
(2010) 01 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14962 of 2006

Devarakonda Sri Lakshmi

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 13, 14, 14(2), 29, 33

Citation : (2010) 2 ALD 165 : (2010) 2 ALT 212 : (2010) 1 APLJ 103 : (2010) 6 SLR 141

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : P. Ratnam, for the Appellant; G.P. for Tourism, Sports and Youth Services, for the Respondent

Judgement

G. Rohini, J.—The petitioner herein was appointed as a Library Assistant in Sports Authority of A.P. on consolidated pay of Rs. 750/- per month vide proceedings of the 2nd respondent dated 23.3.1988. Subsequently, she was extended the scale of pay of Rs. 910-30-1240-35-1625 w.e.f. 1.9.1992 in the post of Library Assistant. On 22.9.1997 she was promoted as Senior Assistant and ultimately retired from service on attaining the age of superannuation on 30.11.1997.

2. Aggrieved by the alleged action of the respondents in not extending the retirement benefits, including pension, she filed W.P. No. 5365 of 2003. The said writ petition was disposed of by this Court by order dated 28.03.2003 with a direction to the Sports Authority of A.P. to pass appropriate orders with regard to the claim of the petitioner for retirement benefits. Pursuant thereto, the 2nd respondent vide memo dated 30.06.2003 informed the petitioner that since she had rendered less than the prescribed qualifying service of ten years, she was entitled to receive only the service gratuity as per Rule 46 read with Rule 45(1) of the A.P. Revised Pension Rules, 1980 and since the same was already paid to her, there were no dues payable to her.

3. Claiming that the period during which she worked on consolidated pay shall also be taken into consideration for calculating the "qualifying service" the petitioner made several representations before the respondents 1 and 2. In response to the same, the 2nd respondent - Sports Authority of A.P.- by letter dated 27.9.2003 informed the petitioner that the services rendered by the petitioner on consolidated pay from 24.03.1988 to 31.8.1992 cannot be taken into account for the purpose of qualifying service in the absence of specific orders by the Government relaxing the Pension Rules in her favour. The 1st respondent - Government of A.P. - vide memo dated 12.02.2004 informed that there were no specific provisions in the pension rules for counting the service rendered on consolidated pay for the purpose of qualifying service and accordingly rejected the petitioner's request for releasing the pensionary benefits. Aggrieved by the said action of the respondents, the present writ petition is filed.

4. The 2nd respondent filed a counter-affidavit reiterating the stand taken in the impugned orders that the period during which the petitioner worked on consolidated pay i.e., from 24.3.1988 to 31.8.1992 cannot be taken into account for the purpose of qualifying service.

5. I have heard the learned Counsel for both the parties and perused the material on record.

6. Rule 42 of A.P. Revised Pension Rules 1980 provides that every Government Servant to whom the said Rules apply shall compulsorily retire on attaining the age of superannuation as provided in the Fundamental Rules as amended from time to time. Rule 33 provides that a superannuation pension shall be granted subject to Rule 45 to a Government Servant who is retired as per Rule 42. Rule 45(1) provides the scale of service gratuity in the case of a Government Servant retiring before completing qualifying service of 10 years. Rule 45(2) prescribes the scale of pension in the case of a Government Servant retiring after completing qualifying service of not less than 10 years. Rule 13 which deals with qualifying service runs 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 in 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.

7. Rule 29 further provides that every Government Servant who at the time of retirement on superannuation has put in a qualifying service of less than 33 years shall be entitled to add to the qualifying service for the purpose of pensionary benefits, the difference between 33 years and the qualifying service at the time of superannuation, such difference not exceeding 3 years.

8. In the present case, the petitioner worked on consolidated pay from 24.03.1988 to 31.08.1992 (4 years 5 months). Her services were regularized and she was granted the scale of pay w.e.f. 1.9.1992 and she retired from service on attaining the age of superannuation on 30.11.1997. Thus after regularization, she worked for a period of 5 years 3 months.

9. According to the petitioner, for the purpose of her qualifying service, her initial date of appointment on 24.03.1988 shall be taken into consideration and thus she had put in 9 years 8 months qualifying service and after adding the weightage of 3 years under Rule 29 her total qualifying service should be 12 years 8 months. Thus, according to the petitioner, Rule 45(2) is attracted and consequently she is entitled to the pension as set out in the Table (B) thereunder.

10. On the other hand, the contention of the respondents is that the period of service from 24.03.1988 to 31.8.1992 during which the petitioner worked on consolidated pay cannot be taken into account for the purpose of qualifying service. Consequently according to the respondents she had rendered the total qualifying service of only 8 years 3 months after adding the weightage of 3 years under Rule 29. The same being less than the minimum qualifying service of 10 years, the respondents contended that Rule 45(1) applies and therefore the petitioner had rightly been granted only service gratuity.

11. Having regard to the rival contentions, the question that arises for consideration is whether the period during which the petitioner worked on consolidated pay can be taken into consideration for the purpose of counting her qualifying service.

12. It is true that there is no specific provision under the A.P. Revised Pension Rules, 1980 for counting the service rendered on consolidated pay. However, Rule 13 of the Rules provides that the qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he was first appointed either substantively or in temporary capacity. What is temporary capacity has not been specified. The order of the 2nd respondent dated 23.3.1988 under which the petitioner was initially appointed as Library Assistant runs as under:

Smt. D. Sree Lakshmi, W/o. Late D.R. Swamy, is hereby temporary appointed as Library Assistant in the Sports Authority of A.P. on a consolidated pay of Rs. 750/- (Rupees seven hundred and fifty only) per month.

2. Her appointment is purely temporary and her services can be terminated at

any time without any notice or assigning any reasons therefor.

3. She should report for duty immediately with all the relevant original certificates of Educational Qualifications, age etc.

13. The order itself shows that the petitioner's appointment was temporary. Thus she worked in temporary capacity till her services were regularized w.e.f. 1.9.1992. However the respondents declined to take into consideration the period of service from 24.3.1988 to 31.8.1992 on the ground that during the said period she worked on consolidated pay. It is relevant to note that the petitioner's initial appointment on 23.3.1988 as Library Assistant was against a clear vacancy and subsequently she was granted regular scale of pay attached to the post of Library Assistant w.e.f. 1.9.1992. In the circumstances, merely because she was appointed on a consolidated pay, it cannot be held that the period during which she worked on consolidated pay shall be excluded for the purpose of qualifying I service.

14. The law is well-settled that the mere form of the order is irrelevant but the surrounding facts and circumstances shall be taken into consideration to find out the true character of the order. Despite the use of a specific expression, the Court has to consider whether the employee had a right to such post. Particularly when the services rendered by a temporary employee are followed by regularization of his service, there is no reason to exclude the period of temporary service for computing the qualifying service for the purpose of pensionary benefits.

15. It is also relevant to notice that Rule 14 of the A.P. Revised Pension Rules, 1980 provides that the services of a Government Servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions determined by the Government. Sub-rule (2) of Rule 14 further made it clear that the expression "service" means that service under the Government and paid by the Government from the Consolidated Fund of the State.

16. In the light of Rule 14, the true test is whether the services of the employee were regulated by the Government and whether he was paid from the Consolidated Fund of the State. Any period of service which satisfies the above test, in my considered opinion shall be treated as qualifying service for the purpose of Rule 13.

17. For the aforesaid reasons, I do not find any substance in the contention of the respondents that the period of service spent by the petitioner on consolidated pay cannot be taken into consideration for determining her qualifying service.

18. Accordingly, the impugned action of the respondents in denying the petitioner pensionary benefits is hereby declared as arbitrary and unreasonable. In the result, the impugned order is hereby set aside and the Writ Petition is disposed of with a direction to the respondents to pass appropriate orders afresh

with regard to the petitioner's claim for pensionary benefits keeping in view the observations made above. Such fresh order shall be passed as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order. No costs.