IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*****

Writ Petition No.28128 of 2018

Between:

The State of A.P., and others

….. Petitioners

And

K. Stanaka

…….Respondent

ORDER PRONOUNCED ON: 09.08.2018

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

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment ?

2. Whether the copies of judgment may be : Yes/No
marked to Law Reporters/Journals ?

3. Whether Their Ladyship/ Lordship wish to: Yes/No
see the fair copy of the judgment ?

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

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

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For Petitioners : Govt. Pleader for Services I AP

For Respondent : -NA-

< Gist:

> Head Note:

? CITATIONS:

(2014) 8 SCC 894

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

<u>WRIT PETITION No.28128 of 2018</u>

<u>ORDER</u>: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present writ petition, petitioners have challenged order dated 09.02.2017 passed in O.A.No.1184 of 2016 by the A.P. Administrative Tribunal, whereby the application filed by the respondent under Section 19 of the Administrative Tribunals Act, 1985, has been allowed.

2. Learned counsel appearing on behalf of the petitioners submits that the Government of India through OM No.7/3/84-Pension Unit dated 28.07.1984 has issued order allowing interest on delayed payment of gratuity at the rate of 7% per annum for the period beyond 3 months and upto 1 year and beyond 1 year at the rate of 10% per annum. According to these orders, interest will be allowed only where it is clearly established that the payment of retirement gratuity was delayed on account of administrative lapse or for reasons beyond the control of the Government servant concerned. These rules also contemplated fixing the responsibility for taking necessary action against the persons responsible for such delay in payment. The AG, AP, Hyderabad, in his letter dated 03.07.1986 has requested to consider the adoption of similar orders on State side. The suggestion of AG, AP, Hyderabad has been examined and after careful consideration, the Government has decided that interest may be allowed on payment of retirement gratuity at the rate of 7% per annum

for the period beyond 3 months and upto 1 year and beyond 1 year at 10% per annum after the gratuity becomes due and payable till the end of the month preceding the month in which the payment is actually made. In this connection, as per G.O.Rt.No.1034 F&P (FW-Pen.I) Dept. dated 09.06.2000, there is no provision in Government rules to pay interest on Commuted Value of Pension, Encashment of Earned Leave and arrears of pension on conclusion of disciplinary proceedings. As per Rule 46 (1-A) of A.P. Revised Pension Rules 1980, interest can be paid on gratuity only from the date of issue of orders dropping the charges.

3. Learned counsel accordingly submits that the learned Tribunal has ignored all these facts while allowing the application filed by the respondent.

4. While the respondent was working as Senior Accountant at Sub Treasury Office, Tenali, a charge memo dated 15.02.2005 was issued framing three charges against him to the effect that he has processed the bills claiming Family Benefit Fund and Group Insurance Scheme amounts submitted by the District Educational Officer, Guntur. The respondent has shown lack of devotion to duty by processing the bills irregularly instead of making payments by Demand Draft allowed them to be credited to Drawing and Disbursing Officer's Account and thirdly he has processed the bills which are outside the jurisdiction of Guntur District Treasury, and therefore, he had shown negligence in performing his duties. The charges were undoubtedly serious in nature. However, immediately after receipt of

the explanation from the respondent and three other delinquent employees, the Deputy Director, who is the disciplinary authority, has gone into the same and was of the opinion that the applicant and three other delinquent employees, who belong to Treasuries Department, are not responsible for the irregular drawals of Government funds and it cannot be said that such an action was with an intention to defraud the Government and the personnel of the Treasuries Department are no way connected with this fraudulent activity as alleged against the respondent. Accordingly, the Deputy Director addressed detailed letter on 11.02.2008 itself requesting the Director to issue necessary orders in this regard. Thereafter, the Director himself has addressed letter dated 19.02.2008 requesting the Government to issue instructions in view of the above circumstances. Then the Government in Memo dated 07.05.2009 called for certain information and from then onwards the matter was under correspondence between the Deputy Director, Director and the Government, that too with a delay of an year at every stage as narrated by the petitioners herein before the Tribunal. When the Director has addressed letter dated 27.12.2009 to the Government regarding innocence and non-involvement of the respondent, the Government reacted only after 3 ½ years on 09.11.2012 seeking certain information, though the said information was already available with the Government. But, however, the same was sent in November 2012 and December 2012, as requested by the Government and, after nine months of the said information, the Government, by Memo dated 12.08.2013, further requested to furnish clear evidence showing innocence of the Treasury personnel. Then, a detailed report was submitted by the Director on 14.07.2014. In pursuance of the said report, the Government issued Memo dated 18.10.2004 permitting the disciplinary authority to drop further action against the respondent and, thereafter, by proceedings dated 06.12.2014, further action against the respondent was dropped by the Deputy Director. Again, after eight months of the said incident, the respondent received cumulative value of pension in two instalments to the tune of Rs.1,84,150/- on 07.08.2015, second part to the tune of Rs.22,238/- on 13.10.2015 and the death-cum-retirement gratuity was paid to the respondent to the tune of Rs.1,84,150/- on 23.12.2015.

5. The above events establish that when the disciplinary authority himself found that the respondent is neither responsible nor involved in the fraudulent drawal of certain amounts as alleged in the charge memo way back in the year 2007, he has communicated the same in February, 2008 to the Director, who is the head of the Department, seeking his instructions on the issue. When he himself is the authority, he ought to have taken a decision on his own.

6. Further case of the respondent was that he was not given promotion to the post of Sub Treasury Officer in view of the pendency of the disciplinary proceedings, which could not be concluded even by the date of retirement. Since the respondent was exonerated of the charges levelled against him, he is entitled for promotion on par with his juniors to the post of Sub Treasury Officer. This fact has been

admitted in the counter-affidavit filed before the Tribunal that the process for promotion of the respondent was already initiated.

7. In the case of *D.D. Tewari (dead) through L.Rs. v. Uttar Haryana Bijlivitran Nigam Limited and ors.*,[1] the Hon'ble Supreme Court, in similar circumstances, has awarded interest at 9% per annum on pension and gratuity to be paid by the employers-authorities.

8. The case on hand also falls within the realm of the aforesaid decision. In that view of the matter, the learned Tribunal has relied upon the same while granting relief to the respondent. Therefore, we find no ground to interfere with the order of the Tribunal under challenge.

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

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

August 09, 2018
MRR
Note: L.R. Copy be marked
B.O.

[1] *(2014) 8 SCC 894*