reason as to why the same benefit should not be extended to the 1st respondent/applicant as he also worked as Wireless Operator. The writ petition is devoid of merits and the same is liable to be dismissed.

6. Accordingly, the writ petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 6th February, 2018.
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HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
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(Order delivered by AKS, J)



06/02/2018

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