

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

WRIT PETITION NO.6973 OF 2005

Between

Md. Ghouse

... Petitioner

and

The A.P.S.R.T.C. rep. by its
Depot Manager, Gadwal,
Mahaboobnagar 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**

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<Gist:

>Head Note:

! Counsel for petitioners : Sri S.M. Subhan

^Counsel for respondents 1 and 2 : Sri B. Mayur Reddy

^Counsel for respondent No.3 : Govt. Pleader for Labour

? CASES REFERRED:

1. (2013) 10 SCC 324

2. (2007) 2 SCC 433
3. (1979) 2 SCC 80
4. (2003) 2 SCC 212

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.6973 OF 2005

ORDER

Aggrieved by the Award dated 01.10.2001 passed by the Labour Court-III, Hyderabad, in I.D.No.85 of 2000, to the extent it denied him backwages with all benefits for the period that he remained out of employment, the petitioner-workman is before this Court. He seeks a consequential direction to the Andhra Pradesh State Road Transport Corporation (APSRTC) to reinstate him in service as a Driver with continuity of service with full backwages and all other consequential benefits.

The petitioner-workman was a Driver in the service of the APSRTC. His services were regularized in the year 1992. He was removed from service by order dated 03.10.1997 on the following charges.

1. 'For having absented for duty unauthorisedly from 1-5-1997 till date, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (conduct) Reg.1963".
2. "For repeated irregular attendance causing cancellation of services, inconvenience to the traveling Public, besides loss of revenue to the corporation, which constitutes misconduct under Reg.28(xxvii) of APSRTC Employees (conduct) Reg.1963".

Aggrieved by his removal from service, he invoked the jurisdiction of the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947. Upon consideration of the material placed before it, the Labour Court held that the charges leveled against the petitioner-workman were not established. Consequently, the removal order passed against him was set aside. Significantly, during the course of arguments before the Labour Court, the petitioner-workman endorsed that he was not pressing his claim for backwages. It was on this ground that the Labour Court denied him such relief and directed his reinstatement in service with continuity of service.

The APSRTC did not assail the said Award to the extent it granted relief to the petitioner-workman. Therefore, the only question that falls for consideration is whether denial of full backwages with all other benefits for the period that the petitioner-workman remained out of employment, was justified.

Perusal of the Award demonstrates that the Labour Court gave the petitioner-workman a clean chit as regards the two charges framed against him. His removal from service was therefore held to be erroneous in its very inception.

Sri S.M.Subhan, learned counsel for the petitioner-workman, placed reliance on **DEEPALI GUNDU SURWASE V/s. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA (D.ED.)**^[1] in support of his contention that once the order of removal is held to be unsustainable, full back wages should be awarded.

No doubt, in the aforestated judgment, the Supreme Court held that in a case involving wrongful termination from service, denial of back wages to an employee who has already suffered due to the illegal act of the employer would amount to indirectly punishing such an employee and rewarding the employer by relieving him of the obligation to pay back wages and emoluments. However, in the present case, it is not disputed that the petitioner-workman himself gave up his claim for back wages

before the Labour Court. Once he voluntarily chose not to press for the said relief, this Court finds no irregularity or illegality in the Labour Court accepting such waiver and denying him that relief. The petitioner-workman cannot be permitted to approbate and reprobate.

In so far as the issue of denial of other benefits is concerned, the Labour Court granted the petitioner-workman continuity of service. The law laid down by the Supreme Court in **J.K.SYNTHETICS LTD. V/s. K.P.AGRawal**^[2] was to the effect that on a mere direction for reinstatement, a workman could not claim continuity of service as of right or as a matter of course. In **DEEPALI GUNDU SURWASE**¹, this was held to be contrary to the *ratio* laid down by a three Judge bench of the Supreme Court in **HINDUSTAN TIN WORKS (P) LTD. V/s. EMPLOYEES**^[3]. Thus, as per the present legal position, continuity of service can be claimed by a workman as a matter of right upon a direction of reinstatement being passed in his favour. In the present case, the Labour Court, in fact, awarded the relief of continuity of service to the petitioner-workman but without elaborating as to what such continuity of service would entail.

Sri B.Mayur Reddy, learned standing counsel for the Telangana State Road Transport Corporation (TSRTC), the successor-in-interest of the APSRTC in the State of Telangana, would contend that unless the Labour Court specifically granted the relief of consequential benefits or the benefit of increments, it would not be open to the petitioner-workman to claim the same under the cover of the 'continuity of service' granted to him by the Labour Court. He relied on **A.P.SRTC V/s. S.NARSAGOUND**^[4] in this regard. That was a case where the workman was found guilty of the charge of unauthorized absence and intervention by the Labour Court was only on the ground of proportionality of the punishment. He was accordingly directed to be reinstated with continuity of service but without back wages. In this factual context, the Supreme Court observed that there is a difference between an order of

reinstatement accompanied by a simple direction for continuity of service and a case where reinstatement is accompanied by a specific direction that the workman shall be entitled to all consequential benefits which necessarily flow from reinstatement or accompanied by a specific direction that the workman shall be entitled to the benefit of the increments earned during the period of absence. The Supreme Court further observed that, in its opinion, the workman, having been held guilty of unauthorized absence from duty, could not claim the benefit of increments notionally earned during the period of such 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.

The factual matrix obtaining in the present case is diametrically different from that in **S.NARSAGOUND⁴**. In the case on hand, the charges of unauthorized absence and repeated irregular attendance were not established against the petitioner-workman as per the Labour Court. He was therefore given a clean chit in this regard unlike the findings recorded against the workman in **S.NARSAGOUND⁴**. Further, when the Supreme Court observed that there is a difference between orders of reinstatement with continuity of service *simpliciter* and orders where reinstatement is accompanied with specific directions, it would obviously mean that there should be a discussion in this regard by the Labour Court qualifying the relief granted and justifying the relief denied, expressly or by way of necessary implication.

In a case where the workman is ultimately held to be innocent of the charges leveled against him, thereby rendering his removal from service illegal, the law laid down in **HINDUSTAN TIN WORKS (P) LTD.³** would apply and the order of reinstatement would mean that he has to be restored to his original position prior to such removal. After giving him a clean chit, denying him the benefit of increments at least notionally for the period that he was kept out of service through no fault of his, would mean

that he is being inflicted with a punishment despite his being found innocent. Such an anomalous situation obviously cannot be the intendment of the law laid down by the Supreme Court in ***S.NARSAGOUD***⁴. The principle laid down therein therefore cannot have application to a case of the present nature, where termination from service is held to be illegal.

The writ petition is therefore allowed to the extent of granting to the petitioner-workman the relief of attendant benefits in the form of notional increments for the period that he was kept out of service. No actual monetary benefits shall be paid to him for such period in terms of these attendant benefits as he himself gave up the claim for back wages. The Award passed by the Labour Court shall stand modified to this extent. 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
L/R copy to be marked -Yes
B/o PGS

[\[1\]](#) (2013) 10 SCC 324

[\[2\]](#) (2007) 2 SCC 433

[\[3\]](#) (1979) 2 SCC 80

[\[4\]](#) (2003) 2 SCC 212