

APHC010006602021



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

[3310]

FRIDAY ,THE TWENTY NINETH DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE DR JUSTICE K MANMADHA RAO**

**WRIT PETITION NOS: 536 AND 23218 OF 2021**

**WRIT PETITION NO: 536 OF 2021**

**Between:**

Rongali Buchem Naidu,

**...PETITIONER**

**AND**

Visakhapatnam Metropolitan Region Development Authority **...RESPONDENT**

**Counsel for the Petitioner:**

1.A V S LAXMI

**Counsel for the Respondent:**

1.V SURYA KIRAN KUMAR (SC FOR VMRDA and MUDA)

**The Court made the following:**

**COMMON ORDER:-**

W.P.No.536 of 2021 is filed under Article 226 of the Constitution of India, seeking the following relief:

*“.....to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not releasing the retirement benefits of gratuity, full pension, commutation, is arbitrary, illegal, and consequently direct payment of the same forthwith together with interest at 18% p.a and pass such other orders....”*

W.P.No.23218 of 2021 is filed under Article 226 of the Constitution of India, seeking the following relief:

*“.....to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned Charge Memo issued under G.O.Ms.No.75, dated 23.07.2021 and G.O.Rt.No.383 Municipal Administration and Urban Development (Vig.I) Department, dated 23.07.2021, respectively are arbitrary, illegal and without jurisdiction, contrary to Rule 9(2) of Revised Pension Rules and also various decisions rendered by the Supreme Court and consequently by nullifying the same direct further action to be taken by the department to mitigate the hardship caused to the petitioner and pass such other orders....”*

2. Heard Mrs. A.V.S.Laxmi, learned counsel for the petitioner and Mr. V. Surya Kiran Kumar, learned Standing Counsel for VMRDA and MUDA for the respondents.

3. These Writ Petitions arise out of the same issue and therefore are being disposed of by a common order. Both parties to the writ petitions are one and same.

4. The precise case of the petitioner in W.P.No.536 of 2020 is that he joined in respondent in April, 1991 as Surveyor vide proceedings dated 27.04.1991, thereafter he got promotions as ADM and JOP vide order dated 24.02.2024 and 13.10.2016. The petitioner was retired from service on attaining the age of superannuation vide order dated 22.10.2019 duly mentioning therein that no charges are pending against him. The petitioner was paid PF and encashment of leave on 30.11.2019 on the date of his retirement, but 75% of the pension was released in August-2020. Therefore,

the petitioner made a request to release his retirement and other consequential benefits, but in vain. Therefore, inaction of the respondent is questioned in this writ petition.

5. The main grievance of the petitioner W.P.No.23218 of 2021 is that the petitioner made a request to release his retirement and other consequential benefits, but in vain. The pension and pensioary benefits are not a bounty but are legal rights, which the respondent cannot deny which relates to W.P.No.536 of 2021. Long after his retirement the Government issued G.O.Ms.No.75, dated 23.02.2021 accorded sanction to initiate disciplinary proceedings under Sub-Clause (1) of Clause (b) of Sub-rule (2) of the A.P.Revised Pension Rules, 1980 against the petitioner and framed charges under G.O.Rt.No.383, dated 23.07.2021 on certain allegations that he miserably failed in discharging his duties in establishing the exact encroachment of VUDA land by M/s P.R.Projects Pvt., Ltd., even after conducting survey in twice on the same site, which worth crores of rupees. The events gave raise for the issue of the charge memo are the inspection dated 16.06.2015, survey dated 18.11.2015 and 02.07.2016. In fact under the survey conducted under manual by the petitioner the encroachment was more when compared to one conducted by Assistant Director under ETS was less. The petitioner never committed any misconduct and there was no loss to the respondents due to his action, and the discrepancy was due to the fact that it is the border of two villages and due to nature of the process of the survey.

Therefore, the writ petition came to be filed questioning the inaction of the respondents herein.

6. The 1<sup>st</sup> respondent filed counter-affidavit in W.P.No.23218 of 2021 denying all material allegations made in the writ affidavit and mainly contended that the respondent authorities conducted joint survey and concluded that the construction was covered in part extent of Sy.No.20/P of Pedagantyada Village, which belongs to VUDA, M/s PR Projects, and others encroached approximately an extent of 628.11 Sq.yds by constructing an apartment along with compound wall. Therefore, the respondent concluded that there was gross negligence of duties by some of the officials of GVMC and VUDA and recommended to initiate action against the petitioner and others.

7. It is further contended that basing on the recommendations of V & E and after following due procedure in terms of A.P.Revised Pension Rules, 1980, read with Rule 20 of A.P.Civil Service (Classification, Control and Appeal) Rules, 1991, the Government has issued Sanction Order and Charge Memo dated 23.07.2021 against the petitioner. The petitioner has also sought for time for submission of reply to the charge memo. The Written Statement of Defence to the Charges framed against him is still awaited. It is further contended that this Court passed order dated 17.11.2017 in W.P.No.38901 of 2017, wherein it was observed that *"the date of occurrence of the event is always the date on which the effect of the event is felt or found out"*. In the

instant case, the Vigilance and Enforcement Department submitted their report to the Government on 17.08.2017, charges were framed by the Government on 23.07.2021 and the petitioner retired from service on attaining the age of superannuation on 30.11.2019. As stated above, the Charge Memo was served on him on 13.08.2021 and as such the charge is framed and served against him within time and as per APRP Rules, 1980 and also order of this Court. Hence, the writ petition is liable to be dismissed.

8. Perused the record.

9. It is the main contention of the respondents that Charge Memo issued to the petitioner, for which the petitioner has not given any explanation so far, without exhausting the available remedies open to him as per APRP Rules, 1980 read with APSC (CC&A) Rules, 1991, the petitioner straight away filed this Writ Petition is highly illegal and arbitrary. The petitioner has not followed due procedure and not taken steps to file written statement of defence or making any representation to the respondent.

10. No doubt, the petitioner has not submitted any explanation to the respondent with regard to charges levelled against him. Further the Charges framed against the petitioner vide G.O.Rt.No.383, dated 23.07.2021. Whereas, the petitioner retired from service on attaining the age of superannuation on 30.11.2019 i.e after lapse of about two years, the respondent issued charge memo to the petitioner.

11. In support of his contention, learned counsel for the petitioner relied on a decision of the Hon'ble Apex Court in **“State of U.P and Another v. Shri Krishna Pandey”<sup>1</sup>**, with regard to time limit for initiating departmental enquiry against the delinquent, who was allowed to retire on superannuation. Wherein it was held as follows:-

*“5. Explanation to the rule purports to give the meaning to the words “commencement of departmental proceedings”. It says that departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, from such date the date of suspension and the proceedings shall be deemed to have been instituted in the case of criminal proceedings, on the date on which complaint is made or a charge-sheet is submitted to a criminal court; and in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to the civil court. As soon as the proceedings of the nature referred in the articles are instituted, the authority which institutes such proceedings shall without delay intimate the fact to the audit officer concerned”.*

*6.....But the events of misconduct etc., which may have resulted in the loss to the Government or embezzlement i.e the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc., had taken place. Admittedly, in this case the officer had retired on 31.03.1987 and the proceedings were initiated on 21.04.1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations.*

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<sup>1</sup> (1996) 9 SCC 395

*This order does not preclude proceedings with the investigation into the offence and taking action thereon.”*

12. Further he relied on a decision of Hon’ble Apex Court in “**Brajendra Singh Yambem v. Union of India and Another**<sup>2</sup>” herein it was held as follows:-

*“51. In the instant case, the action of the disciplinary authority is untenable in law for the reason that the interpretation of the CCS (Pension) Rules, 1972 which is sought to be made by the learned Additional Solicitor General on behalf of the respondents amounts to deprivation of the fundamental rights guaranteed to the appellant under Para III of the Constitution of India. Therefore, we have to hold that the disciplinary proceedings initiated by the disciplinary authority after obtaining sanction from the President of India under Rule 9(2) (b)(i) of the CCS (Pension) Rules, 1972, are liable to be quashed”.*

13. However, in the instant case, there are allegations against the petitioner and issued Charge Sheet, for which the petitioner has not submitted any explanation so far. As per decisions relied by the learned counsel for the petitioner would show that time limit for initiating departmental enquiry more than four years after delinquent was allowed to retire on attaining the age of superannuation. Such enquiry, held incompetent and issued a direction to release his pension. Therefore, it is the contention of the learned counsel for the petitioner that the decision **Shri Krishna Pandey’s case** (Supra) is squarely applicable to the facts of the case and requested to allow the writ petition.

14. Admittedly, the petitioner retired from service and after retirement charges were framed against him. No departmental or judicial case was

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<sup>2</sup> (2016) 9 SCC 20

instituted against the petitioner during his service. On account of the said show cause notice, the respondents withheld the gratuity payable to the petitioner, so also not permitted him to encash the gratuity, full pension, commutation etc.,. The facts are not in dispute, but the entitlement of the petitioner is only in dispute to withdraw the gratuity, full pension, commutation etc., on the ground of pending enquiry is in controversy.

15. 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 issuance of final orders. Further Second proviso to clause (c) of sub-rule (1) of Rule 52 was introduced by G.O.Ms.No.227, Fin & Plg (FW. Pen-I) Dept., dt.10.10.1995 which says 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 with held or withdrawn and the retirement gratuity remains un-effected in the contemplated final orders, the retirement gratuity can be released upto 80%.

16. Despite the Second proviso added to rule 52(c) of the Pension Rules, 1980 vide G.O.Ms.No.227, Finance & Planning, dated 10.10.1995 the Supreme Court in **Veerabhadram's case** (referred above) held as follows:-

*"The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against the appellant when he retired. Rule 52(c) of the A.P. Revised Pension Rules, 1980 expressly permits the*



*State to withhold gratuity during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed that death- cum-retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant. We therefore, do not see any reason to order payment of any interest on the amount of gratuity so withheld.”*

17. Second Proviso was added to Rule 52(c) of the Revised Pension Rules, 1980 in the year 1995 vide G.O.Ms.No.227, dated 10.10.1995. Therefore, the Supreme Court did not apply the Second proviso and concluded that the Government is competent to withhold the gratuity during pendency of criminal proceedings against the Government servant though retired from service. But, in the present case the departmental enquiry is pending from the year 2021 i.e., subsequent to amendment to Rule 52(c) of AP. Revised Pension Rules, 1980. Therefore, by virtue of this amendment, the State is under obligation to release 80% retirement gratuity payable to the retired Government servant as the judgment of the Apex Court relates to the issue of the year 1988, by then there was no amendment to Rule 52(c) of A.P. Revised Pension Rules, 1980. Hence, the principle laid down in the above judgment is based on the Rule existing as on the date of cause of action.

18. In view of the subsequent amendment to Rule 52(c) of the Revised Pension Rules, 1980, the petitioner is entitled to claim release of 80% retirement gratuity though prosecution is pending, in view of

amendment and G.O.Ms.No.227, dated 10.10.1995. Thus, the action of the respondents is contrary to 2nd proviso to Rule 52(c) of the A.P. Revised Pension Rules, 1980.

19. Following the said G.O, the learned Single Judge of this Court in W.P.No.2545 of 2020, dated 24.02.2020 following the earlier judgment of the Division Bench in W.P.No.30443 of 2016, dated 14.02.2017 ordered for payment of Earned Leave on encashment and 80% retirement gratuity as the employee had retired from service.

20. In Division Bench judgment, this Court considered the scope of G.O.Rt.No.1097, dated 22.06.2000 and permitted the retired Government servant to withdraw the amount on encashment of Earned Leave available to the credit of his leave account along with 80% retirement gratuity. Recently this Court also passed similar order in W.P.No.2221 of 2022, dated 26.07.2024 and same is relied by the learned counsel for the petitioner.

21. Therefore, following the principle laid down in the above judgment, adhering to Clause 3(B) of G.O.Rt.No.1097, dated 22.06.2000 as well as to the Second proviso of Rule 52(c) of A.P. Revised Pension Rules, 1980 the petitioner is permitted to withdraw the amount on encashment of Earned Leave available to his credit along with 80% retirement gratuity and the respondents are directed to release the amount payable on encashment of Earned Leave to the credit of the petitioner's leave account and also pay 80% retirement gratuity, in accordance with law, within three (03)

months from the date of receipt of a copy of this order. It is further directed the petitioner to submit explanation to the respondents with regard to charge memo as expeditiously as possible; on such submission, the respondent authorities are directed to conclude the enquiry, after giving an opportunity of hearing of the petitioner and pass appropriate reasoned order in accordance with law, within two (02) months thereafter. The petitioner is at liberty to challenge the said order, if so advised. However, this order does not preclude proceeding with the enquiry into the charges against the petitioner and taking action thereon.

22. With the above direction, both the writ petitions are disposed of. There shall be no order as to costs.

The miscellaneous applications pending, if any, shall also stand closed.

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**DR. JUSTICE K. MANMADHA RAO**

Date: 29.11.2024.

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