

**THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

WRIT PETITION No.5018 of 2021

(Taken up through video conferencing)

ORDER: (Per Hon'ble Sri Justice Joymalya Bagchi)

Department has assailed the order dated 12.12.2017 in O.A.No.654 of 2016 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short, 'the Tribunal'), whereby and whereunder the decision of the District Audit Officer in returning the pension proposal of the respondent-employee vide letters dated 17.12.2014 and 21.12.2015 has been set aside and the respondent-employee has been held to be entitled to pension under the Andhra Pradesh Revised Pension Rules, 1980 (for short, '1980 Rules').

We have considered the materials on record including the subsequent events.

Learned Government Pleader for Services-I fairly submits that the respondent-employee has since expired and his wife had taken out a petition for implementation of the order passed by the Tribunal in W.P.No.14471 of 2019 which came to be disposed of on 25.10.2019 directing the department to implement the order of the Tribunal within three months from the date of receipt of a copy of the order. Subsequently, the present writ petition has been filed against a dead person.

Under such circumstances, we are of the opinion that the writ petition is not maintainable on such score alone.

At this stage, learned Government Pleader for Services-I seeks leave to amend the writ petition and bring legal

representatives of the deceased employee on record and examine the impugned order on merits.

Hence, we have examined the order of the Tribunal on merits. We find that the deceased-employee was employed on a temporary basis from 1986 against regular vacancy on being sponsored by employment exchange. He finally retired on 31.05.2014 after putting in 25 years of service. Upon superannuation his pension proposal was submitted by the Deputy Educational Officer, Nellore District, but the same was returned by Audit Officer vide letter dated 16.07.2014 wherein it was observed as he had not been appointed in regular time scale of pay till 17.12.2014, he would fall under the Contributory Pension Scheme (CPS) which came into force on 01.09.2004. Aggrieved by such decision, petitioner approached the Tribunal and the Tribunal after referring to Rule 13 of 1980 Rules held that the petitioner, who was in continuous service from 1986, will be governed by the Andhra Pradesh Revised Pension Rules, 1980 and not the new contributory pension scheme introduced on and from 01.09.2004. We are of the view that the order of the Tribunal is well merited and does not call for interference. Accordingly, we dismiss the writ petition both on merits as well as on the score of non-maintainability being instituted against a dead person.

In view of the aforesaid, the Writ Petition is dismissed. No order as to costs. As a sequel, Miscellaneous Petitions, if any, pending in the Writ Petition shall stand closed.

JUSTICE JOYMALYA BAGCHI

JUSTICE A.V.SESHA SAI

Date: 09.03.2021
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