

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.35250 OF 2017

ORDER:

Heard Sri V. Jagapathi, counsel for the petitioner, Sri B. Rajeswara Reddy, Standing Counsel for respondent Nos.1 and 3, and the Government Pleader for Endowments for respondent No.2.

2. This is a very unfortunate case where the petitioner, who retired from service on 31.08.2017, has been denied of retirement benefits by respondent No.1 till date.

3. Petitioner was initially engaged in T.T.D. Press as Offset Assistant on N.M.R. basis through a Memo dt. 02.07.1982. He later requested to designate him as Office Assistant and to post him at T.T.D. Administration Building by a representation dt.05.05.2008. After examination of his request, he was ordered to work in the office of the Press Manager, T.T.D. Printing Press, Tirupati, in the capacity of Offset Assistant on 07.06.1984. Later, he was transferred to sales wing of Publications, Tirupati, in the same capacity basing on his request vide proceedings dt. 25.10.1984, duly debiting his salary in the sanctioned post of Offset Assistant, T.T.D. Press. Ultimately, he was absorbed as Offset Assistant in terms of G.O.Ms.No.296 dt. 19.04.1988 and he continued in Editor's Office in the capacity of Offset Assistant.

4. Later, he applied for the post of Junior Assistant as an in-service candidate under the provisions of G.O.Ms.No.614 dt. 27.06.1989 along with other candidates sponsored through employment exchange. He was selected and appointed as Junior Assistant in the Scale Pay of Rs.910-1625 by proceedings dt. 20.06.1992, by allowing pay protection under the provisions of F.R.22 (a) (iv). He jointed duty as Junior Assistant on 03.07.1992.

5. He thereafter filed W.P.No.15493 of 1996 before this Court praying for absorbing his services as Junior Assistant in terms of G.O.Ms.No.296 dt. 19.04.1988 on par with similarly situated persons. He contended that he has discharged his duties on clerical side though he was absorbed as Offset Assistant in T.T.D. Press (technical field).

6. On 22.04.1997, the said Writ Petition was disposed of directing respondent No.1 to consider his representation within six months.

7. Thereafter, petitioner's request was examined, but not considered vide proceedings dt. 29.07.1997. He then filed C.C.No.1459 of 1997.

8. The said C.C. was closed on 19.04.1998 stating that there was no willful disobedience of the orders passed by this Court in W.P.No.15493 of 1996 and leaving it open to the petitioner to challenge the order dt. 29.07.1997 in appropriate proceedings.

9. The petitioner then filed W.P.No.32173 of 1998 before this Court to declare the action of respondent No.1 in rejecting his request vide proceedings dt. 29.07.1997 as illegal, discriminatory and arbitrary and to direct respondent No.1 to regularize his services as Junior Assistant with effect from 19.04.1988 as was done in cases of similarly situated employees.

10. The said Writ Petition was disposed of on 16.04.2008 with the following directions:

“The Proceedings Roc No.B5/30179/95 dt. 29-7-1997 is set aside and there shall be a direction to the respondent to consider the claim of the petitioner to treat his services for the period from 19-4-1988 to 20.6.1992, as a Junior Assistant, by considering his claim on par with the persons whose cases are referred to in the affidavit. Upon considering such cases, appropriate orders shall be passed with regard to the claim of the petitioner as expeditiously as possible, preferably within a period of three months from today.”

11. In view of the directions of this Court in W.P.No.32173 of 1998, the T.T.D. Board passed Resolution No.316 dt. 06.08.2008 as under:

“1. To regularize the services of Sri K. Sudhakar Reddy in the cadre of Jr. Assistant w.e.f. 19.4.88 instead of 3-7-1992 as per Court directions, duly fixing his seniority notionally in the cadre of Jr. Assistant w.e.f. 19.4.88 and consequent promotions on par with the candidates who were appointed during the year 1988 as Junior Assistants (now working as Superintendents), with monetary benefits from the date of

Board Resolution, with the approval by the Government, as was done in similar cases.

2. To convert the post of Offset Assistant as Jr. Assistant for the period from 19.4.88 to 2.7.1992 (in which Sri K. Sudhakar Reddy has drawn his pay as Offset Asst.) as was done in the case of Sri M. Rajendra Kumar, Typist, so as to debit his pay and allowances as Jr. Asst.

3. To recover the excess amount drawn by him as Offset Assistant, if his services are regularized as Junior Assistant retrospectively w.e.f. 19.4.88 as admitted by the individual in the Para (6) of the Affidavit in WP No.32173/98 (since the scale of pay of the post Jr. Asst i.e. Rs.910-1625 is lesser than the scale of pay of Offset Assistant i.e. Rs.1050 -1945. He was also given pay protection while he was appointed as Jr. Assistant basing on the pay drawn by him in the capacity of Offset Assistant. Thus, he has drawn excess pay and hence, the excess pay drawn by him needs to be recovered)."

12. Pursuant to this Board resolution, proposals were sent to the State Government by respondent No.1 on 19.05.2013 with a request to issue necessary orders in this regard.

13. In the meantime, the petitioner filed W.P.No.37575 of 2013 seeking consideration of his case for appointment to the post of Assistant Executive Officer and an interim order was granted in that Writ Petition in W.P.MP.No.46756 of 2013 to consider him for the said post, without insisting for approval of the Government.

14. Respondent No.1 then considered his case for promotion as Assistant Executive Officer temporarily, subject to the outcome of

W.P.No.37575 of 2013 and receipt of the Government Orders with regard to retrospective absorption and claims of seniors, vide proceedings dt. 04.07.2014.

15. Respondent No.1 then requested the State Government to issue necessary orders absorbing the services of petitioner as Junior Assistant with effect from 19.04.1988 instead of 03.07.1992 vide reminder dt. 20.06.2017. The State Government then issued G.O.Rt.No.739 dt. 17.07.2017 according permission to regularize the services of petitioner in the category of Junior Assistant in the T.T.D. with effect from 19.04.1988 instead of 03.07.1992, as was considered in the case of M. Rajendra Kumar, Typist, as resolved in Resolution No.316 dt. 06.08.2008. Thereafter, the petitioner retired from service on 31.08.2017. In the meantime, he also withdrew W.P.No.37575 of 2013 on 31.07.2017.

16. It was thereafter that the impugned proceedings dt. 17.08.2017 was issued by respondent No.1 directing respondent No.3 to initiate necessary steps to recover the excess amount drawn by the petitioner as Offset Assistant in T.T.D. Press, as per T.T.D. Board Resolution No.316 dt. 06.08.2008, and cause necessary entry in the Service Register of the individual and report compliance.

17. Counsel for the petitioner contends that there is no question of recovery of any excess amount drawn by the petitioner as Offset

Assistant in T.T.D. Press, as per the said Board Resolution dt. 06.08.2008, since in G.O.Rt.No.739, Revenue (Endts.III) Department, dt. 17.07.2017, such proposal of the T.T.D. was not accepted specifically by the Government. He further contended that on the pretext that the excess amount is not paid by the petitioner, his retirement benefits, including pension, gratuity, Commutation of Pension Value etc., have been stopped by respondent No.1 and that the sanction of respondent No.1 is illegal, arbitrary and violative of Articles 14, 21 and 300A of the Constitution of India. He further contended that the whole process of issuing the impugned proceedings was to delay sanction of pension and pensionary benefits due to the petitioner and the action of the T.T.D. cannot be sustained.

18. In the counter affidavit filed by respondent No.1/T.T.D., while admitting that normally pension, gratuity etc., would be settled soon after retirement of the employee and probably on the day of retirement itself, if no dues or no charges are pending against such retired employee, a stand is taken that the petitioner has to pay excess salary drawn by him, in view of the retrospective regularization of his services as Junior Assistant with effect from 19.04.1988, and only then his pension papers would be processed. Reliance is also placed on the statement made by the petitioner in W.P.Nos.15493 of 1996 and 32173 of 1998 that he would repay the excess salary drawn by him, to justify the action of respondent No.1 in seeking to recover the

excess salary amounts. However, strangely, in the counter affidavit there is no mention of how much amount the petitioner was expected to pay respondent No.1 and why till date the calculation of the said amount has not been done. The Standing Counsel for respondent No.1 is also unable to give any details in this regard.

19. It is very unfortunate that an organization like respondent No.1 is withholding the pension and pensionary benefits of the petitioner ever since his retirement on 31.08.2017 in this manner. It is not even the case of respondent No.1 that any demand notice has been issued to the petitioner mentioning a specified amount, which it is claiming from the petitioner as excess salary payment made for the period from 19.04.1988 to 03.07.1992. The pension, gratuity etc., are not matters of bounty, as has been held by the Supreme Court in several cases. They are valuable rights which accrue to an employee and delay in settlement and disbursement thereof is to be strongly deprecated.

20. As regards the contention of respondent No.1 that the petitioner himself has voluntarily agreed in W.P.Nos.15493 of 1996 and 32173 of 1998 to repay the excess salary drawn by him is concerned, it is not in dispute that though such a proposal to make recovery was made by the T.T.D. Board in its Resolution No.316 dt. 06.08.2008 to the State Government along with the proposal to regularize the services of the petitioner as Junior Assistant with effect

from 19.04.1988 instead of 03.07.1992, in G.O.Rt.No.739 dt. 17.07.2017, the proposal of regularization was accepted and it does not appear from a reading of the said G.O. that the proposal of the T.T.D. to make recovery was accepted by the Government.

21. In this view of the matter, I am of the opinion that respondent No.1 is not entitled to seek recovery of the alleged excess salary paid to the petitioner when he worked as Offset Assistant.

22. Therefore, the Writ Petition is allowed and the respondents are directed to release the retirement benefits of the petitioner, including pension, gratuity etc., with interest at 9% per annum from 01.09.2017 till the date of payment, within four weeks from today. Respondent No.1 shall also pay costs of Rs.5,000/- (Rupees five thousand only) to the petitioner.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

March 12, 2018.
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