

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 33916 OF 2017

Between

MAHMOODUL HASSAN, S/o. Late Shaik Hassan, Aged about 60 Years, Occ: Retired Assistant Engineer, O/o Superintendant Engineer, Hyderabad Metropolitan Development Authority (H M DA) , Tamaka, Hyderabad. R/o H.No.18-8-451/A/72, Jyoti Bagh, Edibazar, Hyderabad, Telangana State.

...PETITIONER

AND

1. The Hyderabad Metropolitan Development Authority, Tamaka, Hyderabad, Represented by its Secretary.
2. The State of Telangana, represented by its Principal Secretary, MA & UD Department, Secretariat, Hyderabad.

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or order or direction more in the nature of Writ of mandamus declaring the impugned letter No.7202/Estt./HMDA/2004, dated 23.03.2017 issued by the 1st respondent as illegal, null and void and consequently, direct the respondents to count the petitioner's service from the date of initial appointment on NMR basis from 05.08.1985 for the purpose of granting Full Pension and all other Retirement Benefits in terms of the law laid down by this Hon'ble court dated 18.09.2015 passed in W.P.No.25260 of 2002 and as well as the law laid down by the Hon'ble Supreme Court of India with all consequential benefits, by holding the action of the respondents in not counting the petitioner's past service rendered on NMR Basis for the purpose of pension and other benefits as per the law laid down by this Hon'ble Court and as well as Hon'ble Apex court is as illegal, arbitrary, discriminatory and subversive of Articles 14 and 16 of the Constitution of India.

I.A.NO:1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner to receive additional counter affidavit along with material papers in the interest of justice and fair play.

Counsel for the Petitioner : SRI.CH.JAGANNATHA RAO

Counsel for he Respondent No.1 : SRI.V.NARASIMHA GOUD(SC FOR HMDA)

Counsel for the Respondent No.2 : GP FOR MCPL ADMN-URBAN DEV / GP FOR SERVICES -I

The Court made the following ORDER

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 33916 of 2017**

**Heard the Learned Counsel for the Petitioner and
learned Government Pleader for Municipal
Administration, Government Pleader for Services I and
learned standing counsel for HMA.**

2. The petitioner filed this writ petition to issue a Writ of Mandamus declaring the impugned letter No.7202/Estt./HMDA/2004 dated 23.03.2017 issued by the 1st Respondent as null and void and direct the Respondents to count the Petitioner's service from the date of initial appointment on NMR basis from the date of first appointment i.e 05.08.1985 for granting full pension and all other retirement benefits and holding the action of Respondents action in not doing the same as illegal, discriminatory and subversive of Articles 14 and 16 of Indian Constitution.

1. **The case of the petitioner, in brief, is as follows:**

a) The Petitioner was appointed on NMR basis from 05.08.1985. The services of the Petitioner was regularized through G.O.Ms.No.638, dated 21.11.1992 as the Petitioner

completed more than (5) years of service on NMR basis by 31.12.1991. Eventually, through proceedings dated 31.12.1992 the then secretary posted the Petitioner as Technical Assistant Grade-2 as the Petitioner passed LCE in the 1st Respondent corporation.

b) According to the Petitioner's seniority, through proceedings dated 16-08-2000 issued by the Respondents, Petitioner was posted as In-charge Assistant Engineer and was further promoted as Assistant Engineer on regular basis in the regular time scale of pay by the 1st Respondent through the proceedings dated 23-03-2004. The Petitioner rendered (7) years (3) months service on NMR basis and has discharged duties on regular basis till the date of regularization though he was appointed on NMR basis from 5-8-1985.

c) According to Section (8) of Staff Retirement and Services Regulation Act-1979, seniority should be counted from the date of first appointment. As per Rule (13) of AP Revised Pension Rules-1980, qualifying service of a Government Servant commences from the date of first appointment to the post appointed to him either substantively or in an officiating or temporary/NMR basis. The Petitioner has

retired from service as Assistant Engineer by 31-07-2014 on attaining the age of superannuation through the proceedings dated 08-07-2014 issued by the 1st Respondent.

d) According to the pension rules, the total Petitioner's service rendered on NMR basis from 5-8-1985 is of (29) years and is eligible for additional (5) years for the purpose of (33) years to claim Full pension and other benefits.

e) As per the law laid down by the Full Bench of High Court in WP NO. 25260/2002 dated 18-09-2015, the Petitioner's service rendered as NMR is entitled to be counted as qualifying service for the payment of full service.

f) The Petitioner made a detailed representation dated 16.07.2014 and 14.12.2016 requesting the Respondents to consider service rendered from 05-08-1985 for granting full pension and all other retirement benefits and also issued legal notice dated 08.03.2017 to Respondents to count service rendered on NMR basis from 05.08.1985 for all pensionary benefits. Subsequently, 1st Respondent issued proceedings dated 23.03.2017 rejecting the Petitioner's claim.

4. The Counter Affidavit filed on behalf of the 1st Respondent is as follows:

a) The then Government of AP issued G.O.Ms. No.638 MA and UD dated 21.11.1992 permitting the then Hyderabad Urban Development Authority (HUDA) to regularize the services of those who were fully qualified for the posts and consequentially through proceedings dated 31.12.1992 regularize the services of petitioner along with other (17) in post of Technical Assistant Grade-2 w.e.f 21.11.1992 on temporary basis. The Petitioner's services were regularized as surveyor w.e.f 21.11.1992.

b) The seniority and counting of service would be commenced from the date on which an employee is appointed to the substantial post. The petitioner at no point of time during the tenure of employment raised that the services rendered on NMR basis were lost and never challenged the action of the Respondent in considering the appointment w.e.f dated 21.11.1992 and the seniority list prepared in post of Technical Assistant/Surveyor.

c) According to the AP Revised Pension Rules 1980, the period of pension is considered only from the date on which

an employee service was regularized in the substantial post, regarding the same, the notice issued through Advocate dated 08.03.2017 was considered and was informed through Lr.Dt:23.03.2017 that the Petitioner's service as NMR prior to the date of regularization cannot be considered for relief sought.

d) The judgement of the court in W.P. No.25260/2002 relied upon by the Petitioner is based on the rules framed by railways for its employees. The service rules in railway says that an employee who works on casual basis for (6) months gets the status of temporary employment and only after that they will get service benefits on par with permanent employees. Whereas no such provision is available for the employees of the then Hyderabad Urban Development Authority (HUDA). The regularization order issued in 1992 is that the Petitioner was on a temporary basis w.e.f 21.11.1992 in the scale pay of Rs.950/- to Rs.1650/-.

e) The Rule (13) of AP Revised Pension Rules, 1980 is not applicable to the petitioner, as the Petitioner was appointed substantially through G.O.Ms No.638 w.e.f 21.11.1992 and worked till retirement. The Rule (14) of the above Pension

Rules says that the service of the employee including pay is regulated by the government and the Petitioner's service is not regularized by the government in the year 1985 to seek the service benefits. Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

5. The order impugned Dated 23-03-2017, vide Lr. No.7202/Estt./HMDA/2004 reads as under :

Attention is invited to the subject and references cited. It is to inform that the Legal Notice issued by you on behalf of your client viz Sri Mahmoodul Hassan, AE (Retd.), HMDA has been examined in detail and informed that as per the AP Revised Pension Rules 1980, (corrected up to 07-10-2004), under Rule-14 (N), the following guidelines are issued:

Rule-14 (iv) Counting of service prior to regularization of services:

In G.O.Ms.No. 212, Fin. & Plg. (FW P.C.III) Dept., Dt. 22-04-1994 conditions for regularizing services of Daily wage employees / N.M.R employees have been prescribed by the Government including issue of orders of regularization of services in such cases only from date of the issue of such order making with prospective. Hence, counting of services for pension and any other purposes rendered prior to the effective date of regularization cannot be entertained.

Hence, in terms of the above Rule Position, the service rendered b Sri Mahmoodul Hassan, AE (Retd.), HMDA, prior to effective date of regularization cannot be considered.

6. The counsel for the Petitioner places reliance on a Full Bench Judgement dated 18.09.2015 passed in WP No.25260 of 2002 in Ramkumar v Union of India and contends that the Petitioner is entitled for the relief as prayed for in the present Writ Petition. Para 35 of the said judgement reads as under :

Para 35 : On the above analysis, this Court is of the opinion that a casual labour/worker working in the service of the Indian Railways appointed subsequently as a temporary servant and rendered temporary service continuously, followed by grant of permanent status, without any interruption in the temporary service and between the temporary and permanent service, is entitled to compute the entire temporary service also as qualifying service and in addition, he is also entitled to compute 50% of the casual service rendered prior to assignment of temporary status for determination of pension/family pension and retirement/ death benefits.

7. Para 8 of the counter affidavit filed by the 1st

Respondent reads as under :

Para 8 : I humbly submit, the Petitioner has relied upon the Rule 13 of the AP Revised Pension Rules, 1980. The rule would not fit into the facts of the instant case because the petitioner herein was appointed substantially through G.O.Ms.No.638 with effect from 21.11.1992 and accordingly he worked till he was retired from service. Further Rule 14 of the above

Pension Rules also clearly says the service of the employee including pay is regulated by the government and paid the pay from consolidated fund of the state. The service of the petitioner put in as NMR has not been regularized by the government in the year 1985 in order to seek the benefits of the service put up on NMR basis. Hence I submit there are no merits in the writ petition.

8. Paras 3 & 4 of the Additional Counter Affidavit filed on behalf of the 1st Respondent read as under :

Para 3 : I humbly submit that petitioner has joined the services of establishment of HMDA as NMR on 05.08.1985. His service was regularized along with (17) others vide proceedings dt. 31.12.1992 duly putting a condition that his temporary appointment would come into operation from 21.11.1992 and their seniority would be counted from 21.11.1992 in accordance with seriatim shown in the above proceedings. Further the then HUDA, which was succeeded by the present HMDA through Act, 2008 came into pensionable scheme with immediate effect on par with state Govt. employees in respect of payment of pension, gratuity, general provident and group insurance scheme through G.O.Ms.No.631 MA, dated 13.12.1991 with the concurrence of Finance and Planning Department. Therefore, the 1st respondent establishment has come under the pension only from 13.12.1991, but not from 05.08.1985 on which date the petitioner has joined the services of this establishment as NMR.

Para 4 : In the minutes of meeting held on 18.12.1992 wherein it resolved in Item No. 21, the pension is payable from the date of their appointment as issued i.e. the petitioner was appointment vide Proc. No. 16547/ACE/HUDA/92, dated 31.12.1992. Hence, the qualifying service for pension of the petitioner was only from 21.11.1992. In view of that the petitioner is not entitled for counting the NMR period from 05.08.1985 to 20.11.1992 as qualifying service for payment of pension. Further the petitioner was never

put on scale of pay but he was put on the scale of pay from the date of regularization of service i.e., 21.11.1992.

9. Rule 13 and 14 of A.P. Revised Pension Rules, 1980 read as under :

Rule 13 : Commencement of qualifying service:-

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity;

Rule 14 : Conditions subject to which service qualifies:-

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression service means service under the Government and paid by the Government from the consolidated fund of the State but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by the Government.

DISCUSSION AND CONCLUSION :

10. The Learned Counsel appearing on behalf of the Respondent specifically contends as follows :

i. The judgment of the Full Bench dt. 18.09.2015 passed In WP No.25260/2002 pertains only in respect of

Railway employees and the same would not apply to the Petitioner.

ii. The petitioner cannot be entitled for the relief prayed for in the present writ petition i.e., the petitioner's service to be counted from the date of initial appointment on NMR basis from 05.08.1985 for the purpose of granting full pension and all other retirement benefits cannot be granted in view of the fact that applicability of Andhra Pradesh State Government Rules relating to Pension, Gratuity, General Provident Fund and Group Insurance Scheme to the employees of Urban Development Authority in the State came into effect only vide G.O.Ms.No.631 MA, dt. 13.12.1991.

The minutes of the second meeting of MAUD Department held on 18.12.1992 item No.21 reads as under :

HUDA - GPF/EPF/MP Act, 1951 - Case of GPF under section 6/A read with 5/A - Implementation of GPF and Pension Schemes.

Resolved to clarify and record that the services of the employees of HUDA were made pensionable from the date of their appointment in HUDA even though the scheme of pension was introduced in December, 1991 as per the orders issued by the Government in G.O.Ms.No.631, MA, dt. 13.12.1991 directing to extend the benefits of GPF, Ground Insurance and Pension as applicable to the Government employees to the employees of HUDA and that the expenditure on pension payment shall be borne by the HUDA.

11. A Division Bench of this Court in W.P.No.8201/2016 dt. 17.03.2016 in a Writ Petition preferred by the Government aggrieved against the order dated 12.12.2017 passed in O.A.No.654 of 2016 dealing with an identical situation as in the present case observed as follows :

Respondent No.1 was appointed temporarily as Junior Auditor in the office of the District Audit Officer, State Audit, Anantapur on daily wage basis, after he was sponsored by the Employment Exchange under proceedings Rc.No.586/A1/1986, dated 12.07.1986. Thereafter, he was absorbed as Junior Auditor against regular vacancy on 04.08.1990. His services were regularized in the said cadre and he was further promoted to the post of Senior Auditor and has retired from service on attaining the age of superannuation on 31.01.2011. Even before the retirement, he made a representation on 20.01.2011 to the petitioners, requesting them to count the temporary service rendered by him in the cadre of Junior Auditor prior to his absorption. As no order was passed on his representation, he has approached the Tribunal by way of the abovementioned O.A. On consideration of the rival pleas of the parties, the Tribunal has allowed the O.A by the impugned order. Feeling aggrieved thereby, the petitioners filed this writ petition.

Rules 13 and 14 of the Andhra Pradesh Revised Pension Rules, 1980 (for short, 'the Rules') deal with the qualifying service of a temporary employee for the purpose of payment of pension. These Rules read as under:

"13. Commencement of qualifying service: Subject to the provisions of the rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that -

(a) in the case of a Government servant in a Class IV service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th November, 1960, service rendered before attaining the age of sixteen years shall not count for any purpose; and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of

eighteen years shall not count, except for compensation gratuity.

14. Conditions subject to which service qualifies:

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression service means service under the Government and paid by the Government from the Consolidated Fund of the State but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by the Government."

From the above reproduced Rules, it is clear that qualifying service of a Government servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, subject to the exceptions contained in clauses (a) and (b) of Rule 13 of the Rules. A temporary employee shall further satisfy the conditions stipulated in Rule 14 of the Rules for counting his temporary service for pensionary benefits. Under this Rule, unless his duties and pay are regulated by the Government or under the conditions determined by the Government, such service was not qualified for pension. The meaning of the word "service" under sub-Rule (1) of Rule 14 of the Rules is explained in sub-Rule (2) thereof, as per which the service is under the Government and the salary is paid by the Government from the Consolidated Fund of the State, but the same does not include the service of a non-pensionable establishment, unless such service is treated as qualifying service by the Government.

In the case on hand, it is not in dispute that the duties of respondent No.1 and his pay were regulated by the Government. Further it is also not in dispute that respondent No.1 was paid by the Government from the

Consolidated Fund of the State and that the post is a pensionable one. Therefore, the Tribunal has rightly come to the conclusion that temporary service of respondent No.1 shall be counted as qualifying service for the purpose of pension under the abovementioned Rules.

For the above-mentioned reasons, we do not find any merit in this writ petition and the same is, accordingly, dismissed.

12. This Court opines that the order impugned dated 23.03.2017 vide Lr.No.7202/Estt./HMDA/2004, is contrary to the principle laid down by the Full Bench of this Court in its judgement dt. 18.06.2016 passed in W.P.No.25260 of 2002 (extracted above) and the plea of the Respondent that the said judgement pertains to Railway Employees only is not tenable in view of the fact that the principle laid down in the said judgment would apply in the present case as well. Moreover, a Division Bench of this Court vide its judgement dt. 17.03.2016 in W.P.No.8201 of 2016 (extracted above) clearly held that the temporary service shall be counted as qualifying service for the purpose of pension under Rule 13 and 14 of the Andhra Pradesh Revised Pension Rules, 1980.

13. In a judgement of the Apex Court in the matter of State of Jharkhand and others v. Jitendra Kumar Srivastava and another reported in 2013 (12) SCC 210 held that pension and gratuity are not bounty but property within the meaning of Article 300-A of the Constitution of India. Paragraph 16 of the report states as under:

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

"300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law." Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

14. Taking into consideration the averments made in para 3 of the additional counter affidavit filed on behalf of the 1st Respondent (extracted above) this Court opines that in view of the fact that the 1st Respondent

establishment came under the purview of the pension only on 13.12.1991 and the 1st respondent not being a pensionable establishment from 05.08.1985 the date on which the Petitioner joined the services of the 1st Respondent establishment as NMR, the Petitioner herein is entitled for relief of counting Petitioner's service rendered on NMR basis w.e.f., 13.12.1991 for the purpose of granting full pension and all other retiral benefits in terms of the principle laid down by the Full Bench of this Court in its judgement dt. 18.06.2016 passed in WP No.25260/2002 (extracted above) and the law laid down by a Division Bench of this Court vide its judgement dt. 17.03.2016 in WP No.8201/2016 (extracted above) and also the view taken by the Apex Court pertaining to pension in the matter of State of Jharkhand and others v. Jitendra Kumar Srivastava and another reported in 2013 (12) SCC 210.

15. Taking into consideration the above referred facts and circumstances the order impugned in proceedings No.7202/Estt./HMDA/2004, dt. 23.03.2017 issued by the 1st Respondent is set aside and the writ petition is

allowed. The Respondents are directed to count the Petitioner's service from 13.12.1991 for the purpose of granting full pension and all other retirement benefits and pass appropriate orders, in accordance to law duly considering the principle and the law laid down in the judgments referred to and extracted above, within a period of 3 weeks from the date of receipt of copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SDI-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the HON'BLE MRS JUSTICE SUREPALLI NANDA
(For His Lordship's Kind Perusal)

To

1. The Secretary, Hyderabad Metropolitan Development Authority, Tarnaka, Hyderabad
2. The Principal Secretary, MA & UD Department, Secretariat, State of Telangana at Hyderabad.
3. 11 L.R. Copies.
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
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8. One CC to SRI.CH.JAGANNATHA RAO, Advocate [OPUC]
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S.A

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BSR

HIGH COURT

DATED:31/01/2023



ORDER

WP.No.33916 of 2017

**ALLOWING THE W.P
WITHOUT COSTS.**

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12/02/23
BSR