

***THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ WRIT PETITION No. 26799 OF 2019

% 22-03-2024

A Prabhakar and others

....petitioners

Vs.

\$ The State of Telangana rep. by its Principal Secretary Culture,
Sports and tourism Department, Secretariat, Hyderabad and
others

.... Respondents

! Counsel for the petitioners : Sri M. Rama Rao

Counsel for the Respondents : Govt. Pleader for R & B

<Gist :

>Head Note:

? Cases referred:

(2022) 4 SCC 627

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WRIT PETITION No. 26799 OF 2019

Between:

A Prabhakar and others

....petitioners

Vs.

The State of Telangana rep. by its Principal Secretary Culture,
Sports and tourism Department, Secretariat, Hyderabad and
others

... Respondents

ORDER PRONOUNCED ON: 22.03.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**WRIT PETITION No.26799 of 2019****ORDER:**

This writ petition is filed by the petitioners seeking the following relief:

“...to issue a Writ order or orders, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in not paying the retirement Gratuity as per Rule XVI (a) of Ravindra Bharathi Staff Rules is arbitrary, illegal and discrimination and consequently issue a direction to the respondents to pay the gratuity with interest @ 18% from the date when the amount is due and pass such other order...”

2. Heard Sri M. Rama Rao, learned counsel appearing for the petitioners. There is no representation on behalf of the respondents.

3. Learned counsel for the petitioners submitted that on several occasions, there was no representation on behalf of the respondents and today also, there is no representation on behalf of the respondents. However, the respondents filed a

counter and based on the counter, this Court decided to finalise the issue on merits.

4. The brief facts of the case are as follows:

(i) The first petitioner was appointed as a Sound Operator, second petitioner was appointed as an A.C. operator and third petitioner was appointed as a wireman in Ravindra Bharathi Auditorium, Hyderabad, and all of them retired from service as Technical Supervisors on 31.12.2015, 30.04.2017 and 28.02.2019 respectively. On retirement, the Gratuity on the basic pay for one month for every completed year of service is subject to a maximum of 25 months pay. The said rules were framed prior to their appointment. All the petitioners have completed more than 35 years of service, and they are entitled to gratuity as per Rule XVI (a) of Staff Service Rules of the Ravindra Bharathi (for short, "Service Rules"). The grievance of the petitioners is that they should have been paid the Gratuity amount as per the Rules.

(ii) It is further the case of the petitioners that they do not have any pension under the Rules as provided to the Government employees. Prior to their retirement, more than 17

employees had retired from service. They were paid gratuity as per Rule XVI (a) of the Service Rules and the management has shown discrimination in respect of the petitioners as they were paid only Rs.12,00,000/- as maximum gratuity of pay at the time of their retirement based on G.O.Ms.No.99 Finance (HRMV) Department, dated 21.07.2015. The said G.O. mainly applies to the Government servants and pensioners, and it shall not apply to the employees of the Ravindra Bharathi. As such, the petitioners have made 15 representations, including on 17.01.2019 and 25.10.2019, to the respondents for payment of retirement benefits as per Rule XVI (a) of the Service Rules, but the respondents have paid the gratuity contrary to Staff Rules, and amount has been paid basing on the said G.O.Ms.No.99, dated 21.07.2015 which is maximum gratuity is Rs.12 lakhs. Accordingly, prayed to allow the Writ Petition.

5. Counter has been filed by respondents No.2 and 3 stating that pursuant to the PRC orders issued by the Government w.e.f. 01.07.2013 to pay gratuity amount of Rs.12.00 lakhs as the maximum limit eligible, with monetary benefit from 02.06.2014; the same was implemented with respect to the

petitioners. Rule XVI (a) of the Service Rules state that Gratuity amounting to the basic pay for the month of every completed year of service subject to a maximum of (25) months shall be paid. It was further contended in the counter that Rule XVII: GENERAL: states as follows: (a) In all matters where it is not specified in service rules, AP Govt. Fundamental Rules will be made applicable. (b) The Ravindra Bharathi Managing Committee may add or delegate any of these rules. In the same Staff Service Rules of employees under Rule-II Classification of posts & their basic pay Class-II:-Supervisor, Air Conditioning Technicians, Projectionists and other posts with a Basic Pay of Rs.150/- and above.

6. The gratuity for the petitioners was fixed in accordance with Rule XVI (a) of the Service Rules. Rule VII of the Service Rules states that the benefits accruing to Government servants from time to time in corresponding pay scales will apply to the staff of Ravindra Bharathi. Accordingly, the Pay, Dearness Allowance and Compensatory Allowances are being paid on par with the State Government employees as per the PRC orders of the Government from time to time. When the petitioners were

in service, the Basic Pay was Rs.150/- and above in the cadre of Technical Supervisors, and therefore, the service Rules of employees were implemented. However, being in the cadre of Technical Supervisors, the petitioners come under the time scale of Rs.28,940 - 78,910/- which is on par with the Government employees. Further, they have a special provision to work in Ravindra Bharathi up to the age of (60) years, which is not provided to Government employees as their superannuation age is 58 years only. In PRC 2015, the Government issued a G.O.Ms.No.99 dated 21.07.2015 limiting the gratuity amount to Rs. 12.00 lakhs, which applies to the petitioners since they enjoy the pay scales on par with Government employees. Therefore, there are no merits in this writ petition and the same is liable to be dismissed.

7. Learned counsel appearing for the petitioners submitted that the petitioners were appointed to various posts in Ravindra Bharathi and retired from service after attaining the age of superannuation. It was contended that according to Rule XVII of the Service Rules, the A.P. Fundamental Rules would be applicable only in matters which are not specified in the Service Rules. As such, the petitioners are covered by the Service

Rules, and neither Government Executive Orders nor the State Fundamental Rules shall apply to them. But, the said G.O.Ms.No.99, dated 21.07.2015 was made applicable to the petitioners, and they were deprived of the benefits to which they are entitled. Had the said G.O.Ms No.99 not been made applicable to the petitioners, they would have benefitted with the following additional amounts:

1st petitioner :: Rs.7,25,750/-

2nd petitioner :: Rs.4,58,250/-

3rd petitioner :: Rs.4,58,250/-

Even the said G.O. clearly says it applies only to pensioners, but the petitioners are not pensioners. The respondents wrongly applied the said G.O. to the petitioners and denied the entire gratuity as per the Service Rules. As such, the petitioners are entitled to the total gratuity amount in accordance with the Service Rules.

8. This Court, having heard the submissions made by the learned counsel for the petitioners, is of the considered view that Rule 16(a) of the Service Rules states that Gratuity amounting to the basic pay for the month of every completed year of service subject to a maximum of (25) months shall be

paid to the employees, who are governed by the service Rules. The respondents have accepted that when the petitioners were in service, the Basic Pay was Rs.150/- and above in the cadre of Technical Supervisor, and therefore, the service rules of employees was implemented. The condition No.4 of the G.O.Ms.No.99 Finance (HRM-V) Department, dated 21.07.2015 reads as follows:

“These orders shall come into force with effect from 02.06.2014 and shall apply to all Government Servants including the retired University/Government/Aided College Teachers who are drawing the UGC pay scales in the State and to all Non-Government Service Pensioners whose service pension is being charged to 2071 Pension and Other Retirement benefits who retired or whose death took place on or after this date.”

9. A plain reading of the above condition shows that the said G.O. applies to Government servants who are drawing the UGC pay scales in the State and Non-Government Service Pensioners whose service pension is being charged to 2071 Pension. As such, when the respondents accept that the petitioners are neither Government servants nor pensioners, then the question of applying G.O.Ms.No.99, dated 21.07.2015, on the petitioners

does not arise. Moreover, where specific Service Rules exist for Ravindra Bharathi, neither Government Executive Orders nor State Fundamental Rules shall apply to the employees therein. As such, the respondents have wrongly applied the said G.O.Ms.No.99, dated 21.07.2015 to the petitioners instead of applying Rule XVI (a) of Staff Service Rules of the Ravindra Bharathi while calculating their gratuity.

10. Learned counsel for the petitioners submitted that the petitioners are also entitled to interest on the gratuity amount as there is a delay in payment and in support of his contention, he relied upon the judgment rendered by the Hon'ble Supreme Court in ***DR A. Selvaraj Vs. C.B.M. College and others***¹, wherein it was held that where there is a delay in paying retirement dues to the retired employee for no fault of his, he is entitled to interest on delayed payment. It was held:

In that view of the matter, subject to the further final order that may be passed by the Government, the College/Management is first liable to pay the interest on the delayed payment of retirement dues subject to the final decision, which may be taken by the Government, after hearing the Management and the former Secretary. However, because of the inter se dispute between the Management, Secretary and the Government on who is responsible for the delay in making the payment

¹ (2022) 4 SCC 627

and/or settling the dues, the retired employee should not be made to suffer for no fault of his.

11. In view of the above discussions, the petitioners are entitled to gratuity in terms of Rule XVI (a) of Staff Service Rules of the Ravindra Bharathi and they are also entitled for interest as there is delay in payment of the gratuity amount as per the decision of the Hon'ble Supreme Court.

12. Accordingly, this Writ Petition is disposed of directing the respondents to pay the remaining gratuity amount after giving credit to the amount already paid, if any, to the petitioners in terms of Rule XVI (a) of Staff Service Rules of the Ravindra Bharathi with interest @ 6% p.a. on such amount, from the date of filing of the Writ Petition till date of realization within a period of three (03) months from the date of receipt of a copy of this order. No order as to costs.

As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Date: 22.03.2024

NOTE: L.R. copy is to be marked
BDR