

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.13253 OF 2005

ORDER:

This writ petition is filed by the petitioner – workman questioning the orders of the Executive Engineer (Rural), APSRTC, Hyderabad, in No.E3/255(4)/05-HZ, dated 28.05.2005, whereby and whereunder the authority has refused to grant annual grade increments to the petitioner from 10.08.1997 to 25.09.2004.

The petitioner was appointed as Man Mazdoor in the respondent – Corporation on 01.01.1976. On 13.12.1994 the petitioner was directed to follow the contractors namely Sri Chenna Reddy and Sri Bhaskar Rao, who were given 60 bags and 40 bags of cement respectively for execution of work pertaining to Uppal Depot. The petitioner was entrusted with two 68 MTD forms bearing Nos.0086557 and 0086558 and the cement were loaded in a private lorry bearing No.AP Z 5095 engaged by the contractors. The stock is to be delivered at Uppal Depot and on the way 40 bags were unloaded in Ramanthapur at a private residence. The same was detected by the Assistant Engineer on the next day and a complaint was given by him to the Executive Engineer on 17.12.1994. Then the petitioner was issued with a charge sheet alleging that he failed to carry out the instructions of his supervisor for not delivering all the 100 cement bags in Uppal Depot and he failed to unload 40 cement bags which were received by him vide 68-B No.A/o 0086558 and were to be delivered at Uppal Bus Depot but misappropriated the cement bags. An enquiry was conducted and, ultimately, the petitioner was removed from service on 06.07.2005. The review petition filed by him was also dismissed.

Thereafter, the petitioner raised an industrial dispute in ID No.96 of 1996 and the Tribunal, by an award dated 09.07.1997, upheld the

finding of misconduct against the petitioner – workman, but, however, set aside the removal order and directed the respondent – Corporation to reinstate the petitioner without any back wages and any attendant benefits including the annual increment during the period of suspension till the date of appointment. In other words, the Labour Court directed that the petitioner – workman be re-appointed in the respondent – Corporation.

Aggrieved by the same, both the respondent – Corporation and the petitioner – workman filed Writ Petition Nos.29264 of 1997 and 12490 of 1998 respectively and both the said writ petitions were dismissed by this Court, by a common order dated 28.04.2004. Aggrieved by the same, the respondent – Corporation preferred Writ Appeal No.1066 of 2004 and the same was dismissed by a Division Bench of this Court on 16.07.2004.

Thereafter, the Deputy Chief Personnel Manager, APSRTC, has issued office order No.L4/785(77)/04-HCR, dated 25.09.2004, directing the petitioner to report to his duty within seven (7) days. Accordingly, the petitioner – workman had joined duty on 25.09.2004 and had been rendering his services since then.

However, the present writ petition is filed questioning the order of the second respondent refusing to grant annual increments to him from the date of order dated 09.07.1997 till his reappointment dated 25.09.2004.

The point for consideration is whether the writ petitioner can be granted notional increments for the period during which he is out of employment i.e. from 09.07.1997 till his reinstatement on 25.09.2004 in pursuance to the orders of the Labour Court, which were confirmed by this Court in WP.Nos.29264/1997 and 12490/1998 filed by the workmen and the Corporation and in W.A.No.1066/2004 filed by the Corporation.

Point:

The admitted facts are that the writ petitioner on certain

allegations was placed under suspension and ultimately, on enquiry he was removed from service on 06.07.2005. I.D.No.96 of 1996 was raised before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad by the petitioner and by award dated 09.07.1997, the learned Tribunal in para-16 directed as under:

“Thus in the light of my discussion supra while upholding the finding of misconduct against the petitioner/workmen, I set aside the removal order and direct the respondent to reinstate the petitioner without any backwages and any attendant benefits including the annual increment during the period of suspension till the date of appointment.”

Both the Management and Workman were aggrieved by the said orders of the Tribunal and both parties filed W.P.Nos.29264/1997 and 12490/1998 respectively and by a common order dated 28.04.2004 this Court dismissed both the writ petitions. The Management carried the matter in W.A.No.1066/2004, which was also dismissed by a Division Bench of this Court. Consequently, the workman was reinstated into service in obedience to the orders of the Tribunal and the petitioner joined as such on 25.09.2004. The present request of the writ petitioner is that he is entitled to the annual increments during the period from 09.07.1997 to 25.09.2004, i.e. the period during which he was out of employment in view of his suspension and subsequent removal. I am afraid that such request cannot be considered on the ground that admittedly during the said period, the petitioner was suspended and removed from service and only in pursuance of the orders of the Tribunal, as confirmed by this Court in W.P.Nos.29264/1997 & 12490/1998 and in W.A.No.1066/2004, he was reinstated into service on 25.09.2004. The award of the Tribunal is very clear and it stipulates that the writ petitioner though entitled to be reinstated into service, but was not entitled to any back wages and any attendant benefits including

annual increments during the period of his suspension till his reinstatement. When the order of the Tribunal is very clear on this aspect, the writ petitioner, even though was out of employment during the relevant period, he is not entitled to the annual increments from 09.07.1997 to 25.09.2004.

Increments will be granted to an employee for the period when he rendered service and continued in service, but he cannot be given any increments for the period when he was out of service, suspended or removed from service. In this particular case, there is specific direction from the Labour Court that the writ petitioner will not be entitled to any annual increments either regular or notional during the period of his suspension till his reinstatement.

The learned counsel for the petitioner submits that the award of the Labour Court was passed on 09.07.1997 and had the Management reinstated the petitioner into service immediately, he would have definitely earned the increments.

Both the workman and the Management were aggrieved by the order of the Tribunal and both of them have filed two separate writ petitions and further the Management carried the matter in writ appeal. As the issue is pending before this Court, the Management did not issue any orders appointing the writ petitioner. Therefore, it cannot be said that the Management has deliberately prevented or obstructed the writ petitioner from joining service and had Management allowed the writ petitioner to join service, he would have get the increments. As stated above, after the award of the Tribunal, the matter is pending before this Court for nearly 7 years. When the matter is pending before this Court, the Management cannot be expected to issue any orders reinstating the workman in obedience to the orders of the Industrial Tribunal which was subject matter of dispute before this Court in the writ petitions as well as writ appeal. Therefore, I see no substance in the contention of the learned counsel for the petitioner.

For the foregoing reasons, I have no hesitation to say that the

writ petitioner is not entitled to claim any increments for the period from 09.07.1997 to 25.09.2004.

The Writ Petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 09.12.2015

Dsr