

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.4172 of 2001

ORDER:

This writ petition is filed by APSRTC aggrieved by the order dated 13.04.1999 in M.P.No.7 of 1997 passed by Labour Court-II, Hyderabad wherein the learned Presiding Officer directed the Corporation to pay Rs.81,446.90 ps. to 1st respondent towards back wages.

2) The brief facts of the case are thus:

a) The 1st respondent was appointed as driver in the Corporation on 21.12.1966 and working as such. While so, the Depot Manager, Siddipet—2nd respondent by an order dated 22.09.1992 removed him from service for his unauthorised absence. Questioning the same he filed appeal before the Divisional Manager, Sangareddy who by order dated 17.06.1993 allowed the appeal and directed to reinstate R1 into service as a fresh driver fixing his pay in the minimum grade of Driver Gr.II subject to medical fitness for A1 category and posted him to Zaheerabad Depot. Pursuant to the said order, R1 was sent for medical examination but he was found unfit for A1 category and as such he was not taken to duty at Zaheerabad Depot. Questioning the same R1 filed W.P.No.20525 of 1993 before the High Court. The High Court allowed the petition holding that R1 is entitled for seniority. Aggrieved, the Corporation carried the matter in W.A.No.782 of

1995 which was dismissed observing that R1 is entitled for full benefits. Hence, R1 filed MP No.7 of 1997 before the Labour Court, Hyderabad under Section 33(c) (2) of Industrial Disputes Act, 1947 claiming an amount of Rs.81,446.90 ps. towards back wages. The Labour Court on appreciation of facts and judgment in W.A.No.782 of 1995 held that R1 is entitled to claim the amount and accordingly allowed the petition. Questioning the same the present Writ Petition is filed by the Corporation.

3) Heard Sri N.Vasudeva Reddy, learned Standing Counsel for petitioner—Corporation. Though notice was served, there is no representation for respondents.

4) Challenging the impugned order, learned Standing Counsel argued that in the W.P.No.20525 of 1993 learned single Judge having observed that '*fresh*' appointment by way of disposal of appeal against removal or dismissal order is improper and Regulations of the Corporation do not permit such fresh appointment, has no doubt allowed the writ petition. However, it was only ordered that the 1st respondent (petitioner in writ petition) is entitled for his seniority. Learned Standing Counsel sought to emphasise that in W.P.No.20525 of 1993 the learned single Judge has not specifically awarded back wages to the 1st respondent. Therefore, he was entitled to only seniority and continuity of service but not back wages. Aggrieved by the order of learned single Judge granting seniority of service, the Corporation preferred W.A.No.782 of

1995. The Writ Appeal was dismissed granting full benefits of service to the 1st respondent. Learned counsel argued that the grievance of the Corporation against the judgment of the learned single Judge is only to the extent of learned single Judge holding that the 1st respondent is entitled for his seniority. Since the learned single Judge has not awarded back wages to 1st respondent, the Corporation had no grievance in that regard in the appeal. Therefore, in the appeal the point stood for consideration was whether learned single Judge was right in setting aside the order of Divisional Manager, granting appointment afresh and allowing the writ petition granting seniority to 1st respondent. Learned counsel argued that while dismissing the Writ Appeal no doubt the Division Bench has upheld the order of learned single Judge but with an addition of granting full benefits of service to the 1st respondent. He vehemently argued that when the 1st respondent has not challenged the order of learned single Judge for only granting seniority but not granting back wages, the Division Bench ought not to have granted back wages while dismissing the Writ Appeal. So, the order in the Writ Appeal only can be construed that it upheld the decision of single Judge granting seniority to the 1st respondent said order of the Division Bench cannot be construed as having granted back wages also. However, the Labour Court misconstrued the order in Writ Appeal and held that in view of the order in Writ Appeal, the 1st respondent is entitled to

additional benefits of service and other attendant benefits and awarded Rs.81,446.90ps. Learned counsel argued that at the time of retirement of 1st respondent on attaining superannuation, the Corporation has calculated the amounts due to him which comes to Rs.2,14,066.58 ps. and paid to him which is not disputed. Since he was not entitled to back wages, the same was not paid to him. The calculation made was proper and therefore the order of the Labour Court under Section 33 (c) of Industrial Disputes Act is liable to be set aside as there was no existing right for the 1st respondent to claim the said amount. He thus prayed to allow the Writ Appeal.

5) In the light of above arguments, the point for determination is:

“Whether there are merits in this writ petition?”

6) **POINT:** On a careful perusal of the record, particularly the judgments in W.P.No.20525 of 1993 and W.A.No.782 of 1995, I am unable to countenance the argument of learned counsel for petitioner/Corporation. In W.P.No.20525 of 1993 having noticed that the order of the Divisional Manager in appointing the 1st respondent as Driver Gr.II afresh as improper since the Regulation of the Corporation do not permit such appointment, learned single Judge allowed the writ petition and held that 1st respondent is entitled to seniority. Aggrieved by the said judgment in granting seniority to the 1st respondent, the

Corporation preferred W.A.No.782 of 1995 and the same was dismissed by the Division Bench of the High Court at the admission stage itself approving the judgment of the single Judge. The Division Bench held as follows:

“The learned single Judge has allowed the writ petition and in our view rightly with full benefits of service. (Emphasis supplied) We do not find any merit in the appeal. Appeal is accordingly dismissed.”

The Division Bench construed the judgment of the single Judge as having granted full benefits of service also. It must be noted that if it is the case of Corporation that learned single Judge has granted only seniority of service to 1st respondent but not back wages with full service benefits but the Division Bench wrongly interpreted the order as if including full benefits of service, the Corporation ought to have taken legal recourse against the judgment in Writ Appeal to rectify its observation. Unfortunately, the present petitioner/Corporation has not taken any such legal recourse and therefore, the judgment in the Writ appeal stood unchallenged and attained finality as per which, the 1st respondent herein is entitled not only seniority of service but also full benefits of service. Hence the Labour Court rightly held that in view of the judgment in W.A.No.782 of 1995, the 1st respondent is entitled to full benefits of service and accordingly allowed M.P.No.7 of 1997 holding that he has existing right to claim the wages. I find no illegality or irregularity in the said order. The writ petition is devoid of merits

and hence dismissed. No costs.

As a sequel, pending miscellaneous petitions, if any,
shall stand closed.

U.DURGA PRASAD RAO, J

Date: 09.06.2016

Murthy