

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.2771 OF 2020 & 36975 OF 2018

DATED : 17.02.2020

W.P.No.2771 of 2020 :

Between :

B.I. Ebenizer S/o.B.I.Issac,
Aged about 66 yrs, Retired Junior Assistant,
O/o.Mahabubnagar Municipality,
R/o.H.No.1-4-130/7/2, Kamala Nehru Colony,
Mahabubnagar, Mahabubnagar District.

..... Petitioner

And

The State of Telangana,
Rep., by its Secretary,
Municipal Administration & Urban Development Department,
Secretariat Buildings, Hyderabad & others.

.....Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.2771 OF 2020 & 36975 OF 2018

COMMON ORDER :

Heard learned counsel for the petitioner and learned Government Pleader for Services-III for learned Government Pleader for Municipal Administration and Urban Development Department appearing for the respondents 1 to 3 and learned Standing Counsel appearing for the respondent No.4.

2. Against the order dated 29.04.2004 of dismissal from service, petitioner filed O.A.No.420 of 2007 before the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'). The said O.A., was allowed by order dated 20.11.2008, setting aside the order of dismissal and directed to reinstate the petitioner into service. Aggrieved by the said decision of Tribunal, the State and other respondents before the Tribunal, filed W.P.No.29794 of 2010. By order dated 01.03.2012, the Division Bench while upholding the decision of Tribunal, remanded the matter to the disciplinary authority to conduct denovo enquiry after furnishing the documents. The Court also observed that since the order of dismissal is set aside, the employee is entitled to reinstatement into service. As the employee was reinstated and has already attained the age of superannuation, direction was issued to pay provisional pension and other retirement benefits pending finalization of the disciplinary proceedings.

3. Petitioner filed W.P.No.36975 of 2018 alleging that the total pension and pensionary benefits, are not released and the period of suspension from 12.02.1990 to 31.01.2009 is not treated as on

duty, even though the order of dismissal was set aside by the Tribunal and affirmed by the Division Bench of this Court.

4. W.P.No.2771 of 2020 is filed by the petitioner to direct the respondents to implement the order passed by the Tribunal in O.A.No.420 of 2007 affirmed by this Court in W.P.No.29794 of 2010.

5. To appreciate the prayer sought in these two writ petitions, it is necessary to extract the operative portion of the order of the Division Bench in W.P.No.29794 of 2010. It reads as under :

“The dismissal order passed by the third petitioner herein in Proc. Roc. No.701/91/A3/2004 dated 29.04.2004 is set aside remanding the matter to the Disciplinary Authority to conduct the enquiry *de novo* after furnishing the documents as asked for. It is needless to mention that once the dismissal order is set aside and the matter is remanded to the Disciplinary Authority, the delinquent is entitled to be reinstated into service. In fact as the first respondent was reinstated into service and retired on superannuation, having regard to the fact that the matter is remanded, he is entitled for the provisional pension and other retirement benefits, in accordance with the Rules, pending finalization of the disciplinary proceedings. It is further needless to add that the first respondent is entitled to take all the pleas available to him with regard to the delay, at this length of time. Consequent upon allowing the writ petition and remanding the same to the Disciplinary Authority, WVMP No.209 of 2011 and other miscellaneous applications shall stand closed. No order as to costs.”

6. As fairly submitted by learned counsel for the petitioner, petitioner is getting provisional pension, but disciplinary proceedings are not concluded, no conclusion is recorded, the period of suspension is not regularized and full pension is not paid.

7. With reference to continuation of disciplinary proceedings, not regularizing the period of suspension and not paying full pension, are all independent from the order passed by this Court in W.P.No.29794 of 2010. Since the order is already complied, by paying provisional pension, nothing remains for consideration in W.P.No.2771 of 2020. Similarly the direction sought in W.P.No.36975 of 2018 cannot be granted in view of the specific direction issued by the Division Bench in W.P.No.29794 of 2010 which is extracted above. Therefore, both the writ petitions are liable to be dismissed.

8. Accordingly, the Writ Petitions are dismissed. If petitioner has grievance regarding non-conclusion of disciplinary proceedings, not regularizing the period of suspension and not paying the retirement benefits, he has to independently work out his grievance as they do not flow out of the decision rendered by this Court in W.P.No.29794 of 2010. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

17th February, 2020
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