

(2023) 04 TEL CK 0042

In the Telangana High Court

Case No : Writ Petition Nos. 9479, 10954 Of 2015

Md. Raheemuddin

APPELLANT

Vs

State Of Andhra Pradesh

RESPONDENT

Date of Decision : 19-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Commissions for Protection of Child Rights Act, 2005 — Section 20

Citation : (2023) 04 TEL CK 0042

Hon'ble Judges : J Sreenivas Rao, J

Bench : Single Bench

Advocate : Vivek Jain

Final Decision : Dismissed

Judgement

1. Both the writ petitions are filed seeking writ of Mandamus declaring the G.O.Rt.No.196. Dept. for Women, Children, disabled & Senior Citizens(JJ) dated 26.05.2014 issued by the respondent No.1, as illegal, arbitrary and unconstitutional by virtue of G.O.Ms.No.5 dated 25.03.2013 and violation of Articles 14 and 16 of the Constitution of India and by further holding that the petitioners are entitled to be paid honorarium as per Rule 9 of G.O.Ms.No.5 dated 25.03.2013, and by extending other benefits as specified in Rules 10 to 17 of the said G.O.,

2. Heard Sri Vivek Jain, learned counsel for the petitioners and learned Assistant Government Pleader for Women Development and Child Welfare Department appearing for respondents.

3. During the pendency of W.P.No.10954 of 2015 the sole petitioner died and his legal heirs – petitioner Nos.2 and 3 were brought on record vide order in I.A.No.1 of 2022 dated 06.03.2013.

4. Learned counsel for the petitioners submits that respondents issued a notification on 25.07.2013 inviting applications for appointment of Chairperson

and Members to Andhra Pradesh State Commission for Protection of Child Rights (for short 'Commission'). Pursuant to the same, the petitioners have made applications and the respondents have issued G.O.Ms.No.11 dated 19.02.2014 appointing the petitioners in W.P.No.9479 of 2015 and petitioner No.1 in W.P.No.10954 of 2015 as Members of the Commission and since then they have been discharging their duties. He further submits that prior to the issuance of the notification, respondent No.1 issued G.O.Ms.No.5, Dept. for Women, Children, disabled & Senior Citizens(JJ), dated 25.03.2013 and as per Rule 9 of the said G.O., salaries and allowances of the Chairperson and members have been specified, wherein it is stated that the Chairman shall be paid salary equivalent to the salary of the Chief Secretary and every other member shall be paid salary equivalent to that of a Principle Secretary of the State Government.

5. He further submits that one Bhyravabatla Chakradari filed W.P.No.5209 of 2014 alleging that the petitioners were appointed contrary to the provisions of the Commission and Rules made thereunder and this Court granted interim order on 24.02.2014 in W.P.M.P.No.6463 of 2014 and subsequently the writ petition is dismissed as withdrawn by its order dated 05.09.2017.

6. He further submits that respondent No.1 issued the impugned G.O.Rt.No.196 dated 26.05.2014 fixing honorarium to the petitioners @ Rs.15,000/- per month and same is contrary to G.O.Ms.No.5 dated 25.03.2013 and the petitioners are entitled to salaries/honorarium and allowances as per the Clause 9 of G.O.Ms.No.5 dated 25.03.2013. He further submits that the petitioners were appointed as Members vide G.O.Ms.No.11 dated 19.02.2014 and the provisions of G.O.Ms.No.5 dated 25.03.2013 alone are applicable to the petitioners, whereas the respondent No.1 issued G.O.Rt.No.196 dated 26.05.2014 after four months, fixing the honorarium of the petitioners, contrary to the provisions of the Commission for Protection of Child Rights Act, 2005(hereinafter referred to as Act 2005). He further submits that respondent No.2 paid honorarium for a period from 20.02.2014 to 25.11.2014 and since 26.11.2014 the honorarium of the petitioners was not paid.

7. Per contra, learned Assistant Government Pleader for Women Development and Child Welfare vehemently contended that pursuant to the notification issued by respondent No.1 dated 25.07.2013 the petitioners were appointed as members and the respondent No.1 issued appointment order vide G.O.Ms.No.11 dated 19.02.2014. Clause 4 of the said appointment order specifically says that the terms and conditions for payment of salary/honorarium and allowance will be issued separately.

8. Respondents have issued the impugned G.O.Rt.No.196 dated 26.05.2014 fixing the salary/honorarium and allowances to the petitioners and the respondents paid the said amounts to the petitioners as per their entitlement. He further contended that the petitioners have accepted the terms and conditions enumerated in the appointment order vide G.O.Ms.No.11 dated 19.02.2014. Having accepted the same, the petitioners cannot question the terms and

conditions of the G.O., through which they were appointed and they are estopped to contend that they are entitled to honorarium and allowances as per the G.O.Ms.No.5 dated 25.03.2013. He further submits that the said GO is not applicable to the petitioners as stated supra in the appointment order that the respondents specifically mentioned that they will issue orders separately by fixing honorarium and allowances.

9. Having considered the rival submissions made by respective parties and upon perusal of the material placed on records, it reveals that respondent No.1 issued notification dated 25.07.2013 calling applications from the eligible candidates for appointment of Chairperson and Members to Commission. Pursuant to the said notification, the petitioner and others have made applications to the post of Members. Respondents after following due procedure issued appointment order vide G.O.Ms.No.11 dated 19.02.2014. Clause 4 of the appointment order reads as follows:

The terms and conditions for payment of salary/honorarium and allowance will be issued separately.

10. The petitioners have accepted the terms and conditions enumerated in the above said appointment order dated 19.02.2014 and they have submitted joining reports on 20.02.2014. Thereafter, respondents issued impugned G.O.Rt.No.196 dated 26.05.2014 fixing the honorarium to the petitioners and respondents are paying the said honorarium and others benefits. Clause No.5 of the said G.O. reads follows:

After the careful examination of the matter and the proposal of the Commissioner, Women Development & Child Welfare Department, Government hereby fix an Adhoc allowance and other allowances to the Members of the A.P. State Commission for Protection of Child Rights(SCPCR) and subject to outcome of Hon'ble High Court Orders in W.P.No.5209 of 2014 as follows:

(i) Rs.15,000/- per month as honorarium to Members.

(ii) Casual & Optional Leaves, TA/DA allowance on par with Grade-I Officers of the State Government.

(iii) Conveyance facility of hiring vehicle as per Circular Memo No.10783-C/321/DCM-II/2010, Dt:13.06.2012 of Finance(DCM-II) Department.

11. Learned Assistant Government Pleader submits that pursuant to the same, respondents paid salaries and allowances to the petitioners as per their entitlement. Hence, the contention raised by the petitioners that they are entitled to honorarium and allowances and other monetary benefits as per Clause 9 of G.O.Ms.No.5 dated 25.03.2013 is not tenable under law.

12. The respondents in the appointment order specifically enumerated the condition that the terms for payment of salary/honorarium and other allowances will be issued separately. In terms of the said condition respondents issued

impugned G.O.Rt.No.196 dated 26.05.2014 and the same is in accordance with the provisions of the Act, 2005. It is very much relevant to extract Section 20 of the Act, 2005 which reads as follows:

"The salaries and allowances payable to, and other terms and conditions of service of the chairperson and members shall be such as may be prescribed by the State Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member, as the case may be, shall be varied to his disadvantage after his appointment."

13. The petitioners are not entitled to question the terms and conditions of the appointment order once they have accepted the same. The stand taken by the petitioners is not permissible under law and they are not entitled to honorarium and other benefits as per clause 9 of G.O.Ms.No.5 dated 25.03.2013.

14. In view of the foregoing reasons, the impugned G.O.Rt.No.196 dated 26.05.2014 issued by respondent No.1 is in accordance with G.O.Ms.No.11 dated 19.02.2014 and the petitioners are not entitled to the relief sought in the writ petitions and the same are liable to be dismissed. Accordingly, dismissed.

15. However, during the course of hearing, learned counsel for the petitioners submitted that the petitioner in W.P.No.9479 of 2015 is continued as a Member for a period of 14 months and petitioner No.2 for a period of

16 months and petitioner in W.P.No.10154 of 2015 worked for a period of 3 years but the respondents have paid honorarium for a period of five months only and thereafter, they have not paid the honorarium. In view of the same, the respondents are directed to pay the honorarium and other benefits, if any, due to the petitioners within a period of three (3) months from the date of receipt of a copy of this order, if not already paid.

16. Accordingly, both the writ petitions are dismissed. No costs.

As a sequel thereto, miscellaneous applications, if any, pending in this writ petition shall stand closed.