

(2022) 11 TEL CK 0061
In the Telangana High Court
Case No : Writ Petition No. 34021 Of 2016

M.Prabhakar

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Citation : (2022) 11 TEL CK 0061

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : M.Bala Gangadharaiah

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned Government Pleader for Women Development and Child Welfare.

2. This writ petition is filed to issue a Writ or order or direction more in the nature of Writ of Mandamus to call for original records relating to the sanction and payment of pension to the petitioner and direct the respondents to make payment of simple interest on the pension and Gratuity benefits @ 18% per annum for the delayed payment due on 01.07.2010 to 31.07.2016 viz the date of payment of pension and gratuity as per law.

3) The case of the petitioner, in brief, is as follows:

a) The petitioner was appointed as Typist on 01.12.1976 and subsequently promoted as Senior Assistant on 08.11.1985 and further promoted as Superintendent on 06.09.1998.

b) While the petitioner was working as Superintendent in the office of Project Director, District Women and Child Development Agency, Kurnool, the departmental disciplinary proceedings were initiated on 03.05.2001 and the petitioner submitted explanation on 06.06.2001. After conducting enquiry, the charges framed against the petitioner were dropped as not proved. Thereafter,

the petitioner was posted as Assistant Project Officer, at Nizamabad.

c) The petitioner was retired on 30.06.2010 on attaining the age of superannuation and submitted pension papers on 30.06.2010 before the 4th respondent for onward transmission to the 3rd respondent. The 2nd respondent has initiated disciplinary action against the petitioner by levelling nine charges vide memo, dated 30.06.2010. The 2nd respondent has misused the power of revision provided under A.P.Civil Services (CCA) Rules, 1991 with an intention to disentitle the petitioner for payment of pensionary benefits in normal course. The 2nd respondent has not concluded disciplinary proceedings within six months as per the Government instructions.

d) The 1st respondent has sanctioned provisional pension @ Rs.11,831/- p.m. as against the admissible service pension of Rs.15,775/- p.m. vide G.O.Rt.No.483, dated 28.12.2010. But the respondents have not taken any action for making payment of 80% gratuity as against the admissible amount of Rs.6,05,237/- in terms of G.O.Rt.No.1097, dated 22.06.2000 since the charges levelled against the applicant are administrative lapses only and there is no financial loss caused to the Government. Therefore, further action has been dropped vide G.O.Rt.No.2, dated 05.01.2016 as charges are not in serious. Hence, this writ petition is filed.

4. The counter filed by the 2nd respondent, in brief, is as follows:

a) The petitioner has committed certain administrative irregularities while he was working as Senior Assistant, ICDS Project and hence, charge memo dated 30.06.2010 was issued.

b) The delinquent officer has submitted the defense statement dated 14.01.2011 to the Government while marking a copy to o/o Director, Women Development & Child Welfare, Hyderabad. Therefore, not concluding of the disciplinary case within six months does not arise, as the delinquent officer submitted the defence statement after completion of six months.

c) As per para 3(c) of G.O.Rt.No.1097, of Finance & Planning Department, dated 22.06.2000 no gratuity shall be paid until the conclusion of the departmental or judicial proceedings and issue of final orders and that the eligible retirement benefits as per the said GO have already been paid. Therefore, the writ petition is liable to be dismissed.

5. The respondents filed additional counter reiteration the contentions raised in the counter and that since there is no delay occurred in release of pensionary benefits to the petitioner, the payment of interest on delay does not arise and accordingly the Government vide Memo dated 19.01.2017 had rejected the appeal of the petitioner for payment of interest on service pension and gratuity.

PERUSED THE RECORD :

6. The petitioner initially in September 2016 approached this Court with main

prayer as follows :

"That this Hon'ble Court may be pleased to issue a Writ or order or direction more in the nature of mandamus to call for the original records relating to the sanction and payment of pension to the petitioner and direct the respondents to make payment of simple interest on the pension and gratuity benefits @ 18% per annum for the delayed payment from the due on 01.07.2010 to 31.07.2016 viz., the date of payment of pension and gratuity as per law and pass such other order or orders as deemed fit and proper".

7. The Petitioner filed I.A.No.1/2019 in present W.P.No.34021/2016 seeking amendment of the prayer in November 2019, which is as follows :

"In view of the above facts and circumstances, the petitioner humbly prays that this Hon'ble Court may be pleased to permit the petitioner to amend the main prayer by substituting the words "the sanction and payment of pension to the petitioner" with the words "to Government Memo No.4268/Estt.A2/2016-8, dated 21.08.2018 of the 1st respondent and set aside the same as arbitrary and illegal and consequently" direct the respondents to make payment of interest on the service pension and gratuity from the date of retirement to till the date of payment as per law and pass such other order or orders as deemed fit and proper in the interest of justice, equity and fair play".

8. Taking into consideration the averments made in the affidavit filed in support of I.A.No.1 of 2019 in W.P.No.34021 of 2016 the same is ordered as prayed for.

9. Counter affidavit and additional counter affidavit has been filed by Respondent No.2. The relevant paras 9 to 13 in the counter affidavit filed by Respondent No.2 read as under :

Para 9 : Further, his case was referred to the Government, as the individual has retired from service on 30. 06.2010, and the Delinquent Officer has also submitted his written statement of defense on 14.01 2011 and to the Government Basing on that, the Government have appointed Enquiry Officer and Presenting Officer vide G.O.RL No. 16 & 17. dt 31.07.2014, and based on the Enquiry Report of the Regional Deputy Director, WDSCW, Hyderabad, the Government has issued Show Cause Notice to Delinquent Officer on 12:01:2015 The Delinquent Officer have to be give answer within 30 days The defence statement of Delinquent Officer was submitted to the Government on 09.02.2015.

Para 10 : Further, the Government has issued Revised Show Cause Notice on 16.02.2015 and the Delinquent Officer has submitted the Defense Statement on 16.03.2015 and also furnished further defense statement or 30.09 2015 to the Olo Director Women Development & Child Welfare, Hyderabad and the same was submitted by the Director, Women Development & Child Welfare Hyderabad, to the Government vide Lr. No. 502/Vig/2010, dt. 06.10.2015.

Para 11 : It is further submitted that, the Government have dropped further action against the Delinquent Officer and issued G.O.Rt.No.2, of Dept., for

WCD&S (Estt.) dt.05.01.2016.

Para 12 : It is submitted that the eligible retirement benefits as per the G.O.Rt.No.1097, Finance & Planning Department dt. 22.06.2000 have been already paid. But as per para 3(c) of the above said G.O. No. gratuity shall be paid until the conclusion of the departmental or judicial proceedings and issue of final orders.

Para 13 : Therefore it is submitted that there is no delay caused by the Respondents in payment of service pension and gratuity to the Delinquent Officer, as the 75% provisional pension has been paid to the Delinquent Officer as Disciplinary case is pending against him.

10. Additional counter affidavit has been filed by Respondent No.2 in January 2019 enclosing few documents and paras 4, 5 and 6 of the said counter affidavit read as under :

Para 4 : That, vide G.O.Rt.No.2, Department of Women, Children, Disabled and Senior Citizens, dt. 05.01.2016, Government have take a lenient view and issued orders dropping the charges against Sri M.Prabhakar, Assistant Project Officer (Retired). As per the orders issued in G.O.Rt.No.1097, Finance & Planning (FW.Pen.I) Department, dt. 22.06.2000, full service pension and retirement gratuity cannot be settled until the conclusion of the Departmental proceedings pending against the retired government servants, only provisional pension shall be sanctioned.

Para 5 : Accordingly after conclusion of the departmental proceedings the Regional Director, Women Development & Child Welfare, Hyderabad has addressed the Accountant General, Andhra Pradesh/Telangana State, to release the pensionary benefits to the said individual vide their Lr.No.855/A/2010, dt. 03.03.2016. Accordingly the AG, AP, Hyderabad has released the pensionary benefits to the Petitioner vide Lr.No.PAG(A&E)/AP/P15/IV/P-256/SP278/2010-08 /735, DT. 19.04.2016. Since there is no delay occurred in release of pensionary benefits to the Petitioner, the payment of interest on delay does not arise in the present case and accordingly the Government vide Memo No.4268/Estt.A2/2016-4, dt. 19.01.2017 had rejected the appeal of the Petitioner for payment of interest on service pension and gratuity.

Para 6 : It is further to submit that, as already informed in the counter affidavit filed earlier, that the Petitioner was involved in the delay in submission of his defense statement and presently the service pension and gratuity were also processed immediately after finalization of the disciplinary case, there is no delay occurred in release of pensionary benefits to the Petitioner.

DISCUSSION AND CONCLUSION

11. The Petitioner by way of amendment of prayer sought setting aside the Government Memo No.4268/Estt.A2/2016-8, dated 21.08.2018 of the 1st respondent. A bare perusal of the contents of the said Memo only indicate the

request of the Joint Secretary to the Government addressed to the Director, Women Development and Child Welfare Department of Telangana State, Hyderabad requesting to take necessary action to file revised counter affidavit in W.P.No.34021/ 2016 duly incorporating the latest facts in the case in consultation with Government Pleader for WCD & SC, Hon'ble High Court for the State of Telangana, Hyderabad.

12. The Petitioner however, did not choose to challenge the Memo No.4268/ Estt.A2/2016-4, dt. 19.01.2017 of the 1st Respondent herein were under as stated in para 5 of the Additional Counter Affidavit filed by the Respondent No.2, the Appeal of the Petitioner for payment of interest on service pension and gratuity was rejected by the Government vide Memo No.4268/ Estt.A2/2016-4, dated 19.01.2017.

13. Taking into consideration the averments made in the counter affidavit filed by respondent No.2 (referred to and extracted above) and the additional counter affidavit filed by the 2nd respondent and also perusing the contents of the impugned Government Memo No.4268/Estt.A2/2016-8, dated 21.08.2018 of the 1st respondent, this Court opines that the prayer of the Writ Petitioner for setting aside Government Memo No.4268/Estt.A2/2016-8, dated 21.08.2018 of the 1st Respondent is totally uncalled for and unwarranted since it is only internal correspondence between Joint Secretary to Government, Department for Women, Children, Disabled and Senior Citizens (Establishment) addressed to the Director, Women Development & Child Welfare Department, Telangana State, Hyderabad, giving details of the latest facts of the case with a request to file a revised counter affidavit in W.P.No.34021/2016.

14. Therefore, in the interest of justice, without expressing any opinion on the merits of the case, the writ petition is disposed of giving liberty to the Petitioner to challenge the Government Memo No.4268/Estt.A2/2016-4, dated 19.01.2017 of the 1st respondent vide which the Appeal of the Petitioner for payment of interest on service pension and gratuity has been rejected. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.