

APHC010454692015



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

FRIDAY, THE SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 20248 OF 2015

Between:

1. Tella Bhaskara Rao, S/o. Sri Ramulu, Hindu, aged about 63 years, R/o. Sambara Village and Post, Makkuva Mandal, Vizainagaram District

...Petitioner

AND

1. The State of Andhra Pradesh Rep by its Principal, Secretary, Department of Cooperation, Secretariat Buildings, Hyderabad.

2. Sambara Primary Agricultural Cooperative Society, Rep. by its President, Sambara Village & Post, Mukkava Mandal, Vizainagaram District.

3. Sambara Primary Agricultural Cooperative Society, Rep. by its Chief Executive Officer, Sambara Village & Post, Mukkava Mandal, Vizainagaram District.

4. The Chief Executive Officer, The District Central Cooperative Bank, Vizainagaram, Vizainagaram District.

5. The Divisional Cooperative Officer, Vizainagaram, Vizainagaram District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to Issue a writ or order direction more particularly one in the nature of Writ of Mandamus under Art. 226 of Constitution of India, declaring the action of respondents though the petitioner is entitled for arrears of salary of Rs.2,28,260/- and Gratuity, Encashment of Earned Leave not releasing retiral benefits to the petitioner till date without any valid reasons prolonging the issue with a malafide intention is as illegal, arbitrary and void. Consequently directing the respondents to release the arrears of salary and terminal benefits with interest of the petitioner as he entitled to pass

IA NO: 1 OF 2015(WPMP 26106 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to directing the respondents to release the petitioner's arrears of salary of Rs.2,28,260/- and terminal benefits of the Gratuity and Encashment Earned Leave amounts with immediate effect and to pass

IA NO: 1 OF 2016(WVMP 4321 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate interim orders passed in W.P.No.20248 of 2015 dated 07.07.2015 and pass

Counsel for the Petitioner: A PADMA

Counsel for the Respondents: GP FOR COOPERATION (AP)

Counsel for the Respondents:K V RAJASREE

Counsel for the Respondents:V UMA DEVI

The Court made the following order:

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**WRIT PETITION No.20248 of 2015****ORDER:**

The present writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking the following main relief:

“to declare the action of the respondents though the petitioner is entitled for arrears of salary of Rs.2,28,260/- and gratuity, encashment of earned leave not releasing retiral benefits to the petitioner till date without any valid reasons prolonging the issue with a malafide intention as illegal, arbitrary and void and consequently direct the respondents to release the arrears of salary and terminal benefits with interest and to pass.....”

2. Heard Smt.Akella Padma, learned counsel for the petitioner, learned Assistant Government Pleader for respondent Nos.1, 2 and 3. Ms.Umadevi, learned Standing Counsel appeared for respondents 4 and 5. Perused the material on record.

3. The petitioner was initially appointed as decadarised Secretary in the 3rd respondent Sambara Agricultural Cooperative Society, Vizianagaram, which is under the control of the 4th respondent/ District Cooperative Central Bank Ltd., Vizianagaram (in short ‘DCCB’) on 28.06.1977. The petitioner worked in various cooperative societies at Vizianagaram District and while he was working in 2nd respondent society as paid secretary, he was promoted as Special Category Employee on 01.03.2009 in 4th respondent bank and rendered his services without any blemish.

4. The petitioner attained superannuation on 30.09.2011 while he was working as a Cashier at Telam Branch of 4th respondent bank. Though the petitioner discharged his duties without any remark and retired from service in the year 2011, he was not paid the salaries for 14 months from May 2004 to June 2005 and for 21 months from June 2007 to February 2009, totaling to Rs.2,28,260/- apart from his terminal benefits, which have to be paid by the respondents.

5. In this connection, the petitioner submitted a representation to the respondents for payment of his arrears of salary and also retiral benefits, such as, gratuity, earned leave encashment and provident fund etc. On such representation, the 2nd respondent society passed a resolution on 12.05.2014 whereby requesting the 4th respondent bank to advance the amounts payable to the petitioner. The said resolution further reveals that petitioner has not involved in any financial irregularities during his services.

6. Even prior to this, the District Cooperative Officer, Vizianagaram, addressed a letter dated 03.10.2009 to the 2nd respondent society, directing to take necessary action for payment of arrears of salary pending against the petitioner by following the existing bye-laws and rules in vogue. But, till the date of filing of the writ petition, the petitioner was paid neither the arrears of salary nor terminal benefits of gratuity, leave encashment of earned leave and provident fund. Hence, having been left with no other efficacious remedy, the

petitioner, who is a senior citizen being deprived of his terminal benefits i.e., gratuity and leave encashment, has approached this Court under Article 226 of the Constitution of India, by filing the instant writ petition.

7. It is the further case of the petitioner that he being a senior citizen, non-release of the terminal benefits i.e., gratuity and leave encashment, etc, would cause multifarious problems and adversely affect him and his family members physically, psychologically and fiscally and has put his right to life in peril.

8. On 02.11.2016, the 2nd respondent filed its counter while admitting its liability submits that the 2nd respondent society does not have any funds of its own and is merely works as an agent of 4th respondent bank. Further, the petitioner retired as Special Category Employee on 01.03.2009 working in the 4th respondent bank, no record is available with the 2nd respondent office and further states that since because of non-availability of funds only, they have nothing to do in the case of the petitioner and it is only the 4th respondent bank to pay the amounts due to the petitioner. It is further asserted in the counter that indisputably petitioner extended his unblemished service to the respondent authorities and retired from his service without any stigma and also there are no disciplinary or criminal proceedings pending against him and in spite of the same, he has not received his terminal benefits since then.

9. The 4th respondent – The District Co-operative Bank, Vizianagaram (DCCB) filed its counter inter alia stating that the petitioner impleaded the bank in a wrong manner as this bank has no responsibility in making payment of

retirement benefits to the petitioner for the periods stated in the writ affidavit during which period the petitioner worked with 2nd respondent PACS. It is further stated that the 2nd respondent society is an independent entity as per the special byelaws applicable to the said society issued by the Commissioner and Registrar of Cooperative Societies, Government of Andhra Pradesh. The arrears of salary for 14 months and 21 months totaling to Rs.2,28,260/- and also the retirement benefits, such as gratuity and leave encashment of the petitioner during the period the petitioner is working with the 2nd respondent society, if any, shall have to be paid by the 2nd respondent alone and this bank has no role to pay.

10. It is also stated by the 4th respondent bank that DCCB has paid its share of gratuity of Rs.49,588/- and leave encashment of Rs.61,609/- to the petitioner on 19.01.2015 itself for the period the petitioner worked with the bank, i.e. from 01.03.2009 to 30.09.2011 and there is no single rupee due to the petitioner from the 4th respondent bank and prayed to dismiss the writ petition in respect of 4th respondent DCCB.

11. This Court has considered the submissions made by both the counsel and perused the material available on record.

12. On 07.07.2015, while issuing notice before admission, this Court passed the following interim order:

“Notice before admission.

There shall be interim direction to the respondents to release arrears of salary, terminal benefits & encashment earned leave amounts, if any, became due to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.”

13. As the respondents have not complied with the interim direction issued by this Court, the petitioner filed Contempt Case No.2450 of 2015 seeking to punish the respondents under Sections 10 and 12 of the Contempt of Courts Act, and the same is pending.

Analysis of the Court:

14. The central point emerged in the instant case is that the non-payment of gratuity and leave encashment of the petitioner being retired employee, without there being any legal impediment is valid or not?

15. Evidently, the petitioner initially joined in the 2nd respondent/PACS in the year 1977. After serving in various societies as a Paid Secretary, the petitioner got promoted as Special Category Employee on 01.03.2009 in 4th respondent DCCB. Finally, on attaining the age of superannuation, the petitioner retired from his service from the 4th respondent DCCB on 30.09.2011 without any stigma.

16. It is incontrovertibly proved that the petitioner extended his service and has attained the age of superannuation without any stigma or legal

impediment. Therefore, the petitioner is certainly entitled for his terminal benefits for his livelihood after retirement.

17. Indisputably, the respondents are liable to pay the statutory and mandatory entitlement i.e., terminal benefits, leave encashment, gratuity, etc., of the employee in terms of the statutory frame work and also provisions of Payment of Gratuity Act, 1972, (hereinafter referred to as 'Act') which is a legislation enacted with a laudable object of ensuring social security to the working class. The relevant portion of Section 4 of the Act is extracted hereunder:

“4. Payment of gratuity.-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.].....”

(2).....”

(3).....”

(4).....”

(5).....”

(6) Notwithstanding anything contained in sub-section (1),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any

damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

b) the gratuity payable to an employee [may be wholly or partially forfeited]—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(i) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.....”

18. A plain reading of Section 4 (1) of the Act would ascertain that once an employee has rendered continuous services for not less than five years on his superannuation or retirement, he/she shall be entitled to get gratuity except in the circumstances enunciated in Section 4 (1) (a) of the Act. Coming to the case on hand, admittedly even as per the version of the respondents also, the petitioner was superannuated without any legal impediments or stigma. In other words, the action of the respondents' withholding of gratuity is not permissible under any circumstances. In fact, the right to receive gratuity is a statutory right; the respondent authorities cannot take it away except through the procedure enunciated under the law.

19. It is also apt to note the relevant portion of Section 7 of the Act, which reads as under:-

7. Determination of the amount of gratuity.-(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

20. A perusal of the above statutory provision clearly reveals that if the employer fails to pay the gratuity amount within thirty days from the date it becomes payable to the person, then the interest from that date would also become payable. However, such interest shall not exceed the rate notified by the Central Government from time to time. In the light of above statutory provisions, and taking into consideration the existing facts in the present case, this Court, without any hesitation, unequivocally rules that the petitioner's right to interest on delayed payment is statutory in nature and not subject to the discretion of the respondent authorities.

21. At this juncture, it is relevant to note the dictum of the Hon'ble Supreme Court in ***H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd.***¹, while interpreting Section 7 of the Act in its vivid terms, held that there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and is entitled to the interest on the delayed payment of gratuity.

22. The Hon'ble Supreme Court in the recent case between ***Gagan Bihari Pristy Vs. Pradip Port Trust &Ors***²(decided on 03.03.2025), while accessing the rate of interest on the delayed payment of gratuity, held that where an employee retires and has to receive gratuity amount belatedly, without having any excuse for delay, the interest would be payable as per the notification issued by the Central Government and accordingly, the Hon'ble Supreme Court has awarded interest @ 10% per annum on the delayed payment of the gratuity amount.

23. When the employees are entitled to the statutory entitlements, the same cannot be deprived, unless there is any legal impediment, especially in the event of lapse of time prescribed under the statutory framework.

24. In ***D.S Nakara &Ors. Vs. Union of India***, the Hon'ble Supreme Court, while referring to the ***Deokinandan Prasad*** case in the course of interpreting the pensionary rights and entitlements of the employees, had categorically held as under:-

¹(2003) 3 SCC 40

²S.L.P. (C) No.20740 of 2022

“.....20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in ***Deokinandan Prasad v. State of Bihar*** wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in ***State of Punjab V. Iqbal Singh***.....

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.....”

25. Very recently, the Apex Court in ***State of Uttar Pradesh Vs. Dinesh Kumar Sharma***³, in its unequivocal words, stated that pension is not a charity or a bounty and an employee is entitled to receive his pension. Hence, in view of catena of judgments, the law is well settled without any iota of doubt.

26. In respect of financial incapacity/poor financial conditions as stated by the 2nd respondent PACS for non-releasing of their share towards terminal benefits after utilising the services of the petitioner is not valid. A mere financial incapacity or paucity of funds cannot be a valid defence for non-fulfilment of such statutory obligations, more particularly, when the employee rendered his services, as such, he is rightly entitled to terminal benefits under law.

27. It is relevant to note the case of ***Kapila Hingorani Vs. State of Bihar***, wherein, the Hon'ble Supreme Court at para 34 held as follows:

“.....The State may not be liable in relation to the day to day functioning of the Companies, but its liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto the State's constitutional obligations The State acts in a fiduciary capacity. The failure on the part of the State in a case of this nature must also be viewed from the angle that the statutory authorities have failed and/or neglected to enforce the social welfare legislations enacted in this behalf e.g. Payment of Wages Act. Minimum Wages Act etc Such welfare activities as adumbrated in Part IV of the Constitution of India indisputably would cast a duty upon the State being a welfare State and its statutory authorities to do all things which they are statutorily obligated to perform.....”

³(2025) SCC OnLine SC 596

28. In view of the above well settled legal position, the respondents 2 and 3 are bound to release the terminal benefits to the petitioner.

29. It has been consistently held by the authoritative Constitutional Benches of the Apex Court right from ***Deoki Nandan Prasad*** and ***D.S Nakara*** cases as also in catena of judgments delivered by this Court and other Hon'ble High Courts that the pension and terminal benefits payable to the employee upon superannuation age is a property under Article 300-A of the Constitution of India and it form an integral part of right to livelihood guaranteed under Article 21 of the Constitution of India. Any deprivation, even of a portion of such amount, cannot be countenanced, except in accordance with law.

Conclusion:

30. In view of aforesaid facts and circumstances involved in the lis, taking note of the fact that in the counter, the 4th respondent bank stated that the bank's share of gratuity of Rs.49,588/- and leave encashment of Rs.61,609/- (in total Rs.1,11,197/-) were paid to the petitioner on 19.01.2015 for the period the petitioner worked in their bank i.e. from 01.03.2009 to 30.09.2011, the writ petition is allowed with the directions given below:

- (i) The respondent Nos.2 and 3 are hereby directed to release the terminal benefits such as gratuity amount and leave encashment etc., due to the petitioner, i.e. Rs.1,17,063 (Rs.2,28,260/- minus the amount paid by 4th respondent bank towards its share, i.e. Rs.1,11,197/-) with interest @ 10% p.a. from the date on which said amount became payable till the date of actual payment,

within a period of ten (10) weeks, from the date of receipt of copy of this Order.

31. As the Contempt Case is preferred against the respondents 2 and 3 alone, in view of the orders passed in the present writ petition, the Contempt Case is closed giving liberty to the petitioner to seek recourse to law, if the respondents 2 and 3 failed to comply with the orders passed in this writ petition.

No order as to costs. As a sequel, all pending applications shall stand closed.

JUSTICE MAHESWARA RAO KUNCHEAM

Date:02.01.2026
Rns

THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION No.20248 of 2015 and C.C.No.2450 of 2015

Date:02.01.2026

Rns