

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE M. GANGA RAO

+ W.P.NO.39078 of 2017

% Date: 04-01-2018

Between:

1. National Projects Construction Corporation Limited, Corporate Office, Plot No.148, Sector-44, Gurugam, Haryana-122003, rep. by the Chairman & Managing Director.
2. The ManaGER (Finance), National Projects Construction Corporation Limited, NER (IBBW) Zonal Office, Silchar, H.No-II, Sonai Road, Apanjan Pally, Silchar – 788006.
3. The Project Manager, National Projects Construction Corporation Limited, NTPC Simhadri Unit, D.No.11-130, Above Canarabank, Chattivanipatnam, Gajuwaka, Visakhapatnam.

... Petitioners

And

DDP Raju, S/o. Late Swamy Dam,
Occ: Retired Deputy Manager-M, IBBF Works,
NPCC Limited, R/o. Flat No.101,
Rukmini Enclave, Road No.6, Moula Ali, Hyderabad.

... Respondents

! Counsel for the Petitioner s

Mr. V.R. Avula

^ Counsel for Respondent

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

W.P.NO.39078 of 2017

ORDER: (per VRS,J.)

Aggrieved by an order of the Central Administrative Tribunal directing payment of the amount withheld from the respondent's terminal benefits, the National Projects Construction Corporation Limited has come up with the above writ petition.

2. Heard Mr. V.R. Avula learned counsel for the petitioners.

3. The respondent was working as Assistant Manager (Mechanical) in the petitioner-Corporation at Kakinada. At that time, the Corporation was awarded a contract for construction of high level bridge across Tungabhadra River.

4. It appears that the respondent was entrusted with the work of supervising the execution of the contract and the handling of the material supplied to the contractor. Disputes arose between the contractor and the Corporation, forcing the contractor to invoke the arbitration clause. The counter claim raised by the Corporation was rejected by the Arbitrator.

5. When the tussle was going on, the respondent sought voluntary retirement through a letter dated 06.06.2012. While examining his request, the Corporation raised an objection that the Assistant Engineer, the respondent herein, accepted the steel supplied by the contractor to the extent of 27.56 metric tons, valued at Rs.3,40,642/-. Therefore, the Corporation decided to withhold the said amount from the terminal benefits of the respondent.

6. Challenging the action of the Corporation in withholding a part of the terminal benefits, the respondent filed O.A.No.678 of 2015. The said application was allowed by the Tribunal by an order dated 05.05.2017 forcing the Corporation to come up with the above writ petition.

7. It is seen from the order of the Tribunal that the issue relating to the supply of steel by the contractor, in a scrap condition, was first raised way back in the year 2003. But for a full period of more than 9 years from 2003 till 2012, the Corporation did not take any action against the respondent for any act of omission or commission. The Tribunal went on the basis of the Office Orders filed as Annexures-A3 and A4 issued by the management of the Corporation itself to the effect that wherever there is any delay in fixing responsibility, recovery cannot be made. Accordingly, the Tribunal allowed the Original Application.

8. We find nothing wrong in the approach adopted by the Tribunal. As a matter of fact, the Corporation has raised a claim against the contractor for the supply of steel in scrap condition. But they lost their claim in the arbitration. Therefore, it is not open to them now, after more than 9 years, to withhold the terminal benefits of the respondent to the extent of the value of the material, on the very same ground.

9. As a matter of fact when the writ petition came up for admission on 27.11.2017 we directed the learned counsel for the petitioners to find out whether any proceeding was ever initiated against the respondent for recovery of the amount.

10. In response, an additional affidavit was filed on behalf of the petitioner-Corporation to the effect that by a Memo dated 24.03.2003 the respondent was directed to have the matter settled with the contractor and obtain a No Demand Certificate. The respondent appears to have

sought a voluntary retirement even at that time, but he was informed by the proceedings dated 03.05.2007 that the request for voluntary retirement could not be accepted.

11. According to the Corporation, a charge memo was issued on 09.07.2007, but the same was challenged unsuccessfully by the petitioner in W.P.No.1991 of 2008. Thereafter there was no impediment for the Corporation to proceed with the inquiry and impose a penalty. However, the Corporation did not choose to do so. On the contrary they seem to have abandoned the said proceeding and allowed the request for voluntary retirement submitted on 06.06.2012.

12. Any order for recovery or withholding of amount, is apparently an order visiting a person with civil consequences. Therefore, it cannot be passed without any notice and opportunity of hearing to the affected party. Hence, we find nothing wrong in the order of the Tribunal. Therefore, the writ petition is dismissed. However, the petitioners are granted eight weeks time, from the date of receipt of a copy of this order, to make payment of the amount as ordered by the Tribunal.

13. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

4th January, 2018
Js

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

W.P.NO.39078 of 2017

(per VRS, J.)



4th January, 2018

Js.