

PETITIONER:
STATE OF ANDHRA PRADESH & ORS. ETC. ETC.

Vs.

RESPONDENT:
BOLLAPRAGADA SURYANARAYANA & ORS. ETC. ETC.

DATE OF JUDGMENT: 15/07/1997

BENCH:
SUJATA V. MANOHAR, G. B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

with
Civil Appeal No. 4398 of 1988
O R D E R

In C. A. Nos. 2762-2788 of 1988

The respondents were holding the post of Part-time village officers in the State of Andhra Pradesh. Under an Ordinance dated 6.1.1984, the posts of Part-time Village Officers in the State of Andhra Pradesh were abolished. The Ordinance was replaced by the Part-time village officers Abolition Act being Act No. 8 of 1985. Section 3 and 5 of the said Act provide as follows:

"3. The posts of part-time Village Officers in the State of Andhra Pradesh are hereby abolished with effect on and from the date of commencement of this Act, and every person who holds the post of part-time Village officer in any part of the State of Andhra Pradesh shall, with effect on and from such date, cease to hold such post."

"5. (1) Every person who ceases to hold post of part-time Village officer by reason of section 3, shall be paid an amount for the total service put in by him as part-time village officer and such amount shall be determined in accordance with the provisions of sub-section (2).

(2) The amount referred to in sub-section (1) shall be calculated at the rate of one-half of the monthly emoluments for every year of total service put in by the person referred to in sub-section (1).

Explanation:- For the purposes of this section,

(a) Where the total service, ---

(i) includes a period which is a

portion of a year; or
(ii) is a period less than a year;
the amount payable for the period referred to in sub-Clause (i) or sub-clause (ii), as the case may be shall be an amount bearing to the amount payable for one proportion as the said period bears to a period of one year of total service."

Prior to the abolition of the posts of Village Officers, under G. O. Ms. No. 1772 dated 18.4.1980, the Government of Andhra Pradesh had framed a scheme for gratuity which was applicable to the Village officers and the Village servants. The Scheme inter alia, provides as follows:

(i) Gratuity shall be paid at the rate of one months pay (Honorarium) for every completed year of service to the village Officers and Village Servants subject to a maximum of 20 months pay.

(ii) The gratuity is payable in the event of death, there being no age of superannuation in respect of these categories or at the time of demitting office after attaining the age of 58 years in the case of Village officers and 60 years in the case of Village Servants after giving a notice to the appointing authority."

By another G. O. Ms. No. 3420 dt. 1.8.1980, the Government of Andhra Pradesh had formulated a Family Benefit Scheme for Village officers which, inter alia, provides as follows.

"1. (i) Every Village officer shall be required to pay a contribution of Rs. 5/- per month till he attains the age of 58 years.

ii) Every Village Servants shall pay a contribution of Rs. 3/- per month till he attains the age of 58 years.

2(i) In the case of death of village officer while in service and before he attains the age of 58 years a sum of Rs. 7500 (Rupees seven thousand five hundred only) shall be paid to the nominee of the deceased as specified in the said scheme;

ii) In the case of death of a village Servant while in servant while in service and before attaining the age of 58 years a sum of Rs. 5000/- shall be paid to the nominee of the deceased as specified in the said scheme;

iii) In the case of any Village Officer or Village Servant demitting office on attaining the age of 58 years by giving a notice to the competent authority the actual amount of contribution

representing interest shall be paid to him or him nominee in the even of death."

On the abolition of the posts of Part-time Village Officers, the respondents were paid compensation calculated in the manner provided under Section 5 of the said Act. The respondent filed a writ petition before the Andhra Pradesh High Court claiming gratuity under G.O.Ms. dated 18.4.1980 and the benefit of the Family Benefit Scheme under G.O.Ms. No. 3420 dated 1.8.1980 in addition to the compensation already received by them under the said Act. The writ petition was allowed by the Andhra Pradesh High Court. In appeal before the Division Bench of the High Court, the order was partly modified and the benefit of these schemes was given to all those Part-time Village Officers who had attained the age of 58 years on 6.1.1984, that is to say, the date of the commencement of the Ordinance. The State has filed the present appeal.

It is contended by the State that the respondent are not entitled to gratuity or the benefit of the Family Benefit Scheme because the posts of Part-time Village Officers have been abolished under the said Act. The Gratuity Scheme under G.O.Ms. dated 18.4.1980 provides inter alia, for payment of gratuity to the Village Officer at the time of demitting office after attaining the age of 58 years after giving notice to the appointing authority. Therefore, the gratuity Scheme expressly provides for the manner of demitting office on attaining the age of 58 years or 60 year, as the case may be. It is only when the office is demitted in the manner set out in the Scheme that gratuity under the said G.O.Ms. becomes payable. The office is required to be demitted by the concerned holder after giving a notice to the appointing authority. This clearly contemplates a voluntary relinquishment of office on attaining the specified age. There is no retirement age for this office. This provision would not apply when, by legislation, the posts are abolished. In such a situation there is no question of voluntary demitting of office after notice. The provisions of the said G.O.Ms., therefore, cannot be attracted when the posts are abolished by legislation. This is precisely the reason why under section 5 of the said Act, a provision for compensation has been made, which the respondents have received.

Under the family Benefit Scheme framed by the G.O. Ms. No. 3420 dated 1.8.1980, certain amounts are required to be paid in case of a Village Officer or Village Servant demitting officer on attaining the age of 58 years by giving notice. For the same reasons, as in the case of the gratuity scheme this provision is not attracted when the office is not demitted voluntarily by giving notice but the post is abolished.

The Family Benefit Scheme, however, requires every village Officer to pay a contribution of Rs. 5/- per month and every Village Servant to pay a contribution of Rs. 3/- per month till he attains the age of 58 years. It was on payment of these contributions that the Village Officer or the Village Servant has been given certain benefits as specified in the said Scheme. By reason of the abolition of the posts, this Scheme has come to an end. The contributions which have been paid by the Village Officers/Village Servants under the Scheme should, therefore, in all fairness, have been refunded to them since they will not be entitled to claim any benefit under the scheme by the reason of the Scheme having come to an end by abolition of the post of Part-time Village Officers.

We, therefore, direct that the contributions actually made by the concerned respondents under the Family Benefit Scheme should be refunded to the concerned respondents with interest at 6% p.a.

The judgment of the High Court is set aside. The appeals are allowed with the above direction. There shall be no order as to costs.

In C.A.No. 4398 of 1988 For the reasons set out in C.A.Nos. 2762-2788 of 1988, C.A. No. 4398 of 1988 is dismissed. There shall be no order as to costs.

JUDIS