

ANDHRA PRADESH HIGH COURT

State of Andhra Pradesh

Vs

Doulat Rai

(Sriramulu, J.)

04.09.1970

JUDGEMENT

Sriramulu, J.

(1.) THE legality and the correctness of the Judgment passed by our learned brother Gopal Rao Ekbote, J. in Writ Petition No. 3318 of 1969, are called in question in this Writ Appeal.

(2.) THE material facts that are necessary for a proper appreciation of the contentions raised in this Writ Appeal may briefly be stated: THE petitioners, three in number, filed Writ Petition No. 3318 of 1969, under Article 226 of the Constitution of India, praying for the issue of a writ of mandamus directing the Government to give to each of them a monthly pension at the rate of Rs. 964,30 in compliance with the Hyderabad Civil Service Regulations framed under the Constitution of India, (hereinafter referred to as Hyderabad Civil Service Rules). All the three petitioners, at the time of retirement, were in the service of the Andhra Pradesh Government and were drawing a monthly salary of Rs. 1,928-8-0. Besides the said pay, the 3rd petitioner was also receiving a special pay. THE first petitioner retired from Government service in January, 1961 as the Chief Conservator of Forests, and the 2nd in March, 1957 as the Customs and Excise Commissioner, and the 3rd in 1963 as the Chairman, Jagirdars' Debt Settlement Board. Under rule 299 (b) of Hyderabad Civil Service Rules their monthly pension was fixed at Indian Government Rs..857.15, equivalent to O.S. Rs. 1,000. THE petitioners represented to the Government that their pension Was wrongly fixed at Indian Government Rs. 857.15 and that they should be paid the correct pension of Indian Government Rs. 964.30 per month under the Hyderabad Civil Service Rules. THE Government did not accept their representation. Hence the above writ petition. The Writ Petition was resisted by the Government. The case of the Government was that as per 7th edition of the Hyderabad Civil Service Rules the maximum pension that was payable under Articles 308 and 313 (b) of the Hyderabad Civil Service Rules was O.S. Rs. 1,000. Those at times fixing the maximum pension at O.S. Rs. 1,000 were never amended at any time before the issue of 8th edition of Hyderabad Civil Service Rules in 1954 or its re-print in 1968, enhancing the maximum pension of O.S. Rs. 1,000 to Indian Government Rs.i,000. While issuing the 8th edition of the Hyderabad Civil Service Rules the Government issued circular letter No. 83/23/Code P.D. 1952, dated 7th August, 1954, that the different leave and pension rules were left as they were and the options previously exercised continued

unaffected. On a query raised by the Accountant-General, Andhra Pradesh, the Finance Department of the Government in its letter No. 24GA/229/25-55, dated 4th April, 1956 (prior to the formation of the State of Andhra Pradesh) clarified that the maximum pension of O.S. Rs. 1,000 fixed under the Hyderabad Civil Service Rules was not enhanced. The clarification so made was also affirmed by the Government through its letter dated 23rd November, 1961, in answer to a similar query raised by the Government of Maharashtra. The omission of 'O.S.' in rule 299 (b) of the Hyderabad Civil Service Rules in the 8th edition was due to a mistake and that mistake was later corrected by the issue of an erratum to rule 299 (b) of the Hyderabad Civil Service Rules in Memo. No. 27439/540 Pen. 1/69 dated 28th April, 1969. Since the time of their retirement from the last 7 to 13 years, the petitioners have been receiving their pension at Indian Government Rs. 857.15 without demur or protest and, therefore, the writ petition filed by them is barred by time. After due consideration of those facts, our learned brother allowed the writ petition.

(3.) THE learned Government Pleader Sri Shiv Shankar reiterated before us those very contentions, which were raised before our learned brother. THE first ground raised by Sri Shiv Shankar is that the Writ petition ought to have been dismissed in limine on the simple ground that there has been delay of several years in claiming the right. A civil servant with a qualifying service to his credit, is entitled to a sum certain by way of pension allowable to him by rules and regulations prevailing at the time of his retirement from service. It is a sum due and payable to him at regular intervals, viz., every month for life. Being thus a right accruing due at the end of every month till life such a right to receive a specific sum is not lost merely because, out of ignorance, mistake or otherwise, he was being paid for some time or for some years, a lesser sum than was due. THE fact that he accepted the amount without demur or claimed much less in his bills out of ignorance of law or mistake, will neither amount to a waiver nor operate as estoppel to preclude him from claiming the correct amount, on coming to know of the exact measure of his right. Mere delay may not be fatal to writ cases, when ends of justice warrant otherwise. We, therefore, reject the first contention of the Government Pleader. We then advert to his main contention that the sum of Rs. 1,000 as entered in rule 299 (6) of the 8th edition of the Hyderabad Civil Service Rules was intended to be only in O.S. currency and the omission of the words 'O.S.' in that rule is an accidental printing mistake and that this position has been clarified on more than one occasion. This contention had been negatived by our learned brother for strong and cogent reasons. It seems to us that on the state of record, the conclusion reached by the learned Judge is inevitable. ;