

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.28114 OF 2015

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus declaring the action of the respondents in not paying the voluntary retirement benefits, such as, gratuity, ex-gratia and earned leave as per G.O.Ms.No.16, Public Enterprise (PZE.III) Department dated 22.03.2001, from the date of initial appointment on daily wage basis, as illegal, arbitrary and unconstitutional; and for a consequential direction to the respondents to pay the voluntary retirement benefits with interest @ 12% per annum from the date it is payable.

2. The husband of the petitioner herein, Sri B.Srinivasulu Reddy was appointed as Contract Labour/NMR/Daily Wage Worker in the Milk Products Factory, Chittoor, which is one of the unit of the 3rd respondent-organization on 11.05.1985 and his service was regularized on 20.04.1998 in the time scale pursuant to the direction given in W.A.Nos.1426, 1427 and 1525 of 1987 dated 31.10.1996 and W.A.No.15236 of 1994 dated 06.04.1998. While

so, the Principal Secretary, Public Enterprise Department, Government of Andhra Pradesh issued G.O.Ms.No.16 dated 22.03.2001 framing consolidated guidelines to the employees of public sector undertakings/co-operative institution opting for voluntary retirement scheme and the said G.O. made applicable to the 3rd respondent-organization also and as per the said G.O., an employee opting for voluntary retirement is entitled for terminal benefits as specified in clause No.7 of the G.O., which is as follows:

TERMINAL BENEFITS: The terminal benefits as statutorily due will be paid as per the eligibility.

- i) The balance in P.F. account payable as per the E.P.F. Regulations.
- ii) Cash Equivalent to of accumulated Earned Leave as per the Rules of the Enterprise.
- iii) Gratuity as per the provisions of the Payment of Gratuity Act 1972 or other applicable Rules of the Organization.

EX-GRATIA BENEFITS:-

- 1) An employee is regular or permanent, whose request for VRS is accepted would be entitled to an Ex-gratia payment equivalent to one and half months emoluments (Pay + DA) last drawn, for each completed year service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before

normal date of retirement whichever is less, subject to a minimum of Rs.30,000/- (Rupees thirty thousand only) months of service left before normal date of retirement whichever is less, subject to a minimum of Rs.30, 000/- (Rupees thirty thousand only).

One month/3 months notice pay as per the service conditions applicable.

If the application of an employee opting for VRS is accepted instantaneously and payment is arranged by the management on the same, the concerned individual would be entitled for payment of Ex-gratia along with pay for notice period.

Payment of Ex-gratia for services rendered or left over service (Which ever is less), as well as the mount payable for notice period should, however, not exceed the basic pay + DA. That would have been paid to the employee who has opted for VRS till the date of his superannuation.

Where the management takes time to take a decision on the acceptance of application submitted by employees for VRS and allows the notice period to lapse or the employer concerned has drawn full salary during the notice period served by him, the pay for notice period would not be admissible as the employee has already drawn the salary for the notice period.

In addition the employee and his family would also be entitled to travel fare of the admissible class to the his native place within the state of Andhra Pradesh, which will be verified reference to his LT.C. file.

ii) For Calculation of EX-gratia under the scheme the fraction of the service, viz., 6 months and above will be treated as one year and service of less than 6 months will be ignored.

iii) E.O.L. up to a period of one year will be considered for calculation, of Ex-gratia benefits provided the service regulation of the concerned organization permit sanction of such E.O.L.

3. In pursuance of the said G.O., the husband of the petitioner and some other employees have applied for voluntary retirement to the 3rd respondent-organization. The 3rd respondent-organization, vide proceedings No.105/Admn.I/2002 (VRS) dated 31.08.2002, accepted for voluntary retirement and, accordingly, the husband of the petitioner has relieved from his employment. The 3rd respondent has calculated the voluntary retirement benefits from the date of regularization of service and not from the date of initial appointment which is mentioned in the above table. Therefore, the action of the 3rd respondent is challenged in this Writ Petition in not paying the terminal benefits from the date of initial appointment.

4. The petitioner herein relied on the judgment of the Hon'ble Apex Court in the case of *S.K.Dua v. State of Haryana and another*¹, wherein it is held that in the absence of any statutory rules, administrative instructions or guidelines, an employee can claim interest under Part-III of the Constitution of India relying on Articles 14, 19 and 21 of the Constitution of India. The petitioner also relied on another judgment of the Hon'ble Apex Court in the case of *Gammon India Limited v. Niranjan Dass*² for the very same proposition for entitlement of the interest.

5. It appears from the record that the sole-petitioner, who is the wife of the employee, died and an application was filed for impleadment of her legal representative as petitioner Nos.2 and 3 in the Writ Petition and the said application is allowed vide order dated 10.11.2022 in I.A.No.1 of 2022.

6. Per contra, learned counsel for the respondents would submit that initially, dairying activities in the State of Andhra Pradesh were carried under the Forest and Rural Development Department and in 1974, the Government have registered the

¹ (2008) 3 SCC 44

² AIR 1984 SC 500

Andhra Pradesh Dairy Development Corporation Limited (hereinafter called, 'the APDDC Limited') under the Indian Companies Act and later, through G.O.Ms.No.551, Forests and Rural Development Department dated 10.12.1980, the Government have registered the Andhra Pradesh Dairy Development Cooperative Federation Limited (hereinafter called, 'the APDDCF Limited') under the Andhra Pradesh Cooperative Societies Act, 1964. It is also contended that all the infrastructures including the dairies established in the State till that date were brought under the ambit of the APDDCF Limited and all the employees working in the dairying plants and APDDC Limited prior to registration of the APDDCF Limited were brought under the administrative control of the APDDCF Limited. Though the husband of the petitioner appointed in the year 1985, his services were regularized with effect from 20.04.1998. Consequent to the regularization, the deceased-employee was treated as regular employee and at no point of time, the deceased-employee questioned the action in regularizing his service in 1998 till the date of retirement under voluntary retirement scheme on 31.08.2002. The unit of the 3rd respondent is under liquidation and the liquidation process was not yet completed and the term of the liquidator is being extended by the

Government from time to time and is in vogue till 26.07.2023. The deceased-employee has opted for retirement under voluntary retirement scheme and he has retired from service with effect from 31.08.2002 and received benefits of the voluntary retirement scheme without any protest and therefore the claim made by the deceased-employee after lapse of 13 years claiming for payment of retirement benefits from the date of initial appointment in pursuance to the G.O.Ms.No.16 dated 22.03.2001 is untenable and prayed to Writ Petition on the ground of laches.

7. It is the main contention of the respondents that the deceased-employee has accepted the retirement benefits without any protest and they have no legal right to claim at this juncture and also contended that there are laches on the part of the deceased-employee in approaching the Court for the relief.

8. The Writ Petition was filed by the employees for regularization of their services on the abolishment of contract labour and the composite High Court has allowed the Writ Petitions ordering that the workmen shall be regularized and paid back wages and the same is under challenge in W.A.Nos.1426, 1427 and 1525 of 1987 and the batch of Writ Appeals were disposed of by a

Division Bench and it is ordered therein that the management shall pay the workmen in question 50% of their back wages from the date of the order passed by the learned Single Judge. The Division Bench in so far as the date of regularization is concerned, held that the workmen are entitled to claim the benefits from the date of their appointment including terminal benefits from the date of regularization and the said order has become final. In view of the order in W.A., the employee is entitled for the benefits from the date of his appointment for the purpose of retirement benefits.

9. Learned counsel for the petitioners relied on the judgment of the High Court of Calcutta in the case of *Purna Chandra Mondal v. State of West Bengal and others*³ for the proposition of delay and laches and for payment of interest. In the said judgment, the High Court of Calcutta, following the judgment of the Hon'ble Apex Court in the case of *Union of India v. Tarmen Singh*⁴, has observed that if the issue relates to payment of re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. It is further observed that the pension is no more considered to be a bounty to be handed

³ 2018 SCC Online Cal 7366

⁴ (2008) 8 SCC 648

out by the State at its whim and an employee has a right to receive pension upon retirement and if payment of such pension is delayed, the retired employee is entitled for interest for such delayed payment.

10. Therefore, in view of the above judgment and as there is delay in payment of terminal benefits by the respondents, the respondents are directed to pay interest @ 6% per annum.

11. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs of the Writ Petition.

As a sequel, interlocutory applications pending, if any, in this Writ Petition shall stand closed.

JUSTICE TARLADA RAJASEKHAR RAO

Date: 23.12.2022

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