

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE C. PRAVEEN KUMAR
W.A. No. 47 of 2021

(Taken up through video conferencing)

The State of Andhra Pradesh,
represented by its Principal
Secretary, Tribal Welfare
Department, Block No. 3,
Secretariat, Velagapudi, Guntur
District and another.

...Appellants/
Respondents

Versus

M. Raja Gopala Naidu, S/o. Late
Akku Naidu, Aged about 61
years, Occ: Superintending
Engineer (Retd.,) Tribal Welfare
Department, Government of
Andhra Pradesh, R/o. Flat No.
203, Bujjulu Towers, Padamata
Lanka, Back side of Eenadu,
Vijayawada, Krishna District.

...Respondent/Writ Petitioner

Counsel for the Appellants : Mr. Bheema Rao
G.P., for Services -I.

Counsel for Writ Petitioner : Mr.K.Satyanarayana Murthy

Date of hearing : 03.03.2021

Date of pronouncement : 22.03.2021.

JUDGMENT

(Per C. Praveen Kumar, J)

1) Aggrieved by the Order, dated 03.03.2020, passed in
W.P. No.1514 of 2020, the State of Andhra Pradesh,
represented by its Principal Secretary, Tribal Welfare

Department, and the Engineer-in-Chief, Tribal Welfare Office, preferred the present writ appeal.

2) The Respondent/Writ Petitioner filed the above Writ Petition seeking issuance of Writ of Mandamus to declare the action of the Respondents in not concluding the proceedings issued vide charge memos and show-cause notices of the 1st respondent in Memo No. B3/4372/2008 dated 28.11.2008, memo No.B3/6807/2008, dated 09.02.2009, notices vide memo No.14343/TW.Ser.II-2/2006, dated 15.04.2009, memo No.4373/TW.ser.II-2/2007-3 dated 12.05.2009, and memo No. 13111/TW.ser.II-2/2013-3 dated 26.05.2014, G.O.Rt. No.286 TW.Ser.A2 Dept. dated 03.07.2015, G.O.Rt. No.510.TW (Ser.A1) Dept, dated 06.12.2017, G.O.Rt. No.447.TW (Ser.A1) Dept, dated 18.10.2017 as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India, and also contrary to the G.O.Ms. No.679 dated 01.11.2008 and G.O.Ms. No. 100 dated 27.06.2018, and the judgment of the Hon'ble Apex Court, and consequently direct the Respondent authorities to drop further action on all charges against the Petitioner and pay retirement benefits including gratuity of Rs.12.00 lakhs and other consequential benefits.

3) The factual matrix of the case are as under:

(i) The Petitioner was appointed as Assistant Engineer on 21.01.1983 by the Project Officer, ITDA Parvatipuram, Vizianagaram District and later promoted to the post of Deputy Executive Engineer in the year 1999. Subsequently, on 01.04.2006 he was promoted as Executive Engineer as per seniority-cum-meritorious service and worked in Tribal Welfare Division, Srisailam, up to 15.08.2007.

(ii) After working as In-charge Superintending Engineer, Tribal Welfare Department, he retired from service on attaining the age of superannuation vide G.O.Rt. No. 148 Social Welfare (TW.Ser.A1) Department, dated 30.04.2018. It is stated that, though he retired from service, the 1st Respondent released only provisional pension of 75% vide G.O.Rt. No. 276, Social Welfare (TW.Ser) Department, dated 23.08.2018, instead of full pensionary benefits on the ground of charges and show cause notices pending against him.

(iii) It is stated that, though replies to the two charges and two show-cause notices were given 10 years prior, and that for the four charges replies were given one year and five months ago to the respondent authorities, but no action has been initiated till date. It is stated that, all the charges / show cause notices relate to minor procedural lapses and no

financial implications are involved. The G.O.Ms. No. 679, dated 01.11.2008, was issued to complete enquiries in respect of disciplinary cases within a period of three / six months by taking into consideration the nature of charge(s) i.e., minor/ major, but the same are not completed.

(iv) Relying on the judgments rendered by the Hon'ble Supreme Court in ***State of A.P. v. N. Radhakishan***¹ and ***P.V. Mahadevan v. MD. T.N. Housing Board***², the counsel for the Writ Petitioner/Respondent submits that, the charge memo itself is liable to be quashed in view of inordinate delay of 10 years in completion of departmental enquiries in the absence of any explanation by the respondent employer. As the above judgments squarely covers the case of the Writ Petitioner and also the guidelines issued under various G.O's fixing time limit for expeditious completion of enquiries, filed the writ petition seeking the aforesaid prayer.

(v) Vide Order, dated 03.03.2020, the learned Single Judge of this court disposed of the Writ Petition holding as under:

“Learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court of India reported between P.V.Mahadevan Vs. Md.T.N.Housing Board¹, wherein, the Hon'ble Apex Court held that the charge memo itself should be quashed on the basis of the delay. At this stage, this Court is not going into the merits of the matter,

¹ (1998) 4 SCC 154

² (2005) 6 SCC 636

but this Court feels as the petitioner has retired on superannuation on 30.04.2018 and more than two years approximately passed, he has suffered enough. Therefore, there shall be a direction to the respondents 1 and 2 to pay all the eligible retirement benefits of the petitioner including the gratuity without reference to the pendency of the charge memo etc., within a period of four (4) weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No order as to costs.”

4) Challenging the said Order, the present appeal came to be filed by the State.

5) Sri. Bheema Rao, learned Government Pleader for Services, would contend that as there are number of proceedings pending against the Writ Petitioner, the Order of the learned Single Judge in directing ‘the respondents 1 and 2 to pay all the eligible retirement benefits of the petitioner including the gratuity without reference to the pendency of the charge memo etc., within a period of four (4) weeks from the date of receipt of a copy of this order’ would be improper and incorrect. He further pleads that disciplinary proceedings initiated against the Writ Petitioner could not be completed due to dislocation of files at the time of bifurcation of the State. Having regard to the nature of the allegations made against the Writ Petitioner, he would submit that the two judgments relied upon by the learned Counsel shall not apply to the facts of the case. He further pleads that if benefits as sought for are granted, it would be difficult to recover the

same, if the allegations stand proved in the departmental proceedings.

6) On the other hand, the learned Counsel appearing for the Writ Petitioner submits that the order under challenge warrants no interference. According to him, though four weeks time has been granted to Respondent No. 1 and 2 to pay all the eligible retirement benefits of the petitioner including the gratuity, but till date no effort was made to comply with the order. According to him, though on the basis of the report of 1st Respondent, the government framed charges in November 2008 and the Petitioner submitted his explanation to the charge memo on 06.07.2009 denying the charges, till date no orders are passed.

7) The consequences of departmental proceedings being not completed within a reasonable time came up for consideration before the Hon'ble Apex Court in two judgments referred to above in **N. Radhakishan** case (1st supra) and **P.V. Mahadevan** case (2nd supra).

8) As seen from the order impugned, the learned Single Judge only directed the authorities to pay the retirement benefits to which the Petitioner is entitled to, but did not quash the departmental proceedings on the ground of delay. The same is not challenged by the delinquent employee. Having regard to the above, it is now to be seen whether the

authorities were justified in withholding the retirement benefits.

9) As stated earlier, the ground urged by the Appellants Counsel is that, there are number of proceedings pending against the Petitioner and it would be difficult for Respondent Nos. 1 and 2 to pay all the eligible retirement benefits of the petitioner including the gratuity without reference to the pendency of the charge memo etc., within a period of four (4) weeks from the date of receipt of a copy of this order. But, as seen from the record, these proceedings were initiated in the year 2008 and the last one is in the year 2017. There is no justification for the Appellant counsel to contend that the delay in completing the proceedings was due to number of cases. As stated earlier, these proceedings were initiated against the Petitioner over a period of time and the last one was in the year 2017.

10) Having regard to the law laid down in the two judgments of the Apex Court, referred to above and as the Appellants have miserably failed to explain the delay in completing the proceedings and if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it, more so when it is not the case of the Appellants that the Writ Petitioner was responsible for the delay in conducting the proceedings.

11) In view of the Order passed by this court in W.A. No. 45 of 2021, we are of the view that it is a fit case where the Writ Petitioner is entitled for the reliefs as ordered by the learned Single Judge.

12) Accordingly, the Writ Appeal is dismissed. No order as to costs.

13) All the pending miscellaneous applications; if any, are closed.

ARUP KUMAR GOSWAMI, CJ

C. PRAVEEN KUMAR, J

Dt. 22.03.2021.
SM..

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SM..