



IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE SUBBA REDDY SATTI

WRIT APPEAL No. 196 of 2022

(Proceedings through physical mode)

The State of Andhra Pradesh,
rep.by its Principal Secretary,
Home Department, Secretariat,
Velagapudi, Guntur District
and others.

.. Appellants

Versus

Miriyala Jagannadham
S/o. Venkateswarlu, aged 67 years,
Retired Assistant Sub-Inspector of Police,
Home Department, Guntur r/o. Flat No.404,
Near Current Office centre,
Palakaluru road, Gujjanagundla centre,
Guntur District.

..Respondent

Counsel for the Appellants

: G.P. for Services-I

Counsel for Respondent

: Mr. Ramalingeswara Rao Kocharla Kota

JUDGMENT (ORAL)

Dt: 16.02.2022

(per Prashant Kumar Mishra, CJ)

This writ appeal is posted for hearing on admission. However, with the consent of learned counsel for both the parties, we proceeded to decide the matter finally.

2. The writ appeal is preferred against the order dated 19.03.2021 passed in W.P.No.3421 of 2021. By the said order, the learned single Judge has allowed the writ petition preferred by the writ petitioner seeking issuance of writ of mandamus declaring the action of the respondents in not releasing the encashment of earned leave amount and 80% of retirement gratuity, on account of pendency of C.C.No.39 of 2011 on the file of the Special Judge for SPE & ACB Cases, Vijayawada,



in terms of G.O.Rt.No.1097 Finance and Planning (FW Pen.I) Department, dated 22.06.2000, as illegal, arbitrary and discriminatory, and for a consequential direction to the respondents to release encashment of earned leave amount along with 80% of retirement gratuity of the writ petitioner in terms of similar orders dated 14.02.2017 in W.P.No.30443 of 2016 and dated 24.02.2020 in W.P. No.2545 of 2020.

3. The writ petitioner retired from service on attaining the age of superannuation on 31.10.2011 while he was serving as Assistant Sub-Inspector of Police. During his continuation in the service, the officials of Anti-Corruption Bureau registered a trap case against him on 30.07.2021, and thereafter, a charge-sheet was filed against him which is now registered as C.C. No.39 of 2011 pending trial in the Special Court for SPE and ACB Cases, Vijayawada. Since on account of pendency of criminal case, the petitioner was not paid gratuity nor allowed to seek encashment of Earned Leave, he has submitted representation dated 09.01.2020 on the strength of G.O.Rt.No.1097 dated 22.06.2000. The representation was kept pending, therefore, the writ petition was preferred seeking the aforesaid relief.

4. The official respondents defended the same on the strength of clause (c) sub-rule (1) of Rule 52 of the A.P. Revised Pension Rules 1980 (for short, "the Rules, 1980"). According to them, G.O.Rt.No.1097 dated 22.06.2000 has no application where the gratuity is withheld due to pendency of judicial proceedings.

5. Learned Government Pleader for Services-I reiterated the stand of the official respondents and would take us to the text of Rule 52(1)(c) of the Rules, 1980 as well G.O.Rt.No.1097 dated 22.06.2000. He would submit that learned single Judge has not considered the application of



G.O.Rt.No.1097 in proper perspective nor Rule 52(1)(c) has been given effect in its true sense.

6. On the other hand, learned counsel for the writ petitioner would support the impugned order. He would also refer to the order passed by the Division Bench of common High Court in W.P. No.30443 of 2016. According to him, proviso to clause (c) of sub-rule 1 of Rule 52 of the Rules, 1980 clearly empowers the official respondents to release 80% of the eligible retirement gratuity despite pendency of the judicial proceedings.

7. At the outset, it would be appropriate to reproduce clause(c) of sub-rule (1) of Rule 52 of the Rules, 1980, hereunder:

"52. Provisional pension where departmental or judicial proceeding may be pending :-

(1) (a)

(b)

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders:

Provided that where departmental proceedings have been instituted under Rule 9 of Andhra Pradesh Civil Services (Control Classification and Appeal) Rules, 1991, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 9 of the said rules, except the cases falling under sub-rule (2) of Rule 22 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant.

Provided further that notwithstanding anything contained in clauses (a), (b) and (c) of sub-rule (1) above, where a conclusion has been reached that a portion of pension only should be withheld or withdrawn and the retirement gratuity remains unaffected in the



contemplated final orders, the retirement gratuity can be released upto 80%.”

8. Extending the import of proviso to clause (c) of sub-rule (1) of Rule 52 of the Rules, 1980, the Government of Andhra Pradesh issued G.O.Rt.No.1097 dated 22.06.2000. The relevant part of the G.O.Rt.No.1097 is extracted hereunder:

"C. Retirement Gratuity:

According to clause(c) of sub-rule (1) of Rule 52 of the Andhra Pradesh Revised Pension Rules, 1980, no Gratuity shall be paid until the conclusion of the departmental or judicial proceedings and issue the final orders. According to the proviso to the above said Rule, where Departmental Proceedings have been instituted under Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 9 of the said Rules, except the cases falling under sub-rule (2) of Rule 22 of the said Rules, the payment of Gratuity shall be authorised to be paid to the Government Servant. It is also further provided in the said Rule that where a conclusion has been reached that a portion of pension only should be withheld or withdrawn and the Retirement Gratuity remains unaffected in the contemplated final orders, the Retirement Gratuity can be released upto 80% of the eligible Retirement Gratuity.”



9. A joint reading of clause (c) of sub-rule (1) of Section 52 of the Rules, 1980 along with G.O.Rt.No.1097 dated 22.06.2000 would make it clear that the proviso appended to clause (c) concerns a situation where the retired Government Servant is undergoing departmental proceedings. The proviso does not deal with a situation where the retired Government Servant is facing judicial proceedings. While the first part of clause(c) of sub-rule (1) of Rule 52 of the Rules, 1980 provides that no gratuity shall be paid until the conclusion of departmental or judicial proceedings or issue of the final orders, the proviso enables the Government to release 80% of the eligible gratuity in appropriate cases, where the retired Government Servant is facing the disciplinary proceedings. However, the said enabling proviso has not dealt with a situation where the retired Government Servant is facing judicial proceedings.

10. The case decided by the Division Bench of common High Court in W.P. No.30443 of 2016 was dealing with the prayer of a retired Government Servant for release of leave encashment. It was not dealing with the prayer for release of 80% of gratuity. The judgment in the matter of ***R. Veerabhadram vs. Government of A.P.*** reported in ***(1999) 9 Supreme Court Cases 43*** referred by the learned single Judge clearly holds that by virtue of Rule 52(c) of the Rules, 1980, there is an express power empowering the Government to withhold gratuity during the pendency of any judicial proceedings against the employee. Even though the said judgment was rendered before issuance of G.O.Rt.No.1097, the fact remains that there is no amendment in the main part of clause (c) of sub-rule (1) of Rule 52 of the Rules, 1980. As we have mentioned earlier, the proviso only concerns a situation where the employee is facing disciplinary proceedings and not when he is



facing judicial proceedings. In our considered view, the judgment in the case of ***R.Veerabhadram*** (supra) would still hold in a case where the employee is facing judicial proceedings.

11. Learned counsel for the writ petitioner submits that the petitioner is entitled for leave encashment. To this extent, learned State counsel would not object to the prayer because, according to him, the judgment rendered by the Division Bench in W.P. No.30443 of 2016 deals with encashment of leave and moreover, clause(c) of sub-rule(1) of Rule 52 of the Rules, 1980 deals with gratuity and not with leave encashment.

12. For the foregoing discussion, the said part of the impugned order passed by the leaned single Judge allowing payment of 80% of the retirement gratuity to the writ petitioner is set aside. However, we observe that the writ petitioner is entitled to leave encashment.

13. Accordingly, the writ appeal is allowed in part, modifying the order of the learned single Judge to the above extent. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

SUBBA REDDY SATTI, J

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