

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT APPEAL No.625 of 2016

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01.08.2016

Between:

The Andhra Pradesh State Road Transport Corporation
(A.P.S.R.T.C.),
Hyderabad and others

..Appellants

And

V.Srinivasulu

..Respondent

Counsel for the appellants: Mr.N.Praveen Reddy, for N.Vasudeva Reddy,
standing counsel for A.P.S.R.T.C.

Counsel for the respondent: Mr.P.Venkateswara Rao

The Court made the following:

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JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

For cash and ticket irregularities, the services of the respondent were terminated. The respondent raised an industrial dispute before the Industrial Tribunal - II, Hyderabad. By its award, dated 26.09.2005, the Tribunal, while confirming the misconduct of the respondent, however, partly allowed the petition, by setting aside the removal order, dated 29.12.2001, and directing reinstatement of the respondent into service with continuity of service, with all other (attendant notional) benefits, but without backwages, by substituting the penalty with deferment of two annual increments, with cumulative effect for the proven misconduct of the respondent. The respondent filed W.P.No.35552 of 2014 feeling aggrieved by the action of the appellants in not granting him the special grade/stagnation increment available for the employees on completion of 20 years of service. This writ petition was allowed on 18.12.2014 by the learned Single Judge in terms of the order, dated 19.03.2008, in W.P.No.24965 of 2007.

2. We have heard Mr.N.Praveen Reddy, learned counsel representing Mr.N.Vasudeva Reddy, learned standing counsel for the Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) appearing for the appellants and Mr.P.Venkateswara Rao, learned counsel for the respondent.

3. In W.P.No.24965 of 2007, a learned Single Judge of this Court held that consequent on reinstatement of the employee in pursuance of the award of the Tribunal, the period between the date of removal and date of reinstatement deserves to be counted towards service for extending the benefit of stagnation increment on completion of 12 years of service. However, a Division Bench of this Court in

A.P.S.R.T.C. vs. N.Sudhakar Reddy^[1] held as under:

“From this, it is evident that an employee would qualify for increments, if only he has rendered the effective service for the corresponding period. In other words, if he is not in service at all, the mere fact that he is reinstated into service and that the relief of continuity of service was granted does not entitle him to get the benefit. The special increment stands on a higher footing in this behalf. Therefore, we allow the writ appeal and set aside the order of the learned Single Judge, insofar as it held that the respondent is entitled to special grade increment.”

4. The learned counsel for the appellants has invited this Court's attention to the memorandum No.P1/93(12)/87-PD, dated 11.07.1990, wherein it is, *inter alia*, clarified as under:

“Further it is noticed that some of the employees are being reinstated through courts with continuity wages or with attendant benefits, without physically performing their duties.

In such cases, it is clarified that only active service (service spent on duty including leave with allowance) rendered by the employees by deducting LWP/Absenteeism shall be taken into account for purposes of computation of 12 years service for special grade.”

5. As rightly pointed out by the learned counsel for the appellants, the order of the Division Bench in **N.Sudhakar Reddy** (supra 1) was not brought to the notice of the learned Single Judge, who passed the order under appeal.

6. Mr.P.Venkateswara Rao, learned counsel for the respondent, has sought to distinguish between the facts in **N.Sudhakar Reddy** (supra 1) and the present case, by stating that in the former case, except reinstatement with continuity of service, no other benefits were given to the employee therein, and in the instant case, the Tribunal has awarded attendant notional benefits. We are afraid, we cannot accept this contention.

7. As far back as the year 1990, the appellants have issued a clarification as noted above, as per which, only active service rendered by the employees shall be taken into account for the purpose of

computation of 12 years of service. Merely because a vague expression 'attendant notional benefits' was used in the Labour Court award, the respondent cannot be permitted to avail the benefit of increment without putting the 20 years of actual service. In **A.P.S.R.T.C. vs. S.Narsagoud**^[2], on which reliance was placed by the Division Bench in **N.Sudhakar Reddy** (supra 1), the Supreme Court held that an 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, merely because he has been directed to be reinstated with benefit of continuity in service.

8. We are in complete agreement with the view expressed by the Division Bench in **N.Sudhakar Reddy** (supra 1) that for being entitled to the benefit of stagnation increment, one has to render the effective service and he is not entitled to claim such benefit merely on account of the award/order of the Court directing his reinstatement with continuity of service or attendant notional benefits. The learned Single Judge, in our opinion, fell into error in allowing the writ petition.

9. The order under appeal is, accordingly, set aside. The Writ Appeal is allowed.

10. As a sequel to allowing the Writ Appeal, W.A.M.P.No.1630 of 2016 filed by the appellants for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

A.V.SESHA SAI, J

01st August, 2016

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[\[1\]](#) W.A.No.108 of 2006

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