

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION NOs.6088 AND 8682 OF 2005

Between

G.Mallaiah

... Petitioner

and

The Managing Director, APSRTC,
Musheerabad, Hyderabad,
and others.

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 15th SEPTEMBER,2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOS.6088 AND 8682 OF 2005

COMMON ORDER

The petitioner in W.P.No.6088 of 2005 is the first respondent in W.P.No.8682 of 2005. He is an employee of the Andhra Pradesh State Road Transport Corporation (APSRTC), the petitioner in W.P.No.8682 of 2005. He initially joined the service of the APSRTC as a Conductor in the year 1971. He was removed from service on 29.08.1973 and the same was challenged before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, in I.D.No.14 of 1979. By Award dated 23.12.1981, the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, set aside the order of removal passed against him and directed the APSRTC to reinstate him in service with continuity of service and full back wages.

The APSRTC filed W.P.No.4677 of 1982 before this Court challenging the aforesaid Award, but the said W.P. was dismissed on 26.08.1987. The dismissal was confirmed in W.A.No.269 of 1988 on 13.06.1988. In the meanwhile, the APSRTC reinstated him in service on 05.10.1982, promoted him as an Assistant Depot Clerk on 07.11.1988 and he was also granted further promotions thereafter. As he was not paid backwages in terms of the Award passed in I.D.No.14 of 1979, he filed M.P.No.27 of 2001 before the Labour Court-II, Hyderabad, under Section 33-C(2) of the Industrial Disputes Act, 1947. His prayer in the said M.P. was to fix his pay by adding notional increments and also to direct the APSRTC to pay the backwages for the 'out of service' period. The APSRTC filed a counter contending that as attendant benefits were

not granted by way of the Award, notional increments were not to be added. However, the Labour Court passed a final order on 07.11.2002 in the said M.P, which reads as under:

‘Heard. The petitioner is entitled for notional increments through there is no specific word “Attendant benefits”, since the petitioner was awarded reinstatement with continuity of service & back wages. Hence the respondent shall file calculation memo accordingly by 12.12.2002.’

Thereupon, the APSRTC filed a calculation sheet adding notional increments for the ‘out of service’ period, i.e. 29.08.1973 to 05.10.1982, and paid the petitioner difference of backwages in terms thereof.

The petitioner’s grievance thereafter was that the APSRTC did not effect revision of his pay from the date of his reinstatement, i.e. 05.10.1982, by adding notional increments. According to him, his salary was thereby reduced by about ten incremental stages. Due to this inaction of the APSRTC, he filed M.P.No.50 of 2003 before the Labour Court claiming a sum of Rs.1,05,751/-, after deduction of Provident Fund contributions, towards the difference of salary from 05.10.1982 to October, 2003. This M.P. was allowed by the Labour Court on 04.10.2004.

However, as revision was not effected by the APSRTC, he filed W.P.No.6088 of 2005 seeking a declaration that the action of the APSRTC in not effecting his revision of pay after adding notional increments for the ‘out of service’ period, i.e. 29.08.1973 to 04.10.1982, and from the date of his reinstatement, i.e. 05.10.1982, was illegal and seeking a consequential direction to the APSRTC to implement the revised pay pursuant to the Award passed in I.D.No.14 of 1979 and the order dated 07.11.2002 in M.P.No.27 of 2001, along with consequential benefits.

W.P.No.8682 of 2005 was filed by the APSRTC thereafter challenging the order dated 04.10.2004 passed by the Labour Court-II, Hyderabad, in M.P.No.50 of 2003.

By interim order dated 18.08.2005, this Court granted suspension of

the said order subject to the condition that the APSRTC deposits a sum of Rs.25,000/- within a time frame. The said order was made absolute on 02.11.2005.

The order passed by the Labour Court-II, Hyderabad, in M.P.No.50 of 2003 reads as under:

‘Counter not filed. Costs not paid. Respondent called absent. Heard Sri V.N.Goud. This MP is file (*sic*) claiming notional increments on which countes (*sic*) the petitioner is entitled for total sum of Rs.1,05,751/-. Since the same is not dispute (*sic*) the petitioner (*sic*) is allowed declaring that the petition (*sic*) is entitled for a sum of Rs.1,05,751/-.’

As the above order dated 04.10.2004 is subjected to challenge before this Court by the APSRTC in W.P.No.8682 of 2005, the fate of W.P.No.6088 of 2005 filed by the petitioner seeking its implementation would hinge upon the result of the said writ petition.

Sri N.Praveen Reddy, learned counsel representing Sri N.Vasudeva Reddy, learned standing counsel for the Telangana State Road Transport Corporation (TSRTC), the successor-in-interest of the APSRTC in the State of Telangana, contended that as the Award passed in I.D.No.14 of 1979 did not extend to the petitioner the relief of attendant benefits, the Labour Court ought not to have allowed M.P.No.50 of 2003 giving him such benefit. He placed reliance on **A.P.SRTC V/s. S.NARSAGOUD^[1]** in this regard.

It is no doubt true that the Supreme Court in **S.NARSAGOUD¹** observed that an employee, having been held guilty of unauthorized absence from duty, cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard, merely because he has been directed to be reinstated with the benefit of continuity in service. This observation was made in the context of the Supreme Court finding a difference between an order of reinstatement accompanied by a simple direction for continuity of service and reinstatement which is accompanied by a

specific direction that the employee shall be entitled to all consequential benefits which necessarily flow therefrom or accompanied by a specific direction that the employee shall be entitled to the benefit of increments during the period of absence.

However, in the present case, there is a significant intervening circumstance that needs to be taken note of. After the petitioner was reinstated on 05.10.1982, he was not paid the backwages awarded to him in I.D.No.14 of 1979. He also had a grievance as to the manner in which his pay had been fixed upon reinstatement. His specific complaint was that the APSRTC had not allowed him notional increments for the period that he was out of service i.e., 29.08.1973 to 04.10.1982, and from the date of his reinstatement, i.e. 05.10.1982. Owing to this denial of notional increments for the period in question, he got issued legal notice dated 27.09.1999 to the APSRTC and thereafter filed M.P.No.27 of 2001 under Section 33-C(2) of the Industrial Disputes Act, 1947. By order dated 07.11.2002 passed in the said MP, the Labour Court-II, Hyderabad, categorically held that the petitioner was entitled to notional increments though there was no specific mention of attendant benefits in the Award, as he was granted reinstatement with continuity of service and backwages.

Admittedly, this order has attained finality. Upon instructions, Sri N.Praveen Reddy, learned counsel, affirmed that the APSRTC did not contest this order by filing a writ petition at that stage. Therefore, the interpretation of the Award passed in I.D.No.14 of 1979 by the later adjudication in M.P.No.27 of 2001 has become final. Once the subject Award was interpreted to mean that the petitioner was entitled to notional increments pursuant thereto and the same was accepted and acted upon for the earlier period, it is not open to the APSRTC or its successor-in-interest, the TSRTC, to contend that this Court should now adopt a different interpretation of the very same Award. For better or worse, the APSRTC chose to abide by the interpretation of the said Award as per the order dated 07.11.2002 passed by the Labour Court-II, Hyderabad, in

M.P.No.27 of 2001. Acceptance of such interpretation, lending finality to it, is therefore binding upon the APSRTC and thereafter its successor-in-interest, the TSRTC.

That apart, it would be ridiculous to contend that under the very same Award, the petitioner would be entitled to notional increments for reckoning his wages for the period 29.08.1973 to 05.10.1982 as per the order passed in M.P.No.27 of 2001, but not thereafter. Once the said Award was interpreted to mean that the petitioner was entitled to notional increments, such relief should necessarily be extended to him throughout. It appears that the APSRTC did not even choose to file a counter before the Labour Court-II, Hyderabad, in M.P.No.50 of 2003 and was not even represented at the time of the hearing. Having failed to put in its appearance effectively before the Labour Court, it is not open to the APSRTC or its successor-in-interest, the TSRTC, to contend that the Labour Court ought not to have followed its earlier order in M.P.No.27 of 2001. The order dated 04.10.2004 passed by the Labour Court in M.P.No.50 of 2003 therefore does not warrant interference on any ground.

W.P.No.8682 of 2005 is therefore devoid of merit and is accordingly dismissed.

In the light of the confirmation of the order dated 04.10.2004 passed by the Labour Court in M.P.No.50 of 2003, the TSRTC is bound to comply with the direction of the Labour Court that the petitioner is entitled to the benefit of notional increments not only for reckoning his wages during the period that he remained out of service but also throughout his remaining service. The benefit thereof would have to be given while fixing his salary upon his reinstatement on 05.10.1982, from which date he would be entitled to regular increments.

W.P.No.6088 of 2005 is accordingly allowed. The Telangana State Road Transport Corporation shall revise the pay of the petitioner in terms of the benefits granted to him under the Award dated 23.12.1981 passed in I.D.No.14 of 1979, as interpreted by the Labour Court-II,

Hyderabad, in M.P.Nos.27 of 2001 and 50 of 2003.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

15th SEPTEMBER, 2015

PGS

[\[1\]](#) (2003) 2 SUPREME COURT CASES 212