

**\* THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

**+ WRIT PETITION No.15812 of 2017**

% 14.03.2018

# B.V.Koteswar Rao S/o.B.Narasimha Rao,  
Aged about 62 yrs, Occu : Senior Assistant (Retd.),  
Nrupatunga Aided Junior College,  
Bagh Lingampally, Hyderabad,  
R/o.H.No.16-11-17/A, Flat No.501,  
Lotus Towers, Malakpet,  
Saleemnagar Colony, Hyderabad

.. Petitioner

And

\$ State of Telangana,  
Higher Education (VC.I) Department,  
Secretariat, Hyderabad  
rep., by its Principal Secretary & another.

.. Respondents

! Counsel for the petitioners : Sri K.Bheema Rao

Counsel for respondents : Government Pleader for School  
Education

< Gist :

> Head Note :

? Citations:

2010 (2)ALD 773 (DB)

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

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**WRIT PETITION NO.15812 of 2017**

Between :

B.V.Koteswar Rao S/o.B.Narasimha Rao,  
Aged about 62 yrs, Occu : Senior Assistant (Retd.),  
Nrupatunga Aided Junior College,  
Bagh Lingampally, Hyderabad,  
R/o.H.No.16-11-17/A, Flat No.501,  
Lotus Towers, Malakpet,  
Saleemnagar Colony, Hyderabad

.. Petitioner

And

State of Telangana,  
Higher Education (VC.I) Department,  
Secretariat, Hyderabad  
rep., by its Principal Secretary & another.

.. Respondents

DATE OF JUDGMENT PRONOUNCED : 14.03.2018

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

1. Whether Reporters of Local Newspapers : Yes / No  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes / No  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : Yes / No  
see the fair copy of the Judgment ?

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION No.15812 OF 2017**

**ORDER :**

Heard learned counsel for the petitioner and learned Government pleader for the respondents. With their consent the writ petition is disposed of finally.

2. Petitioner was appointed as Record Assistant on 01.12.1976 in Dharmavant Multipurpose Higher Secondary School, Yakatpura, Hyderabad. He earned promotions as Junior Assistant and Senior Assistant. While working as Senior Assistant, on 07.07.1979, the Anti Corruption Bureau (ACB) Authorities conducted surprise check at Dharmavant Junior College, and registered crime against Principal of the College on certain allegations of mis-appropriation of amounts by colluding with the staff. In the said incident petitioner was implicated. ACB filed charge sheet in C.C.No.8 of 2006 on the file of Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad and petitioner was shown as accused No.1. While above criminal case pending, on attaining the age of superannuation, petitioner was retired from service with effect from 29.02.2012. As criminal case was pending, only provisional pension was sanctioned to him. By the judgment rendered on 30.09.2014 the criminal court acquitted petitioner of the charge levelled on him. After his acquittal petitioner filed W.P.No.4422 of 2016, praying to declare the action of respondents in not releasing retirement/pensionary benefits, even though he was acquitted of the criminal case as illegal. The said writ petition was disposed of by order dated 18.04.2016

granting liberty to the petitioner to make a representation within a period of one month and if any such representation was made, the same should be considered and appropriate orders be passed. Consequent thereon, Government passed orders vide G.O.Rt.No.71 dated 10.04.2017 rejecting request of the petitioner to release full pension and retirement benefits as Crl. A.(SR) No.11641 of 2015 was preferred by the ACB against acquittal granted by the trial Court and is pending. Challenging the same, this writ petition is filed.

3. At the stage of admission, this Court by order dated 27.04.2017 directed release of gratuity and full pension without reference to pending criminal appeal. Alleging violation of the said interim order petitioner filed C.C.No.2499 of 2017.

4. Praying to vacate interim order, respondents filed W.V.M.P.No.4329 of 2017.

5. The facts noted above are not in dispute. Petitioner was allowed to retire from service on attaining age of superannuation. No disciplinary proceedings were initiated while he was in service or after his retirement or after the acquittal granted by the trial court. The only reason assigned for rejecting request for grant of full pensionary benefits is only because the ACB preferred Criminal appeal.

6. As per Rule 52 of the Revised Pension Rules, pension and gratuity can be with held and only provisional pension can be paid, if departmental proceedings/ criminal proceedings were set in motion, while he was in service and are pending. However, once criminal proceedings end in acquittal, Rule 52 has no application and employee is entitled to release of pensionary benefits earlier

withheld, pending criminal case. Mere filing of appeal against acquittal is no ground to deny the retirement benefits.

7. Principle of law is well settled on this issue. On due consideration of the relevant provisions of the Pension Rules in **Chief Commissioner of Land Administration A.P., Vs R.S.R.Rao<sup>1</sup>**, the Division Bench held as under:

“18. As per Rule 52 (1) (c) of the Pension Rules, the Government is empowered to withhold gratuity till the final orders are passed either in the departmental or judicial proceedings. Once final orders are passed, there is no provision that empowers the Government to withhold retirement benefits.

19. The final orders, as indicated in Sub-rules (b) and (c) of Rule 52 (1) of the Pension Rules, are the orders to be passed by the Department upon conclusion of the departmental or judicial proceedings. Once the departmental proceedings end in favour of delinquent employee, there is no question of agitating the orders of the disciplinary authority by the Department itself. Therefore, the final orders are required to be passed for the purpose of payment of retirement benefits.

**20. Insofar as the criminal cases are concerned, the Department has got a right to file an appeal. But, it cannot be said that the judicial proceedings have not been concluded. Once the criminal court acquits the accused, it must amount to be the conclusion of the judicial proceedings in the first instance. Therefore, the appeals filed against the acquittal orders cannot be treated as continuation of criminal proceedings.....**

**21. If the appeal is not in continuation of original criminal proceedings, the order of acquittal is a final order within the ambit of Rule 52 of the Pension Rules, referred to above. After the orders of acquittal passed by the criminal court, as already stated above, there is no power for the Government to withhold pension or retirement benefits. The said benefits, therefore, are liable to be paid immediately after acquittal order.**

**22. If the appeal or revision proceedings are in continuation of the criminal proceedings, there will be no end for the litigation and the employees, who have been acquitted honourably, shall not get retirement benefits till conclusion of all appeals, revisions, special leave petitions etc. Appeal against acquittal, not being continuation of original criminal proceedings, Rule 52 as above, will not be available to Government for withholding retirement benefits”.  
(emphasis supplied)**

8. It is also interesting to note order of Government impugned is bereft of reasons, though it runs into 16 paragraphs. In all

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<sup>1</sup> 2010 (2) ALD 773 (DB)

previous paragraphs up to Paragraph No.15, it is only narration of events that took place and in Paragraph No.15 it only indicates the decision not to grant gratuity and full pension, since criminal appeal is pending at the S.R. stage.

9. The rule as interpreted by the Division Bench is clear and the decision of the Division Bench holding the field, it is no more open for the Government to reject request to grant retirement benefits on the very ground that criminal appeal is pending. Even in the counter affidavit no other reason is assigned except referring to pending criminal appeal. There was no application of mind. No discussion on statutory environment and precedent decision operating the field. The attitude and approach of the authorities is highly deprecated. Due to illegal denial of retirement benefits, employee and his family is subjected to suffering and hardship for more than three years.

10. Post retirement, future family needs are planned in advance taking note of retirement benefits employee would get, such as performing marriage of child, securing a home, settlement of debts, etc. The day to day needs of the family of retired employee and medical expenses, which would be more after certain age, are taken care of by monthly pension. Any delay in disbursement of these benefits would have cascading effect. These benefits can be denied only when there is compelling reason supported by statutory provision. Denial cannot be a matter of course. Thus, competent authority should be more careful while dealing claims for settlement of retirement benefits and should apply his mind before taking a decision. He cannot mechanically reject such

request and drive him to court. This kind of decisions are choking the court.

11. Accordingly, the Writ Petition is allowed. The respondents are directed to release all the retirement benefits which petitioner is entitled to, as expeditiously as possible, preferably within a period of six (6) weeks from the date of receipt of copy of this order. Petitioner is entitled to interest @ 10% p.a., from the date of acquittal granted by the criminal court till the date of payment.

12. Petitioner is driven to Court due to illegal action of respondents. The respondents have the audacity to ignore interim order and filed vacate petition and drag on the matter on this ground. In the facts of this case I am of the opinion that the respondents be mulcted with costs of Rs.25,000/- to be paid to the petitioner within four (4) weeks from the date of receipt of copy of this order. The registry is directed to mark copy of this judgment to the Chief Secretary to Government.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

**P.NAVEEN RAO,J**

14<sup>th</sup> March, 2018

Note : L.R. Copy to be marked.  
B/o.  
Rds