

THE HON'BLE MRS JUSTICE ANIS

W.P. No.18657 of 2003

ORDER:

This Writ Petition is filed for the following relief:

“For the reasons stated in accompanying affidavit, this Hon'ble Court may be pleased to issue Writ Order or direction more particular one in the nature of Writ of Certiorari and after calling for the records in I.D. No.133/ 1999 dt.30.03.2002 on the file of the Hon'ble 1st respondent in so far as denying continuity of service, back wages, attendant benefits and imposing punishment of deferment of three (3) annual increments with cumulative effect to the petitioner is illegal, arbitrary and unjust and consequently quash the award in I.D. No.133/1999, dt.30.03.2002 by granting continuity of service, attendant benefits, back wages and three (3) annual increments to the petitioner and pass such other order or orders as this Hon'ble Court may deems fit and proper under the circumstances of the case.”

2) The petitioner stated that he was appointed as a Conductor in respondent Corporation in the year 1984 and discharging his duties to the utmost satisfaction of his superiors. Presently, he is working at Raidurga Depot. When the petitioner was conducting bus No.728 on route Anantapur to Koppalakonda on 11.02.1998, the Head quarter Enforcement Squad, Tadpatri, exercised a check. Though there was no irregularities on part of the petitioner, the checking officials framed a false charges on 19.02.1998. Charge sheet was issued and three charges were framed, for which the petitioner submitted an explanation. However, the 2nd respondent, without considering the explanation given by the petitioner, appointed an enquiry officer to conduct enquiry into the charges. The enquiry officer subsequently conducted enquiry without following the principles of natural justice and made the petitioner guilty of charges in his enquiry report dated 02.07.1998. Basing upon the enquiry report, the 2nd respondent issued show cause notice of removal dated 06.07.1998 for which the petitioner has given his explanation on 10.07.1998. Without

considering his explanation, the 2nd respondent issued proceedings on 01.08.1998 terminating the services of the petitioner. Aggrieved by the same, the petitioner filed an appeal before the appellate Court and the same was rejected on 31.10.1998. Thereafter, he filed a review petition and the same was rejected on 30.04.1999 without assigning any reasons.

3) Having no other remedy, the petitioner raised an Industrial Dispute before the Hon'ble Industrial Tribunal – cum-Labour Court, Anantapur and the same is numbered as I.D. No.133 of 1999. The Industrial Tribunal after considering the record, set-aside the termination order and directed the respondents to reinstate the petitioner into service without backwages and imposed punishment of deferment of three (3) annual increments with cumulative effect. Aggrieved by the award passed by the Tribunal, the petitioner now filed the present Writ Petition.

4) Learned counsel for the petitioner argued that the Tribunal has not considered the record and imposed punishment of deferment of three annual increments with cumulative effect and the said order of the Tribunal is not based on any evidence. Further, the petitioner cannot impose more than one punishment which is against to the circulars issued by APSRTC.

5) On the other hand, learned standing counsel for APSRTC argued that basing on the evidence on record the Tribunal rightly passed an award directing the petitioner to reinstate into the service without back wages and imposing punishment of deferment of three annual increments with cumulative effect.

6) The further contention of the learned counsel for the respondent is that the claim made by the petitioner cannot be granted as he was already reinstated into service without backwages and relied upon the judgment of the Apex Court in **APSRTC vs**

S.Narsagoud^[1] wherein it was held 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 or to the benefit of the increments earned during the period of absence. The employee 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 was directed to be reinstated with the benefit of continuity in service.”***

7) The learned counsel further relied upon the case law reported in ***Mahabir Prasad vs Delhi Transport Corporation***^[2] wherein it was held that ***“the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs’.*** Learned counsel also relied upon the judgment of this Court dated 15.09.2015 passed in W.P. No.6973 of 2005 (Md. Ghouse vs APSRTC rep. by its Depot Manager, Gadwal, Mahaboobnagar).

8) A perusal of the record shows that the petitioner worked as a conductor in APSRTC. Prior to his removal from service on 11.02.1998, when the petitioner was conducting bus No.728 on route

Anantapur to Koppalakonda, the Head Quarter Enforcement Squad, Tadiparthi, exercised a check and concluded that the petitioner committed cash and ticket irregularities. The respondent issued charge sheet basing on the report of the checking Staff for which the petitioner submitted his explanation. The respondent has not accepted the explanation given by the petitioner, conducted domestic enquiry after following the procedure and after considering the evidence on record, passed the order of removal on 04.08.1998.

9) Aggrieved thereby, the petitioner filed appeal as well as review petitions and the same were dismissed on 31.10.199 and 30.04.1999 respectively. Thereupon, the petitioner filed a petition before the Industrial Tribunal. The Tribunal after considering the record passed an award on 30.03.2002 directing the respondent management to reinstate the petitioner into service without backwages and further directed with punishment of deferment of three annual increments with cumulative effect. Aggrieved by the said order, the petitioner filed the present Writ Petition.

10) A perusal of the record shows that the Tribunal held that out of three charges, charge Nos.1 and 3 were proved and charge No.2 was not proved. Hence the award was passed directing the reinstatement of the petitioner into service without backwages. No doubt, there is no specific finding by the Tribunal regarding the continuity of service and attendant benefits. That itself shows the petitioner was not awarded the benefits of continuity of service and backwages.

11) Learned counsel for the respondent also fairly conceded that the petitioner is entitled to set-aside the award insofar as deferment of three annual increments with cumulative effect.

12) If the continuity of service is not granted, it is clear that the petitioner was appointed as a fresh candidate. This was fortified with

the Tribunal not awarding any backwages. Thus it is a fresh appointment wiping of entire past career and benefits that has arisen therefrom. In that event, imposing of further punishment or retention of three annual increments is absolutely onerous and unsustainable. Therefore the petitioner is entitled to set aside the order so far as deferment of three annual increments is concerned and rest of the award is unaltered.

13) Accordingly, the writ petition is partly allowed. No order as to costs.

14) Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

Date:22.04.2016
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[\[1\]](#) 2003 (2) SCC 212

[\[2\]](#) 2014 (6) AD (Delhi) 802=2014 (143) FLR 858