
(2010) 04 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7704 of 2010

The Accounts General (A and E) A.P.

APPELLANT

Vs

A. Nageswara Rao and The Central Administrative Tribunal
Hyderabad Bench

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 4 ALD 275 : (2010) 4 ALT 591

Hon'ble Judges : Ghulam Mohammed, J;G. Bhavani Prasad, J

Bench : Division Bench

Advocate : Ponnamm Ashok Goud Asst Solicitor Gen, for the Appellant; A. Tata Rao Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking to set aside the order dated 01.01.2010 passed by the Central Administrative Tribunal, Hyderabad, in O.A. No. 230 of 2009, whereby and whereunder the Tribunal allowed. The O.A. was filed by the first respondent herein challenging the rejection of his claim for payment of pro-rata pensionary benefits as communicated by the petitioner's letter dated 3/4.02.2009 as illegal and seeking a consequential direction to the petitioner to process the pension of the first respondent and grant pro-rata pension with effect from 12.11.1992 and pay arrears with interest.

2. The case of the first respondent is that he was appointed on direct recruitment as an Auditor on 04.04.1972. He was on rolls of the office of the petitioner from 04.04.1972 to 11.11.1982 afternoon. He passed the "Confirmatory" examination for Auditor in 1973 and was granted an advance increment, he was declared quasi permanent (Q.P.) on 31.03.1975 as per "Gradation List" to end of 31.03.1975. He passed the Subordinate Accounts Service Examination in December, 1977, and was granted Subordinate Accounts Service (SAS) Special Pay. He also passed Revenue Auditor Examination for Auditors and was granted an advance increment. He applied through proper channel for the post of

Accountant in Hindustan Paper Corporation Limited (HPCL), a wholly owned public sector enterprise of the Government of India. The scale of pay of the post of Accountant in HPCL was equivalent to that of a Section Officer in the Indian Audit and Accounts Department. On selection/acceptance by the Corporation, he was relieved on 11.11.1980 afternoon to proceed on foreign service to the Corporation. The first respondent claims that he was allowed to retain his lien on his post and leave salary and pension contributions were paid and received by the Accountant General initially, by the Corporation for sometime and later by the applicant. The first respondent was promoted as Section Officer sometime in March/April, 1982 under the next below rule from the date his next immediate junior was promoted as Section Officer. The Corporation offered to absorb the first respondent in the Corporation and confirm him on permanent basis by November, 1982. The first respondent offered his technical resignation to the office of the petitioner which was accepted with effect from 11.11.1982 afternoon. HPCL confirmed the first respondent in the service of the Corporation by its letter dated 22.04.1983. It is the first respondent's grievance that in spite of orders of Government of India that such of those persons who had put in not less than ten years service on the date of absorption in a public sector undertaking are eligible for pro-rata pensionary benefits for the service rendered in the Government of India, the petitioner processed his case for payment of gratuity only and no pro-rata pensionary benefits were given to him. The first respondent had been making representations which were not being considered. The first respondent relied on the cases of Sri Somi Setty and Sri G.V.B.B. Sarma who also got absorbed in Public Section Undertakings after serving the Government for nearly ten years. The first respondent pointed out that they were granted pro-rata pension after waging a long struggle. He stated that he was senior to Mr. Dattatreya Sarma, junior stenographer of SAS, December, 1977 batch last candidate in OC category who was promoted on proforma basis on 30.06.1982 and therefore, he must have got his "proforma" promotion either on that date or on an earlier date. He stated that declaration of quasi permanency itself is a confirmation of permanency. He had referred circular dated 25.02.1960 according to which normal period of probation in Auditors cadre is one year and he completed the period of probation satisfactorily before the declaration of quasi-permanency. He finally submitted a comprehensive representation dated 20.08.2008 which was also rejected through the order dated 3/4.02.2009 which was challenged in the O.A. Through Impugned order, the Tribunal allowed the O.A. setting aside the order dated 3/4.02.2009 and directed the petitioner to process the pension case of the first respondent, grant pro-rata pension with effect from 12.11.1982 and pay the arrears with interest at applicable rate from 01.04.2009 till the date of payment within a period of three months from the date of receipt of a copy of that order. According to the first respondent, the Tribunal rightly allowed the O.A.

3. The case of the petitioner is that the first respondent was not eligible for pro-rata pension as he was not a permanent government servant at the time of his

absorption in HPCL. He was, therefore, paid the gratuity to which he was eligible. It is stated that the order of Government Service is Temporary, Quasi Permanently Confirmed. The first respondent was only a quasi-permanent employee. The declaration of confirmation/permanent is subject to seniority and availability of substantive vacancies. It is stated that the first respondent himself in his letter dated 02.08.2001 has stated he was not confirmed in the post of Auditor for want of vacancy. Para 7.22 of Manual of Establishment states that all Auditors whether recruited direct or promoted to the Auditor's cadre should pass the Departmental Confirmatory Examination in order to make themselves eligible for confirmation in Auditors cadre. Mere passing the exam does not however entitle an Auditor to confirmation unless his day-to-day work and conduct are satisfactory. Para 7.23 of the Manual states, inter alia, subject to orders regarding reservation of vacancies to certain classes, confirmation in the Auditors Cadre are to be made according to seniority subject to passing the departmental examination. The first respondent has not produced any documents in support of his claim that he was allowed to retain his lien in government service. Since he was not a permanent government servant, the question of allowing him to retain lien did not arise. Gradation list as on 01.03.1982 mention the status of the first respondent as quasi-permanent. The first respondent had not been issued any confirmatory orders. According to the petitioner, as per existing rules, confirmation is delinked with the availability of the posts with effect from 01.04.1984 and these rules are not applicable to the cases prior to 01.04.1984 and hence, cannot be quoted in support of the first respondent. The letter of C and AG dated 20.01.2004 states that pro-rata pension may be allowed to Public Sector Undertakings/Autonomous Body absorbees who fulfilled the following conditions irrespective of the fact whether they got absorbed in the Organization in Public Interest or went there on their own volition with effect from 16.06.1967.

(i) had put in not less than 10 years qualifying service.

(ii) were holding a permanent post or substantive post before being appointed in a Public Sector undertaking/Autonomous Body.

According to the petitioner since the first respondent was not in permanent service and was a quasi-permanent employee, he was not entitled for pro-rata pension and accordingly his case cannot be considered as he was not a permanent government servant and was not holding a permanent post or a substantive post. Therefore, the Tribunal erred in allowing the O.A.

4. The Tribunal, considering the facts and circumstances, observed that the petitioner has not denied that the confirmation procedure has been simplified in O.M. dated 28.03.1988; that the entire provision relating to quasi permanency has been deleted in the above O.M.; that since the first respondent had put in more than ten years of satisfactory service, technical view that instructions in the O.M. will come into effect only from 01.04.1988 cannot be reasonable; that it is settled that quasi permanent government servants shall be deemed to have become permanent when they serve the government for a long period and they

shall be entitled to pensionary benefits. Accordingly, the Tribunal allowed the O.A.

5. Learned Assistant Solicitor General appearing for the petitioner submits that the O.M. dated 28.03.1988 is not applicable before the date of its issuance and therefore, the impugned order is liable to be dismissed. This contention cannot be accepted in view of the observations of the Tribunal referred to above.

6. Learned Counsel for the first respondent submits that the Tribunal, relying on the decision of the SC in *Yashwanth Hari Katakhar v. Union of India* 1995 (8) SLR 56 whereby applicability of pensionary benefits in similar situation was considered, rightly allowed the O.A.

7. The Supreme Court in *Yashwanth Hari's* case held as under:

Dr. Anand Prakash, learned Senior Advocate appearing for the Union of India, has contended that on 7.3.1980 when the appellant was prematurely retired he had put in 18-1/2 years of quasi-permanent service. According to him, to earn pension it was necessary to have a minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18-1/2 years. It would be a travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on 7.3.1980 after serving the Government for 18-1/2 years (more than 10 years of permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs.

8. Having heard the Learned Counsel for both the parties, having perused the material on record and in view of the facts and circumstances of the case, it is seen that the petitioner denied pro-rata pension to the first respondent only on the ground that he was not a permanent government service but a quasi permanent employee and that as per the decision of the Supreme Court in *Yashwanth Hari's* case, quasi permanent government servants when they served the government for a long period, they shall be entitled to pensionary benefits. Since the first respondent had put in more than ten years qualifying service, he is entitled for pro-rata pension. In the circumstances, the Tribunal rightly allowed the O.A. and we do not see any merit in the writ petition.

9. The Writ Petition is accordingly dismissed. There shall be no order as to costs.