

(2023) 04 TEL CK 0033
In the Telangana High Court
Case No : Writ Petition No. 15370 Of 2020

M.Ramulu

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 04 TEL CK 0033

Hon'ble Judges : E. V. Venugopal, J

Bench : Single Bench

Advocate : G. Vidya Sagar, K. Udaya Sri, Kanya Kumari, M. Surender Rao, K. Ram Murthy,

Final Decision : Allowed

Judgement

1. The present Writ Petition is filed under Article 226 of Constitution of India for the following relief/s:-

"i. declaring that the petitioner is entitled for pension in terms of G.O.Ms.No.124, Higher Education (U.E.I) Department dated 05.09.2005 duly reckoning the service rendered by the writ petitioner from 1995 for the purpose of pension, gratuity and other terminal benefits;

ii. direct the respondents to sanction and release the pensionary benefits including gratuity and other retiral benefits from the date of retirement together with interest;

iii. declare that the petitioner is entitled for promotion to the post of Senior Assistant on par with the juniors with all consequential benefits and pass such other order or orders"

By filing I.A.No.1 of 2021, the petitioner sought for the following additional relief/ S:-

"i. Declare the letter of the University No.PSTU/Admn-2/91-5/Notification/2020,

dated 16.01.2020 in so far seeking clarification from the Government for issuance of notification for pension is illegal, arbitrary and contrary to the orders in W.P.No.13116 of 2011 dated 09.06.2017 and set aside the same.

ii. declare that the appointment of the petitioner as Junior Assistant in the University is legal and valid in terms of orders in W.P.No.13116 of 2011 dated 09.06.2017..."

2. Heard Sri G. Vidya Sagar, learned Senior Counsel representing Sri K. Udaya Sri, appearing for petitioner, Ms. Kanya Kumari, learned Assistant Government Pleader representing respondent Nos.1 and 2 and Sri M. Surender Rao, learned Senior Counsel representing Sri K. Ram Murthy, learned counsel appearing for respondent No.3.

3. The present writ petition is filed assailing the order dated 11.03.2011 vide letter. ROC No.13157/A1/2010 issued by the Director, State Audit Department, Andhra Pradesh, Hyderabad whereby the Director refused to approve the pay fixation made in PRC, 2010 to the petitioner on the ground that the Government has not ratified the action of the respondent-University.

4. Learned counsel for the petitioner submitted that in spite of the order of this Court in W.P.No.13116 of 2011 dated 9.06.2017, the respondent-University again has sought clarification from the Government for release of retiral benefits stating that the University could not issue the notification for the incumbent for submission of pension papers before 6 months period due to lack of ratification order as on date. The letter addressed by the University to respondent No.1 dated 16.01.2020 is contrary to the orders in W.P.No.13116 of 2011. Further this Court has also warned for raising same objection filed by the University while releasing the PRCs 2010 and 2015 in the Contempt Case filed by the petitioner vide C.C.No.2811 of 2017.

5. It is submitted that the petitioner has been working since 1995 and retired from service without any promotion though he is senior as on 28.02.2020 and eligible for promotion to the post of Senior Assistant. However, some of the juniors in the cadre of Junior Assistant have been promoted to the post of Senior Assistant ignoring the candidature of the petitioner on the ground of raising similar objections dated 29.02.2020. Even for the release of retiral benefits also, the University is taking same objection. Thereby, the petitioner is being deprived of pension and other retiral benefits viz., pension, commutation of pension, gratuity and encashment of leave. As the retiral benefits of the petitioner are not released, the petitioner's family has been facing severe financial difficulties. Hence, the petitioner filed the present writ petition.

6. The petitioner along with others filed W.P.No.13661 of 2011. The erstwhile common High Court has observed at para Nos.19 and 27 as under:-

"Para No.19: In the instant case, the services of the petitioners were not regularized by applying the scheme in G.O.Ms.No.212. But they were appointed

after following the procedure as indicated by the Syndicate which decision is pursuant to the orders of the Government dated 28.01.1988. Since, Government has already authorized the syndicate to prescribe the procedure of selection, the syndicate has indicated the procedure of selection, where under the selection of petitioners were made, there is no requirement for ratification again by the Government as sought to be projected by the audit in their objection. Merely because University sought for ratification in the year, 2001 cannot give leverage for the audit to raise an objection without regard to the manner in which the selections were conducted. It is not in dispute that the University is an independent authority. However, University has to follow the norms prescribed by the Government and as noticed from the record of the Writ Petition those norms are observed.

Para No.27: Having regard to the fact that such appointments were made in the year, 1995 and even before such appointments, considerable service was rendered by the petitioners, at this distance of time, on the said alleged irregularity in the selection process, the appointments made in the year, 1995 cannot be declared as invalid only to deny the pay revision benefits. Thus, it is not equitable to subscribe to the contentions urged by the learned Special Government Pleader, more particularly with reference to application of pay revision benefits. It is not in dispute that the petitioners have been working and pay revision benefit is extended to all other employees working in the same posts in which petitioners are working. As long as petitioners are working, their entitlement to pay attached to the post cannot be denied. It is also appropriate to note that even though the University wrote a letter on 04.07.2001 seeking ratification, assuming such ratification is necessary, Government cannot sit over on that issue for 16 years and on the ground that Government has not given ratification, authority acting on behalf of the Government cannot refer to the said issue and deny the benefits of pay revision. Accordingly, the writ petition was allowed directing the respondents to approve the pay fixation of the petitioners in the Pay Revision Commission, 2010 pay scales as per the notification issued by the Government in G.O.Ms.No.137 Finance (P.C-I) Department dated 28.04.2010. Such exercise shall be completed within a period of two months from the date of receipt of copy of this order”.

7. The respondents complied with the said order dated 9.06.2017 passed by this Court and the petitioner was allowed to serve the respondents till he attained superannuation on 20.02.2020. Now again the petitioner filed the present writ petition to declare that he is entitled for pension in terms of G.O.Ms.No.124 dated 05.09.2005 duly reckoning the service rendered by the writ petitioner from 1995 for the purpose of pension, gratuity and other terminal benefits and to direct the respondents to sanction and release the pensionary benefits including gratuity and other retiral benefits from the date of retirement together with interest and further to declare that the petitioner is entitled for promotion to the post of Senior Assistant on par with the juniors with all consequential benefits by filing I.A.No.1 of 2021. The petitioner also sought for amendment of prayer to

declare the letter dated 16.01.2020 in so far as seeking clarification from the Government for issuance of notification for pension.

8. Counter affidavit filed by respondent No.3.

9. The averments of the counter state that the promotions are for regular employees and not for daily wage workers. The status of the petitioner as on the date of leaving the service was a daily wage worker and not a regular employee of the University. The services of the petitioner as a daily wage worker were regularized on 04.03.1995 by the internal selection committee. The written and oral tests were conducted with prior approval from the Government. Thereafter, the selection matter was not placed before the Executive Council, Finance Committee for Ratification orders. Thus the selection for the post was null and void as no concurrence was obtained from the Government.

10. It is further submitted that Sri N. Srinivasa Rao, Senior Assistant and Sri Ashwaq Ahmed, Junior Assistant are regular employees and not similarly placed persons. Further the petitioner herein is the daily wager and not a permanent employee of the University duly approved by the Government in accordance with statutory rules. Therefore, prayed to dismiss the writ petition.

11. Having regard to the fact that in the earlier round of litigation i.e., W.P.No.13116 of 2011 dated 09.06.2017 this Court has already held that the appointments which were made in the year, 1995 cannot be said to be illegal and since the order has become final, in my considered opinion, the action of the respondents in writing letters to the Government for ratification is unwarranted at this stage. It is nothing but a deemed ratification since he was already paid all the employment benefits during his tenure and his superannuation was already notified as 29.02.2020. Having accepted all these factors now the respondent University cannot take a turn and seek ratification from the Government which is redundant. So, having notified the superannuation in accordance with the directions given in the above writ petition in C.C.No.2811 of 2017 the respondents ought to have regularized the pension and pensionary benefits such as gratuity, encashment of leave along with interest.

12. The respondents have already paid the pension in compliance of the order of this Court. The writ petitioner has already retired from service and he is paid pension, commutation of pension, gratuity and encashment of leave along with interest in terms of pay revision commission. Obviously, the consequential benefits necessarily have to follow without sitting over on technicalities.

13. Hence, this Court is inclined to allow the writ petition and accordingly, the respondents are directed to release the consequential benefits of the writ petitioner upon attaining superannuation. The entire exercise shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

14. Accordingly, the writ petition is allowed. No costs. Miscellaneous Petitions, pending if any, shall stand closed.