

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.6985 OF 2005

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ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the action of the respondents in not giving notional increments during the out of employment period (i.e. from 08.10.1999 to 10.10.2003) from the date of removal to the date of reinstatement of the petitioner as illegal and arbitrary and consequently direct the respondents to grant notional increments to the said period by fixing correct wages and to pay the arrears in respect of the subsequent period of the reinstatement of the petitioner.

2. The facts leading to filing of the present writ petition are briefly as follows:

The petitioner was appointed as Conductor in the first respondent Corporation on 01.08.1988. A check was exercised when the petitioner was performing his duties as Conductor on the bus No.AP 9Z 7675 on route Miryalaguda to Adavidevulappalli on 25.04.1999. During the check, the officials found that the petitioner committed cash and ticket irregularities and issued a charge memo on 25.04.1999. The petitioner submitted his explanation to the charge memo on 29.04.1999. Being not satisfied with the explanation submitted by the petitioner, a charge sheet was issued to the petitioner on 03.05.1999. After completion of the enquiry, the enquiry officer submitted his report holding that the charges levelled against the petitioner are proved. The respondent issued a notice dated 01.9.1999 to the petitioner calling for his objections on the enquiry report. The petitioner submitted his objections on the enquiry report on 09.09.1999. Thereafter, the petitioner was removed from service vide proceedings of the first respondent dated 08.10.1999. Subsequently,

the petitioner preferred an appeal before the Deputy Chief Traffic Managar, Nalgonda, which was dismissed on 16.03.2000. Against the appellate order, the petitioner preferred a review petition, which was also rejected on 05.05.2000. Thereafter, the petitioner raised an industrial dispute by submitting a petition under Section 2-A(2) of the Industrial Disputes Act, 1947 and the same was numbered as I.D.No.108 of 2001 on the file of the Labour Court-III, Hyderabad. The Labour Court passed an award on 25.08.2003, having accepted the findings of the enquiry officer, however, modified the punishment of removal from service to that of reinstatement of the petitioner into service with continuity of service but with deferment of two (2) annual increments with cumulative effect without back wages and other attendant benefits.

3. The contention of the learned counsel for the petitioner is that the petitioner is entitled for notional increments with effect from 08.10.1999 to 10.10.2003 in view of the award passed by the Labour Court. He further submitted that the first respondent is intentionally and willfully not granting notional increments to the petitioner.

4. Per contra, the learned Standing Counsel for T.S.R.T.C. submitted that as per the terms of the award, the petitioner is not entitled for attendant benefits; therefore, the question of granting of notional increments does not arise. He further submitted that the writ petition is liable to be dismissed.

5. It is not in dispute that the petitioner was out of service with effect from 08.10.1999 to 10.10.2003. The petitioner was reinstated into service in pursuance of the award of the Labour Court dated 25.08.2003 in I.D.No.108 of 2001.

6. Learned counsel for both parties with one voice submitted that as per the terms and conditions of the award, the petitioner is not entitled for back wages as well as attendant benefits. In such circumstances, it

is to be considered whether the petitioner is entitled for notional increments or not.

7. To substantiate the argument, the learned counsel for the petitioner has drawn my attention to the following judgments:

In **T.Narayana v Managing Director, APSRTC**^[1], relevant portion from paragraph No.2 reads as follows:

“... .. It is well settled that whenever an Industrial Court or any other Court grants continuity of service to an employee, the effect of such grant is that the employee should be deemed to have been in service when he was out of employment. This is a legal fiction flowing from grant of continuity of service. ...”

In **APSRTC v. P.Nageswara Rao**^[2], the Division Bench of this court in paragraph Nos.8, 9 and 17 held as follows:

“8. The contention of the learned counsel for the appellant cannot be accepted as the question raised herein is no longer res integra. In Writ Petition No. 1060 of 1998 U.C. Banerjee, J., Chief Justice (as his Lordship then was) held:

It has been contended, therefore, in support of the appeal that since the Tribunal has specifically directed continuity of service without any backwages and other monetary benefits, question of giving him notional increments during the period he was out of employment does not and cannot arise and as such the learned single Judge was clearly in error in directing to take into account the notional increments that the writ petitioner would have earned when he was out of employment. We are however, not inclined to lend our concurrence to the submission of the learned advocate since the other monetary benefits refer to backwages only. The learned Tribunal ordered continuity of service with the benefit of seniority and by reason, thereof, the learned single Judge has also taken into account the notional increments that the writ petitioner would - have earned during the period he was out of employment. We do feel it expedient to record that no exception can be taken to the interpretation given by the learned single Judge and as such this appeal fails and the same is accordingly dismissed. No order as to costs.

9. A special leave petition was relied there against which was marked as Civil Appeal No. 16095 of 1998. By an order dated October 27, 1998 the said application was dismissed. Yet again in Managing Director, APSRTC v. Hanumanlu, QUADRI, J., (as his Lordship then was) by a judgment dated November 26, 1997 in Writ Appeal No. 1321 of 1997 held:

The question raised in the writ petition relates to fixation of pay of the respondent writ petitioner. By award No. 202 of 1992 dated May 5, 1993 the respondent was reinstated into service with continuity of

service but without back wages and stoppage of three annual increments after reinstatement with cumulative effect. The petitioner submits that the fixation of pay should take note of the increment earned by him as a result of continuity of service from the date of removal May 13, 1987, till the date of reinstatement on August 23, 1997. The method of fixation prescribed was notified by the respondents in proceedings No. E2/785/(Genl/I/97/-BDN), dated August 2, 1987). These proceedings were also questioned in the writ petition. The learned single Judge who dealt with the writ petition having taken note of the fact that when similar relief was claimed in Writ Petition No. 11186 of 1992 the principle of fixation was decided by him on October 17, 1995, followed the same judgment and allowed the writ petition on September 24, 1997. It is the correctness of that order that is assailed in this writ appeal.

Smt. A. Vyjayanthi, the learned Standing Counsel for the appellant Corporation submits that as the petitioner has accepted the fixation of pay, he cannot be permitted to raise that issue in the writ petition. The principle of fixation of pay as referred to by the learned single Judge is that the pay of the petitioner should be fixed notionally from the date of removal till the date of reinstatement and if any amount is payable to the respondent- petitioner, the same shall be paid. Obviously that respondent-petitioner will not be entitled to so much of arrears as would relate to the period from the date of removal till the date of reinstatement. He will only be entitled to the benefit of the fixation of pay from the date of reinstatement.

We find no illegality in the order of the learned single Judge subject to the above clarification, the writ appeal is dismissed.

17. Yet recently a Division Bench of this Court in **D.M. APSRTC, Kurnool Depot v. S.S. Reddy Jamal Reddy**, of which one of us (SATYA BRATA SINHA, CJ) was a member held:

"..... Thus the direction for reinstatement of the workman must be read in the aforementioned context that except the backwages and attendant benefits, he was entitled to all other benefits to which he became entitled to by way of his reinstatement without break in service. Having regard to the fact that all the attendant benefits have been clubbed with backwages, we have no doubt in our mind that the learned single Judge while disposing of the writ application meant that not only the notional increments shall not be paid but other allowances to which the concerned workman is entitled to, had he worked during the said period, could not be allowed. But the same does not and cannot mean that the workman would not be entitled to the benefit of notional increments for the purpose of computation of his retiral and other terminal benefits, as also payment of his salary from the date of his reinstatement. If any other meaning is attributed, the same, in our opinion, would amount to double punishment, meaning thereby not only he becomes disentitled from receiving backwages and attendant benefits but also reduction in his salary, which is not contemplated under the statute."

8. As per the principle enunciated in the cases cited supra, an

employee, who was reinstated into service without back wages and other attendant benefits, is entitled for notional increments during the period of out of service.

9. To substantiate the argument, the learned Standing Counsel for the first respondent has drawn my attention to the following judgments:

1. In **APSRTC v. S.Narsagoud**^[3] (of Manupatra), the Hon'ble Apex Court in paragraph Nos.9 and 10 held as follows:

"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.

10. The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of over-stayal after the expiry of leave or joining time cannot count towards increments; unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of over-stayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of over-stayal. Ordinarily, the increments are earned on account of the period actually spent on duty or during the period spent on leave the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period of unauthorised absence from duty though held liable to be punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee."

2. The same principle is reiterated by the Hon'ble Apex Court in **APSRTC v. Abdul Kareem**^[4]. Relevant portion from paragraph No.11 (of SCC) reads as follows:

"... ... There is no specific direction that the employee would be

without 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.”

3. In **J.K.Synthetics Ltd v. K.P.Agrawal**^[5]. Relevant portion from paragraph No.19 (of SCC) reads as follows:

“... .. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.”

10. As per the principle enunciated in the cases 3, 4 and 5 cited supra, the petitioner is not entitled for notional increments, even though he was reinstated into service, during the period of out of employment.

11. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the petitioner is not entitled for notional increments during the period of out of employment.

12. Accordingly, the Writ Petition is dismissed. No costs.

13. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 16.06.2016

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^[1] 1998(3) ALD 304

[\[2\]](#) 2001 (4) ALD 568 (DB)

[\[3\]](#) (2003) 2 SCC 212

[\[4\]](#) (2005) 6 SCC 36

[\[5\]](#) (2007) 2 SCC 433