

HOB'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

**W.A.Nos.392, 443, 444, 544, 545, 551, 552, 553, 563, 564,
567, 575, 580, 584, 585, 587, 588, 595, 614, 619 and**

622 of 2023

COMMON JUDGMENT: (*per Hon'ble D.V.S.S.Somayajulu*)

This Batch of Writ Appeals is taken up for hearing with the consent of all the learned counsels appearing for the respective parties.

2) Learned Advocate General argued the matter for the appellants on being instructed by all the counsels, namely learned standing counsel for the respective organisations which have preferred the appeals. Sri Pita Raman led the arguments for the respondents/writ petitioners.

3) As pointed out by the learned Advocate General, the learned single Judges granted interim orders without looking into the prayer made, which in a high percentage of these matters, were for reference/ sending proposals for enhancement of the retirement age from 60 to 62 to the Government for approval. Without such approval and without compliance with some other major factors, it is submitted that age of retirement could not have

been increased by the organization itself let alone by the Court by granting interim prayer. The learned Advocate General submits that the learned Judges, should have looked into the pleading which clearly mentioned that proposals have to be sent for approval. Even without the said approval, the interim orders were granted. He also submits that in a majority of the cases, petitioners who have crossed the age of superannuation prior to the filing of the writ itself were directed to be taken back into service by the interim order. He contends that respondents were not even given an opportunity of properly contesting the case by filing counters before the interim orders were granted. He points out that granting of such an interim mandatory direction is an exception rather than rule, but in this batch of cases routinely the orders were granted long after the petitioners have retired.

4) He also submits that the practice of granting an interim order which virtually grants a final order has been deprecated by the Hon'ble Supreme Court on more than one occasion. Lastly, the learned Advocate General submits that the existing law on the subject as laid down in the Division Bench decision reported in ***G.Rama Mohan Rao v. Govt. of A.P.***,¹ was totally overlooked. This judgment was passed when the Government had enhanced

¹ 2017 (3) ALT 1

the age from 58 to 60 and according to the learned Advocate General, this judgment is a virtual answer to all the pleas raised by the learned counsels for the respondents/writ petitioners. This critical judgment was overlooked by the learned single Judges while granting the interim orders. He also points out that a Coordinate Division Bench also had an occasion to consider the issue in W.A.No.1033 of 2022 and batch. This Bench also upheld the contention of the State and that the enhancement of age is only applicable to those Government employees who are defined in The Andhra Pradesh Public Employment (Regulation Of Age Of Superannuation) Act, 1984 (for short 'the Act 23 of 1984'), in sections 1 (2) (ii) and 1 (2) (iii) of the Act 23 of 1984. Employees belonging to the TRANSCO, Cooperative Societies and other State instrumentalities etc., are not governed by the Act. Therefore, he submits that the writ appeals should be allowed and the interim orders should be set aside.

5) In reply to this, Sri Pita Raman, learned counsel, valiantly tried to defend the orders passed. It is his contention that the appellants have an opportunity of filing counters before the learned single Judges and get the order varied/modified or set aside. A Writ Appeal is not a proper remedy according to him. Therefore, he urges that all these issues should be raised before

the learned single Judges. He prays that the writ appeals should be dismissed.

COURT:

6) This Court after hearing the submissions notices that it is true that as per the settled law, this Court should not lightly interfere with the interim order or entertain an appeal and should normally ask the parties to appear before the single Judge and seek a variation/modification or setting aside of the order. However, in view of the fact that an interim mandatory direction virtually reemploying retired people was given and in the bulk of the writ petitions, the order was passed contrary to the pleading, this Court is of the opinion that it has to interfere. When the petitioners themselves want the proposal to be sent to the Government for approval and processing, granting of an interim mandatory direction is not at all warranted. It is totally contrary to law. People who had retired were asked to be continued in service till they attain the age of 62 years. Therefore, this Court is of the opinion that this Court should interfere. In addition, the law on the subject is also clear and has been settled in the case of ***G. Rama Mohan Rao***, which has been mentioned earlier. In identical circumstances earlier when the retirement age was raised from 58 to 60, large number of cases were filed and this

final judgment was delivered. It is fully applicable to the facts and circumstances of the case. An interim order was passed without looking into this important legal aspect. The order is in terms a virtual final order. Apart from the prima facie case etc the issue of balance of convenience etc., was overlooked.

7) For all the above mentioned reasons, the writ appeals are allowed and the interim orders which are the subject matter of challenge in each of these matters are set aside. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

DUPPALA VENKATA RAMANA, J

Date:01.08.2023
KLP