



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE EIGHTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA
WRIT PETITION NO: 18793 OF 2020

Between:

1. Kasi Raju, S/o. Lava Raju,
Aged about 67 years, Occ Retd. Sub-Staff,
R/o Door No.4-25, Rameswaram, PeddapudiMandal, East Godavari
District.
2. Katra JanardhanRao , S/o. ChinnaVenkanna, Aged about 65 years, Occ
Retd. Sub-Staff, R/o. Tumlapalli, AllavaramMandal,AmalapuramTaluga,
East Godavari District.
3. Madeti Venkat Reddy, S/o. Ramaswamy, Aged about 65 years, Occ Retd.
Sub-Staff, Rio. Katrenikona, YenammaCheruvu, KatrenikonaMandal,
East Godavari District.
4. Polimarthi BhimaRao , Sio Musalaiah,
Aged about 64 years, Occ Retd. Sub-Staff, Rio. Lolla Village,
KothapetTalucia,
East Godavari District.
5. Rongala Tata Rao , S/o Akkaiah, Aged about 61 years, Occ Sub-Staff,
R/o. D.No.2-1-15, Varahalaiahpeta, Peddapuram East Godavari District.
6. Guttula Satyanarayana , S/o Ramanna,
Aged about 58 years, Occ Sub-Staff, Rio. Door No.69-3-16, SBH Colony,
Engineering College Post, Kakinada, East Godavari District.
7. Betapudi VenkatRao S/o. Raghavulu,
Aged about 67 years, Occ Retd. Sub-Staff, R/o. Door No.76-6-18,
Gandhipuram, Danvaipeta, Rajahmundry, East Godavari District.
8. B.ChandraRao, S/o.Venkanna,
Aged about 67 years, Occ Retd. Sub-Staff, Rio. Door No.7-8-53,
Lusulapeta,
Samarlakota, East Godavari District.
9. Vuda Kanakaratham , S/o Subbarayudu,
Aged about 64 years, Occ Retd. Sub-Staff, Rio. Palekuru,
TallarevuMandal,
East Godavari District.
10. Chollangi Mangadevi, W/o. Late C.S.YedukondalaRao,
Aged about 58 years, Occ Homemaker,
G.N.Naidu Colony, Yanam,
East Godavari District.
11. D.K. Laxmi, Wio. Late D.JogiRaju,
Aged about 55 years, Occ Homemaker,
R/o. PratipaduHarjana Colony, PrathipaduMandal, East Godavari District.
12. K.Saraswathi, W/o K. Benerji, Aged about 48 years, Occ Homemaker,
Rio. AtreyapuramMandal, East Godavari District.
13. Jannupaili Satyanarayana , S/o. Veeraju,
Aged about 62 years, Occ Retd. Sub-Staff, R/o. Door No.5-3-43,
Dangeru, PamaruMandal, East Godavari District.
14. Kumbe Balayogi, S/o Chandranna,
Aged about 67 years, Occ Retd. Sub-Staff, Rio. Door No.4-76,
T.Challapalli (Bondallipeta)
UppalaguddamMandal, East Godavari District.



15. Nellapalli SattiBabu, S/o Dharmaraju,
Aged about 65 years, Occ Retd. Sub-Staff, Rio. Door No.6-84, Indooru,
SamarlakotaMandal, East Godavari District.
16. Pasupu David , S/o.Buchaiah.
Aged about 66 years, Occ Retd. Sub-Staff, R/o. Door No.2-53,
Srikrishnapatnam, RajanagarMandal, East Godavari District.

2023:APHC:11719

...PETITIONER(S)

AND:

1. The Chief Manager, Andhra Bank (Now merged in Union Bank of India),
Human Resources, Head Office,
Saifabad, Hyderabad.
17. The Regional Manager, Andhra Bank, Zonal Office, Kakinada, East
Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): SUREPALLI MADHAVA RAO

Counsel for the Respondents: K LAKSHMI NARASIMHA (SC FOR AB)

The Court made the following: ORDER



HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No. 18793 of 2020

ORDER:

Heard Sri S. Madhava Rao, learned counsel for the petitioners, and Sri K. Lakshmi Narasimha, learned standing counsel for the respondents.

2. This writ petition is filed to declare the order dated 31.03.2020 passed by the 1st respondent rejecting the claim of the petitioners for counting the period of their temporary service prior to their absorption into permanent service of the respondent bank from 2012 onwards for the purpose of grant of service benefits, the Circular dated 26.03.2013 issued by the Bank to the extent that the temporary service prior to absorption shall not be counted as service for any other benefits except for payment of gratuity, and the Regulation No.15 of Andhra Bank Employees Pension Regulations 1995 to the extent that it excludes the counting of period of service prior to the date of appointment on permanent basis for qualifying service, as illegal and arbitrary.



3. Briefly, the case of the petitioners is that petitioner Nos.1 to 4 and 7 to 9, late husbands of petitioner Nos.10 to 12 and petitioner Nos.13 to 16 worked as sub-staff in various branches of the respondent Bank and retired from service. Petitioner Nos.5 and 6 are still in service of the Bank. All of them belong to Scheduled Caste community. In the year 1982, they were sponsored by the Employment Exchange and accordingly, the Bank conducted interviews for all of them and prepared a panel of 78 candidates in the year 1986 for filling up the future temporary or permanent vacancies. Out of 78 candidates, 10 of them belonging to other communities were appointed on permanent basis and when the Bank sought to cancel the remaining list, the petitioners objected to the same. Then, the Bank issued letters of temporary appointment to them in the year 1986 promising to absorb them as permanent sub-staff in the year 1995. Thereafter, a settlement dated 09.01.1995 was arrived at between the Bank and the Andhra Bank Award Employees Union, Hyderabad. As per the said settlement, the Bank empanelled all the eligible employees including the petitioners for absorption. Accordingly, during the years 2001 to 2009, the Bank appointed the petitioners on permanent basis.



i) Due to the absorption in regular basis, petitioner Nos.1 to 9, late husbands of petitioner Nos.10 to 12, while working as sub-staff, submitted representations dated 25.05.2009 and 05.08.2012 to the respondent Bank requesting to count the period of their temporary service till their absorption into permanent service of the Bank for the purpose of grant of service benefits. As no action was taken by the Bank, they were compelled to file W.P.No.33969 of 2012. By an order dated 20.02.2020, this Court disposed of the writ petition directing the respondent Bank to dispose of the representations of the petitioners within a period of four weeks. In compliance of the orders of this Court, the respondent Bank vide proceedings dated 31.03.2020 considered and rejected the representations of the petitioners on the grounds that the claim of the petitioners is not in consonance with the terms of the settlement dated 09.01.1995; more so, as per circular dated 26.03.2013, the service put in by the erstwhile panel sub-staff shall not be counted as service for any other benefits except for payment of gratuity; in fact, as per Regulation 15 of the Pension Regulations, 1995, the qualifying service of an employee shall be counted from the date of his taking charge of the post for which he is first appointed on



permanent basis and hence, there is no question of counting past service rendered during the temporary period for the purpose of pension. The same is questioned in this writ petition.

4. A counter affidavit is filed on behalf of the respondents denying the averments made in the writ affidavit and stating that the petitioners are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. Since they were available with an alternative remedy under the said Act, they cannot invoke the extraordinary jurisdiction of this Court. Moreover, as per Clause-7 read with Clause-4 of the admitted settlement dated 09.01.1995, the temporary employees who were empanelled as such shall not be entitled to any service benefits during the period of their temporary service. The petitioners cannot be equated with the permanent employees of the bank as they continued as temporary employees till their absorption. The petitioners are entitled for pension from the date of their absorption/appointment as regular employees in the bank as per Andhra Bank Employees' Pension Regulations, 1995. In fact, there was no provision in the settlement dated 09.01.1995 for payment of pension for the services engaged prior to their absorption. There are no merits or



substance in the writ petition and therefore, the same is liable to be dismissed.

5. Learned counsel for the petitioners would submit that as per the circular of the respondent bank dated 26.03.2013, five years of temporary service prior to absorption would be counted as service for the limited purpose of calculation of gratuity as per the Payment of Gratuity Act, 1972. The gratuity is one kind of retiral benefit. As per the circulars of the bank and as per the settlement entered between the petitioners and the respondent bank dated 09.01.1995, neither in the agreement nor in circulars it is stated that the petitioners are not entitled for pensionary benefits for their period of temporary service. The learned counsel would further submit that the Hon'ble Apex Court in *State of Kerala Vs. M. Pamanabha Nair* reported in (1985) 1 SCC 429 and in *D.S.Nakara Vs. Union of India* reported in (1983) 1 SCC 305 held that pension and gratuity are valuable rights and property in the hands of the employees and that any culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest.



i) Learned counsel for the petitioners further submits that the Division Bench of this Court had well considered the Rules 13 and 14 of A.P. Revised Pension Rules, 1980 in W.P.No.8201 of 2016 dated 17.03.2016 wherein it is held that once a person appointed even on daily wage and temporary basis in a post and paid from the Consolidated Fund, the services rendered in the said post is bound to be counted for the purpose of pension. The said ratio was reiterated by the another Division Bench of this Court in W.P.No.1425 of 2019 dated 15.10.2019, wherein it is held that, the issue of counting the services rendered as part time prior to regularization for the purpose of qualifying service for pensionary benefits. This Court also declared that the services rendered on adhoc basis or temporary basis prior to the regularization is to be treated as qualifying service for the purpose of pension and retirement benefits in a reported case in 2010 (2) ALD 165. Therefore, the petitioners are entitled for the reliefs as claimed in the writ petition.

6. *Per contra*, learned standing counsel for the respondent bank would submit that the present writ petition is not maintainable, since the petitioners have an alternative remedy under Section 2(s)



of the Industrial Disputes Act, 1947, as such, they cannot invoke the extraordinary jurisdiction under Article 226 of the Constitution of India, for which he relied upon the judgment rendered by the Apex Court in *U.P.State Bridge Corporation Ltd. Vs. U.P.Rajya Setu Nigam S. Karamchari Sangh* reported in (2004) 4 SCC 268. He would also submit that as per the settlement arrived at between the parties, there is no provision for considering the period of temporary service for payment of service benefits. Moreover, the temporary employees, who were empanelled, shall not be entitled to any service benefits during the period of their temporary service, since the panel was in existence only till their regular absorption into the service of the bank and thus, the panel ceased to be existed after the absorption into the service of the bank. Further, as per Regulation 15 of the Pension Regulations, 1995, qualifying service of an employee shall be counted from the date of his taking charge of the post for which he is first appointed on permanent basis. Admittedly, the petitioners were not appointed on permanent basis initially, but subsequently they were absorbed into the service of the bank as per the settlement dated 09.01.1995. Therefore, the



petitioners are not entitled for any relief as claimed in the writ petition and the writ petition is liable to be dismissed.

7. Having considered the submissions made by both the learned counsels and having perused the material placed on record, it is not in dispute that the petitioners had rendered service on temporary basis in the respondent bank from 1986. Admittedly, the petitioners were sponsored by the Employment Exchange for the purpose of employment at the request of the Bank, which is a regular procedure and by way of duly selection by the respondent bank. It is also not in dispute that out of 78 selected candidates in the year 1986, 10 of them were appointed on permanent basis. It is also not in dispute that the petitioners were empanelled for absorption in the year 1995 pursuant to a settlement arrived at between the Bank Employees Union and the respondent bank on 09.01.1995 and accordingly, the petitioners were absorbed into service on permanent basis during the years 2001 to 2009 only. It is also not in dispute that the petitioners submitted number of representations for consideration of their temporary service even from the date of empanelment for pensionary benefits. It is also not in dispute that as per the circular dated 26.03.2013, five years



of temporary service prior to absorption would be counted as service for the limited purpose of calculation of gratuity.

8. The contention of the learned standing counsel that the present writ petition is not maintainable, as the petitioners are the workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 and they cannot invoke the extraordinary jurisdiction without availing the alternative remedy before the Industrial Tribunal, is not sustainable, since the petitioners have already retired from service. The other contention of the learned standing counsel that as per clause 7 r/w clause 4 of the settlement dated 09.01.1995, the petitioners are not entitled for any service benefits in respect of temporary service rendered by them before their absorption into service, is also not tenable and not acceptable, in view of the ratio laid down by the Hon'ble Supreme Court in *State of Kerala Vs. M. Pamanabha Nair* reported in (1985) 1 SCC 429 wherein it is held that pensionary benefits can be treated as a property and mere agreements between the parties cannot take away the rights of the petitioners.



9. The Division Bench of this Court in W.P. No.8201 of 2016 dated 17.03.2016 and in W.P.No.1425 of 2019 dated 15.10.2019 held as under:

“..6. The short point that arises for consideration in this Writ Petition is, whether the past services of the applicant in OAS. I.e. prior to their regularisation can be taken into consideration for the purpose of pension?..”

“..7. In our view this issue is no more res integra. A Division Bench of this Court in Devarakonda Sri Lakshmi1 held as under:

The law is well-settled that the mere form of the order is irrelevant but the surrounding facts and circumstances shall be taken into consideration to find out the true character of the order. Despite the use of a specific expression, the Court has to consider whether the employee had a right to such post. Particularly when the services rendered by a temporary employee are followed by regularization of his service, there is no reason to exclude the period of temporary service for computing the qualifying service for the purpose of pensionary benefits.

It is also relevant to notice that Rule 14 of the A.P. Revised Pension Rules, 1980 provides that the services of a Government Servant shall not qualify for pension unless his duties and pay are regulated by the Government or under conditions determined by the Government. Sub-rule (2) of Rule 14 further made it clear that the expression 'service' means that service under the Government and paid by the Government from the Consolidated Fund of the State.

In the light of Rule 14, the true test is whether the services of the employee were regulated by the Government and whether he was paid from the Consolidated Fund of the State. Any period of service which satisfies the above test, in my considered opinion shall be treated as qualifying service for the purpose of Rule 13.

For the aforesaid reasons, I do not find any substance in the contention of the respondents that



the period of service spent by the petitioner on consolidated pay cannot be taken into consideration for determining her qualifying service.

Accordingly, the impugned action of the respondents in denying the petitioner pensionary benefits is hereby declared as arbitrary and unreasonable.."

*"..8. Similarly in **State of Tamil Nadu v. T.N. Registration Department Ministerial Service Association (2001) 10 SCC 473**, the Apex Court while dealing with an identical issue, observed as under:*

1. The State of Tamil Nadu is in appeal before us challenging the judgment dated 20-11-1990 passed by the Tamil Nadu Administrative Tribunal, by which the respondent was held entitled to count the period from 28-6-1950 (the date on which he was appointed) till 3-12-1962 as the period for the benefit of pension under the Tamil Nadu Pension Rules, 1978.

2. The contention of the learned counsel appearing on behalf of the State of Tamil Nadu is that the post of Section Writer which was held by the respondent was brought under graded pay with effect from 1-10-1970. and, therefore, he would be entitled to pension only with effect from that date. It is pointed out that, prior to 1-10-1970, the respondent was being paid a fixed salary every month and, therefore, the period from 28-6- 1950 to 2-12-1963 cannot be counted for purposes of pension particularly as the respondent has already been paid one month's pay for every completed year of service for the period aforesaid.

3. A perusal of the judgment passed by the Tribunal indicates that the State Government had contended that the respondent was not entitled to count the period from 1950 to 1963 for purposes of pension, as he had rendered only temporary service for that period. The other contention was that Section Writers would be entitled to



count the period of service for purposes of pension only with effect from 1-10-1970 as it is from that date that the post was brought under graded pay. Both the contentions were rejected. The Tribunal found that Rule 2 of the Tamil Nadu Pension Rules, 1978 categorically provides that the Rules were applied to all government servants appointed to the service and posts in connection with the affairs of the State which are borne by pensionable establishments, whether temporary or permanent. Consequently, even though the respondent had rendered temporary service for the period from 1950 to 1963, he would be entitled to count that period for the purpose of pension. The Tribunal also found that the date 1-10-1970 on which the post of Section Writer was brought under graded pay has no nexus with the benefit of pension payable to those Section Writers who had, prior to that date, rendered temporary service. It was held that on the basis of that date, the employees could not be categorised into two classes.

4. Learned counsel for the State contended that the post of Section Writer was not pensionable post and it became a pensionable post only with effect from 1-10-1970 and, therefore, the entire period service rendered by the respondent on this post prior to 1-10-1970 would have to be excluded. This was not contention raised before the Tribunal nor has any rule to that effect been shown to that the post Section Writer was a non-pensionable post up to 1-10-1970. We, therefore, cannot accept this contention.

5. In view of the above, this appeal has no merits and is dismissed, but without any order as costs.."

*"..9. Similar view was taken by a Division Bench of the High Court of Judicature at Hyderabad for the State Telangana and the State of Andhra Pradesh in **State of Andhra Pradesh v. M. Raja***



Rao Order dated 17.03.2016 in W.P.No.8201 of 2016 and also the Kamataka High Court B.H. Mahadevappa v. Karnataka Power Transmission Corporation Ltd., ILR 2006 Kar 3405.”

“..In the case on hand, it is not in dispute that the duties of respondent No.1 and his pay were regulated by the Government. Further it is also not in dispute that respondent No.1 was paid by the Government from the Consolidated Fund of the State and that the post is a pensionable one. Therefore, the Tribunal has rightly come to the conclusion that temporary service of respondent No.1 shall be counted as qualifying service for the purpose of pension under the abovementioned Rules.”

“..It is further respectfully submitted that the applicant made a representation while he was in service i.e., on 20.01.2011 to all the concerned authorities of his department i.e., to the Regional Dy. Director of State Audit, Kurnool, Director of State Audit, AP, Hyderabad and to the Secretary to the Government for Finance (F.W. Admin.11) department, Hyderabad, A.P. wherein while explaining his case for counting his four years daily wage service (i.e., 12.07.1986 to 04.08.1990) for the purpose of his pensionary benefits, requested to count his four years daily wage service for the purpose of his pensionary benefits. The Government of AP by way of reminder dated 26.03.2011 also asked the Director of State Audit, AP Hyderabad to furnish his remarks in the matter on 26.03.2011. Thereafter due to acute ill health he could not pursue the matter further; but on 08.12.2013 he made a representation under Right to Information Act, 2005 seeking information on what action was taken in his case. As there was no response so far nor any action was taken so far on his case, he is constrained to approach this Hon'ble Court by way of filing this O.A.”

10. For the foregoing discussion and on perusal of the material on record and also in view of the ratio laid down by the Hon'ble Apex Court as well as this Court as stated supra, the material facts



in the present *lis* are similar to the facts of the cases in which the ratio was laid down i.e., inclusion of temporary/adhoc/daily wage services for entitlement of pensionary and gratuity benefits shall be extended to the petitioners herein. Moreover, they have satisfied all the criteria for such entitlement regarding due procedure of selection for their appointment and part of the employees were already absorbed out of total 78 employees from the same selection. The petitioners herein also duly qualified and duly selected on par with them, as such the petitioners cannot be discriminated which is in violation of Articles 14 and 21 of the Constitution of India. Therefore, the petitioners are entitled for the relief prayed for.

11. In view of the foregoing analysis, this Court is of the considered view that the present writ petition can be disposed with a direction to the respondents.

12. Accordingly, the Writ petition is disposed of directing the respondents to include the temporary service of the petitioners prior to their absorption into service for the purpose of pensionary benefits and for gratuity within a period of six months from the date of receipt of a copy of this order. No order as to costs.



Consequently, miscellaneous applications, if any, pending shall stand closed.

VENKATESWARLU NIMMAGADDA, J

18th April, 2023

Note: LR copy be marked.

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HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

W.P.No.18793 of 2020

18th April, 2023

cbs



*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

+Writ Petition No. 18793 of 2020

% 18-04-2023

Kasi Raju and others .. Petitioners

Vs.

\$ The Chief Manager, Andhra Bank
(now merged in Union Bank of India),
Human Resources, Head Office,
Saifabad, Hyderabad and another .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri Surepalli Madhavarao

^ Counsel for respondents : Sri K. Lakshmi Narasimha

? CASES REFERRED :

1) (1985) 1 SCC 429



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No. 18793 of 2020

Between:

Kasi Raju and others .. Petitioners

Vs.

The Chief Manager, Andhra Bank
(now merged in Union Bank of India),
Human Resources, Head Office,
Saifabad, Hyderabad and another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 18.04.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

VENKATESWARLU NIMMAGADDA, J