

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 23391 of 2000

ORDER:

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Aggrieved by an order dated 19.03.1999 passed in M.P.No.10 of 1996 on the file of Labour Court-II, Hyderabad, the State Road Transport Corporation (for short "the corporation"), preferred the present writ petition.

The facts in issue are as under:

The first respondent herein who was working as a Bus Conductor in petitioners Corporation was attached to Medak Depot. On 20.05.1994 while the first respondent was on duty on Medak to Degloor route, a surprise check was conducted by the authorities at stage No.23. Basing on the cash and ticket irregularities, the authorities framed three charges against him. After conducting domestic enquiry the first respondent was removed from service. Thereafter, the first respondent filed I.D.No.248 of 1993 before the Labour Court under Section 2-A (2) of the Industrial Dispute Act. Two issues came up for consideration before the Tribunal i.e. 1) Whether the removal of the petitioner from service is justified? and (2) If not, to what relief is the petitioner entitled to?

During the course of trial, neither the first respondent nor the Corporation adduced any oral evidence. By taking into consideration Exs.M1 to M.18, which were produced by the respondents, the Labour Court directed the Corporation to reinstate the delinquent employee into service without break in service but without back wages. The Corporation was also directed to stop two annual grade increments with cumulative effect after his reinstatement. Thereafter, the delinquent filed M.P.No.10 of 1996 under Section 33-C (2) of the Industrial Dispute Act, to compute the benefits payable to him by taking into consideration the notional increments. Fixing the basic pay at Rs.2,805/-, the Labour Court directed the Corporation to pay Rs.78,986.55 ps. Thereafter, the delinquent filed execution petition before the Deputy Commissioner of Labour for payment of Rs.78,986.55 ps. which was transmitted to the Court of Chief

Judicial Magistrate, who in turn sent a copy to the Junior Civil Judge, Narayankhed for execution of the order. By an order dated 14.11.2000 in E.P.No.25 of 2000 the Junior Civil Judge, Narayankhed ordered attachment of RTC bus for recovery of amount of Rs.78,986.55 ps. Aggrieved by the same, the present writ petition came to be filed.

Learned Standing Counsel for the Corporation submits that even assuming that the Executing Court has jurisdiction to recover the amount due, the arrears would only come to Rs.62,002.15 ps. but not Rs.78,986.55 ps. as calculated by the Deputy Commissioner of Labour, Rangareddi Zone. He further submits that when the award of the Labour Court does not refer to payment of notional benefits, the delinquent is not entitled for the same. Relying upon the judgments of the Apex Court in ***APSRTC and another v. S.Narsagoud*** and ***APSRTC v. Abdul Kareem*** learned counsel for the petitioners submits that the impugned order is illegal and improper.

However, relying upon the judgment of the Apex Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others*** the learned counsel for the respondent submits that notional increments have to be taken into consideration for the purpose of calculating the amount due since the Tribunal ordered reinstatement without break in service but without back wages and also stoppage of two annual increments with cumulative effect.

The only dispute in the present case is as to whether the delinquent employee, who is the first respondent herein, is entitled for the notional increments which were given to the employees working in the Corporation in the Revised Pay Scales while he was away from the service.

In ***APSRTC v. S.Narsagoud*** case (1 supra) the Apex Court was dealing with a case where a conductor, who was in employment of the appellant remained absent from duty from 05.06.1982 to 08.08.1982 and again from 13.10.1992 to 01.11.1992. A departmental enquiry on the charges of unauthorised absence from duty culminated into dismissal from service. However, the Labour Court while upholding the finding of departmental enquiry held that denial of back wages was the appropriate punishment for the respondent's guilt. Accordingly, it directed the respondent to be reinstated with continuity of service but without back wages. At the instance of the respondent,

the High Court directed the appellant to fix the wages payable to him on his reinstatement by taking into account the increments that he would have earned had he been in service during the period of absence from duty. Aggrieved by the order passed by the High Court, the Corporation approached the Apex Court. After considering the rival submissions made, the Apex Court held as under:

“There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after 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 and merely because he has been directed to be reinstated with the benefit of continuity of service.”

Similarly in ***APSRTC v. Abdul Kareem case (2 supra)*** the Apex Court held as under:

“Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he cannot claim a benefit of increments notionally earned during the period when he was not on duty during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence.”

But in ***Deepali Gundu Surwase case (3 supra)*** a three Bench judgement of the Apex Court, after referring to the judgments in ***Hindustan Tin Works (P) Limited v. Employees, Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour, Mohan Lal v. Bharat Electronics Limited, Workmen of Calcutta Dock Labour Board v. Employers*** and also the other judgments of the Apex Court held as under:

“38.7 The observation made in ***J.K.Synthetics Limited v.***

K.P.Agrawal that on reinstatement the employee/ workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge benches referred to above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

In **Surendra Kumar Verma case (5 supra)** the Apex Court observed as under:

“6.... Plain common sense dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

Keeping in view the principles laid down by the Apex Court in the judgment referred to above, I proposed to deal with the case on hand.

The case of the Corporation is that on 21.11.1984 when the officials of the Corporation made a surprise check of bus bearing No.8909, it was found that the first respondent herein failed to issue tickets to 23 passengers who were found alighting without tickets at Khanduballoor, stage No.23, having boarded the bus at Jukal, stage No.22.

On perusal of the record, the Labour Court found that the delinquent had no intention to misappropriate the funds of the Corporation. It was found that the passengers did not board the bus at Jukal bus stop, stage No.22, but they boarded the bus after the bus moved from Jukal. It was also observed by the

Labour Court that the distance between two stages i.e. Jukal to Khanduballoor is very short and the conductor was in the process of issuing tickets. Taking into consideration all these aspects, the Labour Court found that the punishment of removal from service was too harsh.

A reading of the judgments of the Apex Court, referred to above, show that the reinstatement of employee with continuity in service will not disentitle him to claim the notional increments which he would have got had he been in service. In view of the finding of the Labour Court that there was no intention to misappropriate the funds of the Corporation; that the fault lies with the passengers in boarding the bus after the bus left Jukal bus stop; getting down at Khanduballoor which was at a short distance and that the first respondent herein is entitled for continuity of service without break in service, the notional increments which the petitioner would have got had he been in service during the said period cannot be denied to him. Further, by an order dated 17.04.2001 this Court made the stay absolute subject to the condition of the Corporation depositing a sum of RS.50,000/- out of the total due amount of Rs.78,986.55 ps. within a period of four weeks and on such deposit, the first respondent was given liberty to withdraw the same without furnishing security. It is represented by the learned counsel for the first respondent that the Corporation had deposited Rs.50,000/- and the first respondent herein withdrew the said amount.

For the aforesaid discussion, I see no reasons to interfere with the impugned order.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.07.2015

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