
(2000) 03 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12760 of 1999

A.K. Reddy

APPELLANT

Vs

Depot Manager, APSRTC, Nellore and another

RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

Citation : (2000) 2 ALD 818 : (2000) 2 ALT 214

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. P. Venkateswarlu, for the Appellant; Mr. C.V. Ramula, for the Respondent

Judgement

1. The petitioner, who is currently serving as driver in the establishment of the APSRTC being aggrieved by the Officer Order No.El/367(2)/98-NLR-I, dated 15-4-1999 of the Depot Manager, Nellore-I the first respondent herein directing recovery of a sum of Rs.8,434-30 ps. from the salary of the petitioner on the ground that family planning incentive increment was wrongly paid to the petitioner for the period from 23-5-1991 to 31-5-1998, has filed this writ petition assailing the validity of the same.

2. The circumstances that led to filing of the writ petition may be stated briefly as under: The petitioner while serving as Driver submitted a representation stating that his wife underwent tubectomy operation on 14-9-1990 after giving birth to two children and requested the management to grant family planning incentive increment as per the scheme framed by the management. Acting on the representation of the petitioner, he was sanctioned one incentive increment with effect from 1-10-1990. The petitioner's wife Smt. K. Vijayamma died in an accident in the month of November, 1990. Thereafterwards, the petitioner contracted second marriage with Smt A Sridevi on 23-5-1991. It appears that the petitioner informed the management about his contracting of second marriage on 23-5-1991. Out of the second wedlock a child was born. Thus, the petitioner has three children, two children out of the first wedlock and one child

out of the second wedlock. However, it appears that despite this development, the petitioner was allowed to draw family planning incentive increment upto 31-5-1998 and thereafterwards, he was prevented from drawing the above increment.

3. The only contention of the learned Counsel for the petitioner while assailing the impugned order of the first respondent is that the management having permitted the petitioner to draw family planning incentive increment even after the petitioner contracting second marriage on 23-5-1991 and even after the petitioner got one more child out of the second wedlock, it is totally unreasonable on the part of the first respondent to withhold the payment of family planning incentive increment, and at any rate, it is *ex facie* unreasonable to direct recovery of incentive increment already paid to the petitioner during the period from 23-5-1991 to 31-5-1998. On the other hand, the learned Standing Counsel for the APSRTC would support the impugned action.

4. The only point that arises for consideration is, whether the petitioner could legally draw family planning incentive increment even after he contracted the second marriage on 23-5-1991. If the answer is positive the impugned order should go, and on the other hand, if the answer is negative, an exception can be taken to the impugned action.

5. It is trite to state that but for the scheme framed by the management of APSRTC to provide family planning incentive increment to its employees by issuing administrative guidelines and instructions, no employee of the Corporation, as a matter of right, would have legally asserted the right to such increment. If that is so, the right to receive incentive increment should be worked out within the parameters of the scheme framed by the management of APSRTC. In the impugned order as well as in the counter filed by the respondents, it is stated that according to the scheme envisaged in Circular No.PD-115 of 3993, dated 15-12-1993 of the Chief Manager (Personnel), Hyderabad, an employee to whom the family incentive increment is granted, after remarriage, for any reason, the benefit of incentive increment so granted shall be withdrawn from the date of such remarriage. Therefore, the petitioner after 23-5-1991 cannot claim the incentive increment as a matter of right *de hors* the scheme. Secondly, after contracting remarriage, one more child is born to the couple out of the second wedlock thereby the petitioner as on today is having three children. On that count also, in terms of the scheme, the petitioner is not entitled to family planning incentive increment. Therefore, I do not find any illegality or unreasonableness on the part of the first respondent in declining to continue the payment of incentive increment to the petitioner. Similarly, since payment made to the petitioner during the period from 23-5-1991 to 31-5-1998 was in breach of the scheme and consequently unauthorised, there is nothing wrong on the part of the first respondent now to recover the unlawful gain made by the petitioner-workman.

6. In the result, the writ petition fails and it is accordingly dismissed with no

order as to costs.