

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.25188 of 2018

ORDER: (Oral)

(Per Suresh Kumar Kait, J)

Vide the present writ petition, the petitioner-Andhra Pradesh Housing Board, has challenged order dated 15.12.2017 passed in O.A.No.3359 of 2017 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the application filed by the 1st respondent herein under Section 19 of the Administrative Tribunals Act, 1985, has been allowed.

2. The present writ petition has been filed on the ground that the age of retirement of the officers and employees of the erstwhile A.P. Housing Board was 58 years. While so, after bifurcation of the State, the successor State of Andhra Pradesh passed the Andhra Pradesh Public Employment (Regulation of Age of Superannuation (Amendment) Act, 2014, amending Section 3(1) of the Principal Act, enhancing the age of retirement of Government servants from 58 to 60 years, whereas in the State of Telangana, the age of retirement continued to be 58 years. The 1st respondent was provisionally allotted to the A.P. Housing Board (Andhra Entity) and was working as Assistant Estate Officer in the A.P. Housing Board. He was due to retire on 30.04.2016, i.e. on attaining the age of superannuation of 58 years and accordingly he was retired on 30.04.2016. However, he approached the A.P. Administrative Tribunal vide O.A.No.1506 of

2016 seeking directions to continue to him in service till he attains the age of 60 years by applying the enhanced age of superannuation made applicable to Government servants vide Act No.4 of 2014. The learned Tribunal had granted interim order dated 27.04.2016 directing to continue him in service till he attains the age of 60 years or till such the A.P. Housing Board Act, 1956 is amended restricting the age of retirement to less than 60 years, whichever is earlier. However, before the said order was communicated, the 1st respondent was retired on 30.04.2016.

3. Learned Standing Counsel appearing on behalf of the petitioner-Housing Board submits that as per the principle 'no work no pay', the 1st respondent is not entitled for salary for the period he has not worked, however, the learned Tribunal has erroneously held that the 1st respondent is entitled for the benefit of pay and other consequential benefits during the period he has not worked. He further submits that the Hon'ble Supreme Court in the case of *State of Haryana v. O.P. Gupta*¹, held that the normal rule is 'no work no pay' and a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged; similar view is taken in the case of *Sukhdeo Pandey v. Union of India and anr.*² and *Union of India and others v. Rajinder Singh Rawat*³.

4. We do not dispute the dictum of the Hon'ble Supreme court in the aforesaid decisions, however, the fact remains that the Tribunal

¹ (1996) 7 SCC 533

² [2007 (7) SCC 455]

³ AIR 1999 SCW 4873

granted interim directions in favour of the 1st respondent/applicant to continue him in service till he attains the age of 60 years, by applying the enhanced age of superannuation made applicable to Government servants vide Act No.4 of 2014. In pursuance of the said directions, 1st respondent/applicant was continued for some time, however, when there was change of Vice Chairman of the Board, the 1st respondent was discontinued and kept out of service for about a month to three months. Subsequently, when the petitioner-Board filed Vacate Miscellaneous Application, the same was dismissed, while disposing of the O.A. In the meanwhile, the 1st respondent was again reinstated into service even before the O.A. was finally disposed of.

5. It was not the case of the petitioner-Board before the Tribunal that 1st respondent-applicant had not come forward to work after the interim orders were granted by the Tribunal and it is the petitioner-Board that has discontinued and prevented the 1st respondent, which is illegal. In view of the facts recorded above, denying the 1st respondent the benefit of pay and other benefits for which he was kept out of service is illegal and arbitrary.

6. It is pertinent to mention here that, according to the 1st respondent, even his services during the said period for which salaries were not paid were, in fact, regularized. In addition to the same, similar issue came before the learned Tribunal in O.A.No.4112 of 2015 and batch. The learned Tribunal vide order dated 02.09.2015, allowed the said O.As., holding that the applicants therein are entitled for the benefit of pay and other consequential benefits for the period

for which they were out of service. It was further directed that the applicants therein are entitled for consequential revision and re-fixation of their pay and pension with arrears in pursuance of the said benefit. The aforesaid common order passed by the Tribunal in the said O.As., is based upon a common order dated 02.09.2015 passed by the Tribunal in O.A.No.4112 of 2015 and batch, which was confirmed by this Court in W.P.No.28623 of 2016 dated 01.09.2016. It is not in dispute that the aforesaid common order passed by the Tribunal has been implemented by the petitioner-Board. In that view of the matter, we do not find any justification as to why the same benefit should not be extended to the 1st respondent herein.

7. For the foregoing reasons, we see no infirmity or irregularity in the order dated 15.12.2017 passed by the Tribunal in O.A.No.3359 of 2017.

8. Writ petition is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

July 20, 2018
MRR