

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 945/2015**

SURESH KUMAR Petitioner

Through **Mr. G.S. Charya, Advocate**

versus

DELHI TRANSPORT CORPORATION Respondent

Through **Ms. Latika Chaudhary, Advocate**
for **Mrs. Avnish Ahlawat,**
Advocate for the DTC.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

%

17.03.2015

KAILASH GAMBHIR, J. (ORAL)

Invoking the writ jurisdiction of this Court, the petitioner has preferred the present Writ Petition under Article 226 of the Constitution of India to challenge the order dated 27.09.2012 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'learned Tribunal'*) in Original Applications (*in short 'OAs'*) No.3052/2011.

Mr. G.S. Charya, the learned counsel for the petitioner submits that the petitioner is entitled to the benefit of continuity of service in terms of the order dated 29.12.1996 passed by the Hon'ble Supreme Court in a

Special Leave Petition being SLP No.4276 of 1996 but the same was denied to him by the respondent. The learned counsel also submits that the petitioner is also entitled to the grant of arrears of pay from 18.07.1987 to 05.02.1997 after fixation of his pay by giving the benefit of notional increments earned by him along with benefit of ACP and other legal dues. The learned counsel further submits that the petitioner is also entitled to pension after reckoning his past service w.e.f. 19.07.1977 till the date of his superannuation.

We have heard Mr. G.S. Charya, the learned counsel for the petitioner and Ms. Latika Chaudhary, Advocate for Mrs. Avnish Ahlawat, the learned counsel for the respondent.

The petitioner was appointed as Work Charge Apprentice Conductor in DTC vide letter dated 13.04.1976 and on the post of Conductor w.e.f. 23.05.1977 vide memo dated 09.06.1977. There is a chequered history of petitioner having faced various disciplinary proceedings and the petitioner challenging the same resulting into certain directions being given by the learned Tribunal from time to time. One of the order of termination dated 17.07.1987 was a subject matter of challenge before the Hon'ble Supreme Court in Civil Appeal No.

16543/1996 preferred by the petitioner and vide order dated 20.12.1996, the Supreme Court gave a direction for reinstatement of the petitioner with continuity of service but without the relief of back wages. In compliance with the direction given by the Hon'ble Supreme Court, the petitioner was reinstated in service as Retainer Crew Conductor on 05.02.1997 and he was kept on probation. His period of probation was also extended vide order dated 31.05.1999 upto 01.06.2000. During this extended period of probation, he again indulged in misconduct of non-deposit of DTC articles and again his services were terminated w.e.f. 01.06.2000 under clause 9 (a) (i) of the DRTA (Conditions of Appointment and Service) Regulation 1952. This order was challenged by the petitioner in Appeal and by the order passed by the Appellate Authority he was again inducted into service with the condition that his performance will be watched before his regularisation. The petitioner did not join the service and raised an Industrial Dispute being ID No. 123/2001 and the learned Industrial Tribunal vide order dated 03.07.2003 directed the respondents to reinstate the petitioner with continuity of service w.e.f. 01.06.2000 alongwith back wages for the period from 01.06.2000 to 10.10.2010. In para 5 of the impugned order the learned

Tribunal observed that as far as the period from 01.06.2000 to 10.10.2010 is concerned, the petitioner has as already been granted full back wages and continuity of service. The learned Tribunal further observed that it is also not in dispute that the respondents have granted continuity of service to the petitioner w.e.f. 01.06.1998 for all purposes. It further observed that in the period from 14.08.1986 to 18.07.1987, there is no question of continuity of any kind of service, as the petitioner had never questioned the order of termination dated 17.12.1983 as well as his order of fresh appointment as Retainer Crew Conductor w.e.f. 14.01.1986. The period w.e.f. 18.07.1987 to 05.12.1997 would be treated as the period spent by him as Retainer Crew Conductor and not as an employee on monthly rate basis. In the operative para of the impugned judgment, the learned Tribunal held as under:-

“5. As far as the period from 1.06.2000 to 10.10.2010 is concerned, applicant had already been granted the full back wages and continuity of service. It is not dispute that respondents have granted continuity of service to applicant w.e.f. 1.6.1998 for all purposes. For the period prior to 14.08.1986 there is no question of continuity of any kind of service by the applicant, as he never questioned the order of his termination dated 17.12.1983 as well as his order of fresh appointment as Retainer Crew Conductor w.e.f 14.1.1986. The only controversy pertain to the period from 14.08.1986 to 18.07.1987, i.e. whether the applicant is entitled to the benefit of said period for pay fixation on monthly rate basis. In terms of the order passed by Hon’ble Supreme Court, said period is liable to be treated as period of continuous service of applicant

*as Retainer Crew Conductor without back wages. Whatever benefit attached to the post of Retainer Crew Conductor are admissible to applicant for the said period except back wages and consequential benefit such as increment, if any. However, under no circumstances the said period can be treated as continuance service on monthly rate basis. Hon'ble Supreme Court had not directed to place in a position better than which he occupied on the date of his removal on 18.7.1987. The benefit of continuous service for the intervening period, i.e. 18.7.1987 to 05.12.1997 could also be given to him only as Retainer Crew Conductor and not as an employee on monthly rate basis. In **Andhra Pradesh State Road Transport Corporation and Ors Vs. Abdul Kareem** (2005 6 SCC 36) relied upon by learned counsel for respondents it has been held that in the absence of specific direction in that regard merely because the applicant had been directed to be reinstated in service without back wages, he could not claim benefits notionally for the period when he was not on duty and was out of service. Paras 11 to 14 of the judgment read as under:-*

*11. In our considered opinion, the argument advanced by the counsel is not tenable in law in the view taken by this Court in the recent decision. In the case of **A.P. SRTC and Anr. - Appellants v. S. Narsagoud - Respondent** (2003) 2 SCC 212, this Court had occasion to deal with the identical controversy and succinctly crystallized the point of law. In that case the respondent was a Conductor in the employment of appellant - **A.P.S.R.T.C.** He remained absent from duty between 05.06.1982 and 08.08.1982 and again between 13.10.1992 and 01.11.1992. A departmental inquiry was initiated against him on the charges of unauthorized absence which ended in the punishment of removal from service and a dispute was raised before the Labour Court. The Labour Court upheld the departmental enquiry and the findings arrived thereat, but the respondent was directed to be reinstated with continuity of service but without back-wages. The Learned Single Judge, on being approached by the respondent, 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. This finding of the Learned Single Judge was affirmed in an appeal by the Division Bench. This Court allowed the appeal preferred by the A.P.S.R.T.C.

12. The principle of law on point are no more res integra. This Court in S. Narsagoud (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment on Page SCC 215:

"We find merit in the submission so made. 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 in service."

13. 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 could claim a benefit of increments notionally earned during the period when he was not on duty or 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.

14. In view of what has been stated above, both the Learned Single Judge and Division Bench had erred in law in allowing the benefit of increments notionally to the employee during the period of when he was out of service. Both the orders in C.A. No.7797 of 2003 are set aside.

Also in Andhra Pradesh State Road Transport Corporation v. S. Narsagoud (2003) 2 SCC 212 followed in the aforementioned decision, Hon'ble Supreme Court had ruled that 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 special direction that the employee shall be entitled to the benefit of the increment earned during the period of absence. Para 9 of the said judgment read as under:

9. We find merit in the submission so made. 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 unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service."

In view of the aforementioned it is held that the applicant is not entitled to continuity of service from 1975 as claimed by him, the period from 18.07.1987 to 05.12.1997 would be treated as period spent on duty by him as Retainer Crew Conductor without back wages as directed by Hon'ble Supreme Court and not as an employee on monthly rate basis. The period from 06.12.1997 to 01.06.1998 has been spent by him as Retainer Crew Conductor and the benefits attached to such engagement

have already been released to him. From 02.06.1998 the applicant has already got continuity of service as monthly rate basis employee with consequential benefits, thus no orders are called for the said period.”

Pursuant to the direction given by the Hon'ble Supreme Court vide order dated 20.07.1987 the petitioner was reinstated back in service vide order dated 05.02.1997 passed by the respondents. In his appointment letter it was clearly mentioned that he was not entitled to the grant of back wages. The petitioner was appointed on probation for a period of one year and thereafter his probation was also extended upto 01.06.2000. By the order dated 31.05.2000, the Delhi Transport Corporation again terminated the services of the petitioner w.e.f. 01.06.2000 on account of his failure to deposit all the DTC articles which were in his possession in the Office within 24 hours of receipt of memo by him. This order of termination, however was set aside by the Appellate Authority and by the order passed by the Appellate Authority the petitioner was directed to be reinstated back in service. The petitioner was again issued a fresh appointment letter on the post of Retainer Crew Conductor vide order dated 10.10.2000. This order of termination was also separately challenged by raising Industrial Dispute and vide order dated 03.07.2003 passed by the

learned Industrial Tribunal, the punishment imposed upon the petitioner was held to be illegal and unjustified and as a consequence thereof the petitioner was held to be entitled to the reinstatement and continuity of service w.e.f. 01.06.2000. The petitioner was also entitled to full back wages for the period w.e.f. 01.06.2000 to 10.10.2010. The said order of the learned Industrial Tribunal was challenged by the respondents in a writ petition but the same was dismissed and even an LPA preferred against the order of the writ petition was also dismissed by the Division Bench of this Court vide order dated 30.09.2008. The petitioner was ultimately reinstated back in service vide order dated 25.02.2010.

As can be seen from the aforesaid facts that the petitioner could not continue in service even after he was reinstated back in service in compliance with the direction given by the Hon'ble Supreme Court vide order dated 20.02.1987. His termination was also subject matter of challenge before the learned Industrial Tribunal. The learned Industrial Tribunal gave a direction that the petitioner would be entitled to continuity of service w.e.f. 01.06.2000. No grievance was raised by the petitioner that he has been denied the continuity of back in service and rightly so because the petitioner was not in continuous service even after

he was reinstated back, pursuant to the direction given by the Hon'ble Supreme Court.

With regard to the claim of the petitioner to treat the period w.e.f. 18.07.1987 to 05.12.1997, as a period spent on duty, the learned Tribunal is correct in taking a view that the said period would be treated as a period spent on duty by the petitioner as Retainer Crew Conductor without back wages and not as an employee on monthly rate basis. We are in complete agreement with said reasoning of given by the learned Tribunal. Certainly, the petitioner cannot claim any special advantages by granting him the benefits of increments and ACP etc.

There is no merit in the present petition and the same is hereby dismissed.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

MARCH 17, 2015

v