

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION(TR) No. 158 OF 2017

ORDER:

This writ petition(TR) has been filed seeking to “declare the action of the respondents in denying pensionary benefits and compassionate allowance to the applicant on the ground that he is retrospectively removed from service w.e.f 01.08.1992 as being arbitrary, illegal unjust and in violation of Article 14 and 21 of the Constitution of India and contrary to Rules 40 and 41 of the AP Revised Pension Rules 1980 and hold that the applicant is entitled for payment of pensionary benefits/ compassionate allowance with all consequential benefits.”

2. Today, when the matter has been taken up for hearing, learned counsel for the petitioner submits that the petitioner was initially appointed as Lab-Attender on 04.03.1959 and in the year 1964 the petitioner was promoted as Lab Technician, while working as Lab Technician, the petitioner applied for leave from 16.5.1982 to 14.7.1982. Later, the petitioner extended the leave from 15.7.1982 to 31.7.1982. Thereafter, the petitioner, went on extending leave and finally reported for duty on 01.05.1987. It is further submitted that the respondent authorities has not permitted the petitioner to join duty and informed that the petitioner was removed from service w.e.f. 01.08.1982, vide

proceedings dated 03.01.1990 after publishing of show cause notice in the A.P. Gazette.

3. Learned counsel for the petitioner further submits that the law is settled and no employee can be dismissed from service retrospectively. Therefore, the order of removal dated 03.01.1990 is void *abinito* and *non-est* in the eye of law and therefore petitioner is entitled for grant of pensionary benefits by holding that petitioner is deemed to have been retired from service w.e.f. 31.03.1998. Learned counsel for the petitioner further submits that the petitioner has put in (23) years (1) Month and (15) days of service till 05.08.1982, to which the petitioner is otherwise entitled for pensionary, retirement benefits and other benefits.

4. Learned counsel for the petitioner bring to the notice of this Court, the Rule 40 and 41 of A.P. Revised Pension Rules, 1980 for compassionate allowance which reads as under:

40. Compassionate allowance :- A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity : Provided that the authority competent to dismiss or remove him from service, may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on invalid pension”

41. Amount of compassionate allowance :- A compassionate allowance sanctioned under the proviso to the above rule shall be subject to Rule 45.”

5. Learned counsel for the petitioner further submits that the then Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'), on 21.12.2012, passed the following interim order, which reads as:

“Pending disposal of the OA, the respondents are directed to pass appropriate orders on the representation of the applicant dated 5.11.2012 keeping in view the Rules 40 and 41 of the AP Revised Pension Rules, 1980 within a period of four weeks from the date of receipt of a copy of this order.”

6. Though various grounds are raised in the writ petition, learned counsel for the petitioner restricts his prayer seeking a direction to respondent authorities to consider the petitioner representation, dated 05.11.2012, in terms of Rules 40 and 41 of the AP Revised Pension Rules, 1980.

7. Learned Government Pleader for Services-II appearing for respondent submits that Rules 40 of A.P.Revised Pension Rules, 1980 grant discretionary power to the competent authority to be exercised if the case is deserving of special consideration and fairly submits that the petitioner's representation dated 05.11.2012 will be considered afresh, in accordance with law.

8. Heard both sides.

9. In view of the submission made by learned counsel on either side, perused the material on record and considering the fact that the petitioner has rendered 23 years, 1 Month and 15 days of service in the respondent office, this Court is of considered view that the writ petition (TR) can be disposed of; directing the respondent authorities to consider the petitioner's representation dated 05.11.2012 afresh, in terms of Rules 40 and 41 of the AP Revised Pension Rules, 1980 within a period of four (4) weeks from the date of receipt of copy of this order and pass necessary orders and communicate the same to the petitioner.

10. Accordingly, with the above directions writ petition(TR) is disposed of. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

N.V.SHRAVAN KUMAR,J

31.01.2023
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