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Shaik SamiuddIn Vs. District and Sessions Judge and anr.

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Court : Andhra Pradesh

Decided On : Oct-01-2002

Reported in : 2002(6)ALT463

Judge : AR. Lakshmanan, C.J. and ;V. Eswaraiah, J.

Acts : Revised Pension Rules, 1980 - Rule 39(1); Service Law

Appeal No. : W.P. No. 13149 of 2002

Appellant : Shaik Samiuddin

Respondent : District and Sessions Judge and anr.

Advocate for Def. : M. Bhaskara Lakshmi, S.C.

Advocate for Pet/Ap. : M. Rama Rao, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

AR. Lakshmanan, C.J.

1. Heard Shri M. Rama Rao, learned counsel for the petitioner and Smt. M. Bhaskara Lakshmi, learned Standing Counsel for the respondents.

2. The Writ Petitioner was removed from service while he was working as Deputy Nazir of Munsif Magistrate Court, Siddipet by the competent authority, the 1st respondent herein, by order dated 11-2-1994 in proceedings bearing No. 1064 on certain charges. The appeal preferred by him before this Court on the administrative side was also ended in dismissal by order dated 29-7-1994 made in proceedings ROC. No. 1394/94. C Spl. (Con) of the 2nd respondent herein. Challenging the same he filed W.P. No. 19351 of 1994. By judgment dated 3-3-2000, a Division Bench of this Court modified the punishment of removal of the petitioner from service to that of compulsory retirement. Pursuant to this judgment, the 2nd respondent directed the 1st respondent vide proceedings ROC. No. 1395/94 C.SPI. (Con) dated 16-11-2000 to pass consequential orders.

3. In compliance with the directions above, and also in accordance with Clause (1) of Rule 39 of the A.P. Revised Pension Rules, 1980, the 1st respondent herein passed orders dated 9-1-2001, vide proceedings No. 158/1 granting gratuity to the petitioner at the rate of two-thirds admissible to him from the date of removal from service. The order of the 1st respondent was again questioned by the petitioner in his representation dated 27-3-2001 before this Court on administrative side. However, the High Court, on careful examination of the matter, rejected the representation of the petitioner and affirmed the impugned order passed by the 1st respondent.

4. The question that arises for consideration in this Writ Petition is whether the order passed by the 1st respondent is valid in law? For the purpose of resolving the said question, we feel it necessary to reproduce Rule 39 (1) of the Revised Pension Rules, 1980, which reads:

'39. Compulsory retirement pension:- (1) A Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full invalid pension or gratuity or both admissible to him on the date of his compulsory retirement.'

5. The above Rule says that the Government servant who has been compulsorily retired from service as a penalty may be granted pension or gratuity or both at a

rate not less than two-thirds admissible to him on the date of his compulsory retirement.

6. Shri Rama Rao, learned counsel for the petitioner contended that the order passed by the respondent No. 1 in sanctioning only two-thirds of gratuity to the petitioner instead of granting pensionery benefits is arbitrary and illegal. The said contention, in our opinion, is not sustainable as no such direction/observation has been made by the Division Bench of this Court in its order dated 3-3-2000 made in W.P. No. 19351 of 1994 making the writ petitioner eligible for the pensionery benefits.

7. Shri Rama Rao, further contended that the action of the respondents in granting two-thirds of gratuity is not only contrary to the observations of the Division Bench but also disproportionate to the charges levelled against the petitioner. We are unable to countenance this argument of the learned counsel. The order in question was passed by the District Judge, the 1st respondent herein following the Division Bench decision of this Court. The Division Bench has elaborately gone into all aspects of the matter including the one as to whether the punishment was disproportionate to the charges levelled and in the result modified the imposition of punishment of removal from service to that of compulsory retirement. We, therefore, do not propose to open the said question once again in this Writ Petition which has already been answered by the Division Bench. This apart, the impugned order is passed on consideration of the service record of the writ petitioner.

8. The learned counsel further contented that Clause (1) of Rule 39 of the Rules does not mean that punishment can be awarded completely stopping either the pension or gratuity. According to him, the Rule says that one should get two thirds of pensionery benefits as well as gratuity but not only one. We are unable to accept the contention of the learned counsel. The language of the Rule is very clear. It categorically says that a Government Servant who has been compulsorily retired from service by way of penalty may be granted by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full invalid pension or gratuity or both admissible to him

on the date of his compulsory retirement.

9. The 1st respondent has passed the orders based on the observations made by this Court and also in exercise of the discretion conferred on him under Rule 39 of the Revised Pension Rules, 1980. We are, therefore, of the view that the petitioner has not made out any case for grant of any relief in the Writ Petition. The competent authority to impose punishment in the instant case is the appointing authority viz., the District Judge who, in the instant case, passed the impugned order imposing penalty. In the circumstances, we see no illegality in the impugned order passed by the 1st respondent. The Writ Petition fails and is dismissed. No costs.

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