

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.43077 of 2022

Between:

Konda Tirupathi

...Petitioner

AND

The State of Telangana, rep. by its Principal Secretary, Finance
(Pension) Department, BRKR Bhavan, Secretariat, Hyderabad and
three others

...Respondents

JUDGMENT PRONOUNCED ON: 23.02.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

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

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

+WRIT PETITION NO.43077 OF 2022

%Dated 23.02.2023

Konda Tirupathi

...Petitioner

AND

\$ The State of Telangana, rep. by its Principal Secretary, Finance (Pension) Department, BRKR Bhavan, Secretariat, Hyderabad and three others

...Respondents

! Counsel for Petitioner : Sri V.Balram

^ Counsel for Respondent Nos.1 to 4 : G.P. for Services-I

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2023) 2 SCC 286

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION No.43077 of 2022

ORDER:

1. Heard, Learned counsel appearing for the petitioner and Learned Government Pleader for Services-I appearing for the respondent Nos.1 to 4 and perused the records.

2. Learned counsel for the petitioner submits that the petitioner is a handicapped/physically disabled person with 74% disability and son of Late K.Venkata Rajaveeru, who retired as an Attender, Zilla Parishad High School, Gatla Narsingapur, Warangal District and a pensioner *vide* PPO.No.S-001468, ID No.15093904 upon his death on 04.10.2017, Family Pension was sanctioned to the mother of the petitioner Smt.K.Rajalaxmi and she was died on 19.08.2018. The petitioner was dependent on his parents and he is not having any earning capacity.

3. Learned counsel for the petitioner further submits that the petitioner has been entitled to the sanction of Family Pension throughout his life under Rule 50 Sub-

Rule (5) Category I B (iii) and submitted an application for the same to the respondent No.4 which was forwarded to the respondent No.2 for sanction of family pension. Thereafter, the respondent No.2 rejected the petitioner's application *vide* Lr.No.148/A4/PENSION/2019-20, dated 31.10.2019 wherein, it is stated that the petitioner is not fit for the sanction of Family Pension as per the existing pension Rule 50 Category-I B (iii) of the A.P Revised Pension Rules, 1980.

4. Learned counsel for the petitioner further submits that as per G.O.Ms.No.315, Finance (Pension-I) Department, dated 07.10.2010, Amendment of Rule 50 substituting Sub-rule 5 Category-I B (iii) to the A.P Revised Pension Rules, 1980 issued in G.O.(P).No.88, Finance & Planning Department, dated the 26.03.1980, the petitioner is physically disabled person and entitled for family pension throughout his life.

5. Learned Assistant Government Pleader for Services-I basing on the counter submits that the as per

G.O.Ms.No.315, Finance (Pension-I) Department, dated.07.10.2010 i.e., amendment of Rule 50 substituting Sub rule 5 Category-I B (iii) of the Revised Pension Rules, 1980 issued in G.O.(P).No.88, Finance and Planning Department, dated.26.03.1980:

“In the case of a son or daughter of a Govt. servant who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living”.

As per his disability certificate issued by the Government Civil Hospital, Karimnagar, dated 01.12.2011, the petitioner can earn his livelihood.

6. After hearing both sides, this Court is of the considered view that admittedly, the petitioner is a physically handicapped person and the District Medical Board of Karimnagar also issued Certificate certifying that the petitioner has 74% disability.

7. The Section 2(r) of the Rights of Persons with Disabilities Act, 2016 (for brevity RPwD Act, 2016) read as follows:

“2 (r). Person with Benchmark Disability means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;”

The petitioner is eligible for all the benefits as the percentage of disability is under Section 2(r) i.e., more than 40%.

8. Section 3 of RPwD Act, 2016 states as follows:

“3. Equality and non-discrimination.—(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) *No person shall be deprived of his or her personal liberty only on the ground of disability.*

(5) *The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”*

9. The Hon’ble Supreme Court in ***Avni Prakash Vs National Testing Agency (NTA) and Others***¹, observed that the rights of the disabled person as under:

“42. The fundamental postulate upon which the 2016 RPwD Act is based is the principle of equality and non-discrimination. Section 3 casts an affirmative obligation on the Government to ensure that persons with disabilities enjoy: (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the notion of a benchmark disability. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among, other provisions of Part III of the Constitution. By recognizing a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to implement and facilitate the fulfillment of the constitutional rights of persons with disabilities.

¹ (2023) 2 SCC 286

10. The petitioner has been diagnosed with 74% of permanent disability, falling within the definition of the disabled person with bench mark disability under Section 2(r) of the RPwD Act, 2016. The petitioner claimed under RPwD Act, 2016 and eligible for family pension.

11. In the instant case, the petitioner is the only son and he is eligible for family pension of the deceased father as he is physically disabled as per the certificate issued by the District Medical Board having 74% disability and the respondents without taking into account of the percentage of the disability rejected the case/claim of the petitioner. As per the Hon'ble Supreme Court judgments and RPwD Act, 2016, the petitioner has to be considered having the Disability of Bench Mark and eligible for Family Pension.

12. In view of the same, the impugned orders in Lr.No.148/A4/PENSION/2019-20, dated 31.10.2019 issued by the respondent No.2 is liable to be set aside and accordingly set aside.

13. With the above directions, the writ petition is allowed and the respondents are directed to release the family pension to the petitioner in his life time being son of Late K.Venkata Rajaveeru, PPO.No.S-001468. However, there shall be no order as to costs.

14. Miscellaneous petitions, if any, pending in this writ petition, shall also stand closed.

JUSTICE K.SARATH

Date:23.02.2023

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