

**HON'BLE SRI JUSTICE B. KRISHNA MOHAN**

**WRIT PETITION No.3309 OF 2022**

**ORDER:**

Heard the learned counsel for the petitioner and the learned Government Pleader for Services-III for the respondents.

2. This writ petition is filed questioning the proceedings of the respondent No.4 in Memo No.3689/TE.A1/2017 dated 27.01.2021 rejecting for restoration of full pension to the petitioner herein.

3. The counsel for the petitioner submits that the petitioner initially worked as Lecturer in Mechanical Engineer, Government Polytechnic, Vijayawada between 1958 to 1983 and he was absorbed subsequently in Bharat Heavy Plates and Vessels which is a Government of India undertaking with full pensionary benefits for 25 years of services rendered in the Government of Andhra Pradesh. The petitioner retired from service and made a representation on 30.05.2018 stating that he worked as Lecturer in Mechanical Engineer in the Department of Technical Education for about 25 years from 27.10.1958 to 28.10.1983 and he was absorbed in Bharat Heavy Plates & Vessels, Visakhapatnam, with effect from 28.10.1983 with all pensionary benefits vide G.O.Ms.No.58, LEN & TE Department, dated 21.02.1985. The counsel for the petitioner further submits that the petitioner is drawing 1/3<sup>rd</sup> portion of the pension as per G.O.Ms.No.168, Finance & Planning Department, dated 05.10.1999 and seeks restoration of full pension in terms of Office Memorandum F.No.4/34/2002-P&PW(D).VOL.II

dated 23.06.2017 of the Government of India. The counsel for the petitioner submits that the Commissioner of Technical Education of Government of Andhra Pradesh, Vijayawada also addressed a letter to the respondent No.4 dated 24.02.2020 requesting the respondent No.4 to issue necessary orders in terms of the Government of India vide Office Memorandum, F.No.4/34/2002-P&PW(D).Vol.II, dated 23.06.2017 for restoration of full pension to the absorbees of Public Sector Undertakings much less for the case of the petitioner herein.

4. The counsel for the petitioner further submits that the Government of Andhra Pradesh vide G.O.Ms.No.102, dated 24.05.2011 decided to adopt the orders issued by the Government of India dated 14.07.1998 and 19.01.2010 in respect of Government employees who were absorbed in public sector undertakings/ autonomous bodies for payment of full pension, dearness relief and sanction of family pension on par with the State Government Pensioners. The counsel for the petitioner further refers to the Office Memorandum issued by the Government of India dated 23.06.2017 wherein restoration of full pension of absorbed pensioners was ordered in view of the orders of the Hon'ble Supreme Court of India in Civil Appeal No.6048 of 2010 and Civil Appeal No.6371 of 2010. He also further refers to the Corrigendum issued by the Government of India dated 21.07.2017 extending the above said benefit to the similarly placed absorbee pensioners.

5. The counsel for the petitioner further submits that when the same was not extended to the case of the petitioner earlier, he filed O.A.No.432 of 2019 and there was an interim order passed by the erstwhile Tribunal on 28.03.2019. Upon non implementation of the same, the petitioner filed another writ petition before this court in W.P.No.14281 of 2019 and the same was disposed for implementation of the orders of the Tribunal vide order dated 16.10.2019. Consequently, the impugned order has been passed by the respondent No.4 dated 27.01.2021. Aggrieved by the same, the present writ petition was filed. As per the above said proceedings of the Government of Andhra Pradesh and as well as the office memorandum issued by the Government of India from time to time, the petitioner is entitled for full pension and other benefits.

6. On the other hand, the learned Government Pleader submits that the petitioner is entitled only for 1/3<sup>rd</sup> portion of the pension as per the existing Rules issued in G.O.Ms.No.168, Finance & Planning (FW-Pen.1) Department, dated 05.10.1999 and until and unless the Government of Andhra Pradesh adopts the Office Memorandum issued by the Government of India dated 26.03.2017, the petitioner would not be entitled for drawing the full pension as absorbee pensioner.

7. Insofar as the decision of the Hon'ble Supreme Court, as mentioned above, the learned Government Pleader submits that the order was passed in respect of the Central Government employees,

who worked as Deputy Controller General of Accounts and who was governed by the Central Civil Services (Pension) Rules, 1972, whereas the petitioner herein worked as Lecturer in Government Polytechnic, Vijayawada under the control of Government of Andhra Pradesh to whom the revised Andhra Pradesh Pension Rules would only apply.

8. Having regard to the above said facts and circumstances and upon consideration of the rival submissions of the counsels, it is to be seen that there is no dispute with regard to the service particulars of the petitioner who worked initially for a quite number of years as Lecturer in the Government of Andhra Pradesh, then absorbed in Government undertaking with effect from 1983 and retired as an employee in Bharat Heavy Plates and Vessels and after such retirement, made a representation seeking for sanction of the pension on par with absorbee pensioners. A reading of the impugned proceedings dated 27.01.2021 shows that since the Office Memorandum of Government of India dated 26.03.2017 was not yet adopted by the Government of Andhra Pradesh, the petitioner was not eligible for full pension as absorbee pensioner. But the said proceedings do not dispute with regard to the status of the petitioner who worked initially in the Government of Andhra Pradesh and then went to the Bharat Heavy Plates and Vessels for rendering his remaining service who retired therein subsequently similarly on par with absorbee pensioners of Public Sector Undertakings.

9. As stated supra, the Government of Andhra Pradesh adopted the Office Memorandum issued by the Government of India and benefit was given to the absorbee pensioners enhancing the quantum of pension in terms of the Central Government circulars. Though the Office Memorandum dated 23.06.2017 and the subsequent Corrigendum issued by the Government of India dated 21.07.2017 are very much available and the judgments of the Supreme Court confirming the judgment of the Madras High Court wherein it was held that the absorbee pensioners are entitled for drawing full pension, denying the same for the sake of the petitioner by way of impugned proceedings is not justifiable and it is contrary to the above said proceedings and the orders of the Hon'ble Supreme Court.

10. Accordingly, the writ petition is allowed and the impugned proceedings of the respondent No.4 dated 27.01.2021 is set aside directing the respondent Nos.4 and 5 to extend the benefit of Office Memorandum of the Government of India dated 23.06.2017 and the subsequent Corrigendum dated 21.07.2017 in the case of the petitioner and release the full pension and other consequential benefits as per his entitlement under law specifically within a period of four months from the date of receipt of a copy of this order. No costs.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

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**JUSTICE B. KRISHNA MOHAN**

April 26, 2022/ *LMV*

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