

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.39084 of 2018

ORDER :

Heard the counsel for petitioner, and Sri A. Ravi Babu, counsel for Telangana State Road Transport Corporation (T.S.R.T.C.), for respondents.

2. The petitioner was employed in the 1st respondent-Corporation and retired as Mechanic on 30.06.2018.

3. The petitioner contends that the respondents have withheld his Leave Encashment and Gratuity vide proceedings dt.30.06.2018.

4. In the said proceedings, it is stated that petitioner was recorded under B.C.-D quota in 1990 on the strength of a Community Certificate obtained by him; that somebody complained that the said certificate was not genuine and it was cancelled on 20.09.2008 by the Tahsildar, Bejjanki, Karimnagar District (now Siddipet District); that a show-cause notice for removal was also issued to him vide charge-sheet dt.16.06.2009, but petitioner filed WP.No.12888 of 2010 and on 08.06.2010 in WPMP.No.16238 of 2010, this Court stayed operation of the same on the ground that the Tahsildar was not competent to cancel the Caste Certificate of the petitioner; thereafter, the Collector, Karimnagar District issued a show-cause notice dt.01.03.2016 proposing to cancel the Caste Certificate dt.22.08.2008, issued to petitioner; that petitioner submitted his explanation thereto, but the

District Collector has not passed any final order; and therefore, he is not entitled to receive Leave Encashment and Gratuity payments.

5. The counsel for petitioner contended that withholding of these two benefits to petitioner by respondents when he was allowed to retire from service on 30.06.2018 and when the District Collector did not take any further action in the matter, is highly arbitrary, illegal, and is violative of Sections 4 and 7 to 9 of Payment of Gratuity Act, 1972 and Regulation 50-A of A.P.S.R.T.C. (Leave) Regulations, 1963.

6. The counsel for petitioner contended that there is no provision under the Act to withhold Gratuity after retirement of an employee, and under the said statute he is entitled to penal interest also. He further contended that there is no provision in the Andhra Pradesh State Road Transport Corporation Employees' (Leave) Regulations, 1963 empowering the respondents to withhold Leave Encashment benefit.

7. Counter-affidavit has been filed by respondents refuting the above contentions.

8. The facts stated in the impugned order are reiterated in the counter-affidavit.

9. In the counter-affidavit, filed by respondents, it is stated that petitioner was already paid Provident Fund (P.F.) and his subscriptions towards S.B.T. along with interest, but disciplinary

proceedings are still pending against him in view of the order dt.08.06.2010 passed in WPMP.No.16238 of 2010 in WP.No.12888 of 2010.

10. This contention is not correct because once petitioner was allowed to retire from service, the relationship of 'employer' and 'employee' ceases.

11. It is not the case of respondents that there is any provision in the Service Regulations permitting the respondents to continue with an enquiry after retirement of an employee.

12. That apart, it is not disputed in the counter-affidavit, filed by the respondents, that the District Collector, having issued the show-cause notice on 01.03.2016 which was replied to by petitioner on 19.04.2016, took no further steps in the matter. Therefore, the B.C.-D Caste Certificate issued to petitioner continuous to be valid, and the respondents cannot doubt the same in the absence of any order passed by the District Collector adverse to petitioner.

13. In this view of the matter, the action of respondents in withholding the Gratuity and Leave Encashment benefits of petitioner is wholly unwarranted, particularly, when there is no finding as required by Section 4(6)(b)(ii) of Payment of Gratuity Act that petitioner committed any offence involving moral turpitude, and also when there is no provision in the A.P.S.R.T.C. (Leave) Regulations,

1963 empowering the respondents to withhold the Leave Encashment benefit.

14. The impugned order dt.30.06.2018 passed by 2nd respondent is set aside. The respondents are directed to release Leave Encashment benefit as well as Gratuity payable to petitioner within a period of three (03) weeks from the date of receipt of copy of the order without fail.

15. Accordingly, the Writ Petition is allowed with costs of Rs.5,000/- to be paid by respondents to petitioner.

16. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.11.2018

Ndr/*

