
(1997) 03 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 732 of 1995

National Institute of Rural Development and Others

APPELLANT

Vs

K. Ramakrishna Prasad and Another

RESPONDENT

Date of Decision : 19-03-1997

Acts Referred:

Citation : (1997) 6 ALD 580 : (1997) 6 ALT 647

Hon'ble Judges : P.S. Mishra, C.J.;D.H. Nasir, J

Bench : Division Bench

Advocate : R.V. Kameswaran, for the Appellant; S.L. Chennakesava Rao, for the Respondent

Judgement

P.S. Mishra, C.J.—Heard.

2. These appeals arise out of a common judgment by a learned single Judge who has held as follows:

"Thus, as per this rule, persons similar to petitioners but employed after 1-7-1986 will not be entitled to advance increments. But this rule as per Office Memorandum dated 31-7-1986 issued by the Ministry of Personnel, applies only to appointments made on or after 1-7-1986. As the petitioners were re-employed before 1-7-1986, this Office Memorandum does not apply to them.

The claim of the other four petitioners is similar to that of petitioner in W.P.No. 17408 of 1992. In the result, all the five writ petitions are allowed and the impugned orders as confirmed by the appellate authority are quashed and it is declared that petitioners in W.P.Nos. 17408, 17409, 17410, 17411 of 1992 and W.P.No. 323 are all entitled to pay of Rs. 530/-, 308/-, 358/-, 400/- respectively...."

3. Facts, of the case are fully narrated in the impugned Judgment. With reference to W.P.No. 17408 of 1992 which is subject matter of appeal in W.A.No. 750 of 1995, the petitioner has worked as a Subedar Clerk, non- commissioned rank, a

post in the Armed Forces, until he retired on 30-9-1983. According to him, at the time of his retirement he was drawing basic salary of Rs. 575/- per month. On 12-6-1984, he received an Offer of Appointment from the appellant as Upper Division Clerk in the scale of pay of Rs. 330-10- 380-EB-12-500-EB-15-560. In the Offer Appointment it was stated that his pay would be fixed according to the Government of India Rules as applicable to Military pensioners and re-employed in civil service as in force from time to time. It was also stated that he would be entitled to draw pension to which he was eligible provided that the total amount of initial pay plus the gross amount of pension would not exceed the last drawn pay. The Offer of Appointment stipulated that if he was retired before attaining the age of 55 years, pension would be ignored totally in fixing his pay if he was below the rank of Commissioned Officer. It appears, final fixation of pay was not done for nearly one year. On 10-9-1985 the petitioner-respondent requested the appellant to fix the pay. On 29-9-1986 order was passed fixing his pay at Rs. 530/- with effect from 25-6-1984. He was accordingly paid arrears upto 29-9-1986. The fixation of pay, it is recited in the order, was provisional subject to confirmation on receipt of required information from the Pay and Accounts Officer, Ministry of Defence. Apprehending that he would be reduced in pay when fixed after such information, the petitioner-respondent moved this Court in W.P.No. 18338/88 along with other writ petitioners. Pending writ petition, however, the appellant refixed the pay of the petitioner-respondent on 25-4-1990 at reduced pay scale of Rs. 330/- effective from 19-2-1990 and directed for recovery of the over-payment. The petitioner thereupon amended the prayer in the writ petition and sought for quashing of the said office order. Pending disposal of the writ petition, however, the petitioner-respondent obtained stay of recovery of the excess amount paid. The writ petition was ultimately allowed on 13-7-1992 on the ground that no notice was issued to the petitioner-respondent. Subsequently after giving notice to the petitioner- respondent, the appellant vide Office Order No. 353 dated 28-8-1992 refixed the petitioner-respondent's pay at Rs. 330/- as fixed by it earlier on 25-4-1990 and also directed recovery of excess amount paid so far. Petitioner-respondent again, thus, filed W.P.No. 11668 of 1992 which was disposed of at the admission stage with a direction that the petitioner could file appeal within ten days. On 18-12-1992, the appeal preferred by the petitioner was dismissed by the Director General of the appellant. Against the said order, the instant proceedings have been raised. Learned single Judge has reproduced various Government Orders and various orders on the subject from the concerned Ministry of the Union of India as well as Circulars which are made applicable to the employees of the appellant and observed that Circular O.M.No. 8(34) issued by Ministry of Finance did not admit of the interpretation as put forward by the learned Counsel for the appellant that while considering hardship the receipt of pension by the petitioner-respondent from the Army has to be considered and rejected the contention that entitlement to draw Rs. 330/- as the basic pay was in consonance with the pay last drawn by the petitioner-respondent is not acceptable, for, the position in the instant case is different as the same had to apply in the case of persons re-employed after 1-7-1986 as per

4. This Court has the occasion to consider in some details the issue of fixation of pay of Ex. Army Personnel who were re-employed in the Andhra Bank after retirement from the Army in W.A. 1465/1991. The Court in the said case has taken the view that the employer has the right to determine the scales of pay and while giving appointment, to fix pay of any person at the minimum of the basic pay under the Circulars aforementioned and otherwise in the case of persons who are retired from Army. In the said Judgment the Court has observed:

"In the case of appointments by transfer or when it is decided to protect the pay last drawn of a person, who, after retirement, is sought to be recruited, protection is extended to what had last been drawn only for the fitment in the existing scale of pay. When the Bank decided accordingly to fit such ex-servicemen in its existing scale of pay for those who joined before 31-8-1978 it took into consideration the dearness pay which reckoned with the Consumer Price Index. It adopted the said method again in the cases of those who joined the service of the bank after 24-1-1983 as the new Common Consumer Price Index has enhanced the scale of pay in the Bank and was comparable with the pay last drawn by ex-servicemen only when dearness pay was also included in it."

The Court, thus, in the said judgment, after adverting to the various types of ex-servicemen who were re-recruited in the service of the Bank and the employer, intended to protect their pay, indicated how the only entitlement which can be of concern is the protection of the pay last drawn. In the instant case, however, as we have noticed, learned single Judge has not adverted to this aspect of the controversy at all. A provisional fixation, it is obvious, made available to the petitioner-respondent revising the salary per month which later, on response from the Ministry of Defence, was reduced at the minimum of the scale of pay, and with addition of dearness allowance, never affected the pay last drawn by the re-employed person while he was in the service of the Defence. There appears, however, only one reason that the Court can take notice of that when such provisional fixation had been made and the appellant had some reasons to fix the pay of the petitioner-respondent as above, when it proceeded to re-fix, it ought to have made a reference to the Ministry of Defence and the Ministry of Agriculture and the concerned Ministries ought to have taken into account various aspects of the controversy as to the protection of pay last drawn while the petitioner-respondents were in the service of the Defence. While we see no reason thus to sustain the impugned directions in the writ petition, we also see good reason to issue a direction in the writ petition to the respondent (appellant herein) to make a reference of the dispute raised by the petitioners to the Ministry of Defence and obtain its views and decide in consultation with the Ministry of Agriculture and accordingly, if there has been any anomaly in the re-fixation of pay the petitioner-respondents to remove the same strictly in accordance with law.

5. In the result, the writ appeal is allowed. The impugned judgment is set aside. A direction, however, is issued in the writ petition to the respondent (appellant herein) to refer the dispute which has been raised by the petitioner-respondents, to the Ministry of Defence, and to take its opinion as well as the opinion of the Ministry of Agriculture and if there is any anomaly, to resolve the anomaly strictly in accordance with law and not to proceed to make any recovery of any alleged excess payment to the petitioner- respondents until the above is complied with. The appeals are accordingly ordered.