

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.6465 of 2016

Between:

The State of Telangana,
represented by its Principal Secretary,
Panchayat Raj Department, Hyderabad and others
..Petitioners

And

Ambareesh and another ..Respondents

JUDGMENT PRONOUNCED ON: 11th March, 2016

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

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| 1. Whether Reporters of local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

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*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

+ **WRIT PETITION No.6465 of 2016**

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% 11.03.2016

The State of Telangana,
represented by its Principal Secretary,
Panchayat Raj Department, Hyderabad and others
..Petitioners

Vs.

\$ Ambareesh and another ..Respondents

! Counsel for the petitioners: Government Pleader for Services (TS)

Counsel for respondent No.1: Mr.P.Raghavender Reddy

Counsel for respondent No.2: --

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>Head Note:

? Cases referred:

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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Counsel for the petitioners: Government Pleader for Services (TS)

Counsel for respondent No.1: Mr.P.Raghavender Reddy

Counsel for respondent No.2: --

The Court made the following:

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

The respondents in O.A.No.5971 of 2011 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') – respondent No.2 filed this writ petition feeling aggrieved by the order, dated 21.11.2013, passed in the said O.A. declaring that respondent No.1 herein is entitled for all the consequential benefits including the wages/salaries for the period from 27.02.2001 to 15.10.2009.

2. The brief facts leading to the filing of the present writ petition are that respondent No.1 was originally appointed as Work Inspector in 1991 on Nominal Muster Roll (NMR) basis, under the control of petitioner No.4 and worked continuously till his services were terminated on 20.04.1999. Feeling aggrieved by his discontinuance, respondent No.1 filed O.A.No.2127 of 1999 before the Tribunal. He also filed another O.A.No.1946 of 1999 for regularization. By common judgment, dated 27.02.2001, the Tribunal disposed of both the said O.As. by declaring that respondent No.1 is entitled to be regularized as Work Inspector Grade II irrespective of the vacancy and accordingly, directed the petitioners to reinstate respondent No.1 and regularize his services, within a period of three months from the date of receipt of a copy of the said order. Questioning the said order, the petitioners filed W.P.No.17918 of 2001. A Division Bench of this Court disposed of the said writ petition, by order, dated 01.04.2009, whereunder, it set aside the order, dated 27.02.2001, of the Tribunal to the extent of the relief of regularization, but, however, confirmed the said order pertaining to the reinstatement of respondent No.1 into service. It,

accordingly, directed the petitioners to reinstate respondent No.1 into service within a period of one month from the date of receipt of a copy of the said order. It needs to be mentioned at this stage that during the pendency of the aforesaid writ petition, respondent No.1 filed an application for an interim direction to reinstate him. In the said application, the Division Bench of this Court granted interim direction on 14.08.2007 for reinstatement of respondent No.1. As the petitioners failed to comply with the said interim order, respondent No.1 filed a contempt case. Thereafter, the petitioners filed W.V.M.P.No.705 of 2008 in the said writ petition. By an order, dated 18.06.2008, the Division Bench made interim direction granted on 14.08.2007 absolute, while dismissing the vacate stay petition. At the hearing of this writ petition, it has come out that in spite of the said order, respondent No.1 was not reinstated into service. Finally, the said writ petition was disposed of as aforementioned on 01.04.2009. More than six months after the disposal of the said writ petition, respondent No.1 was taken back as daily wage NMR worker. As respondent No.1 was not paid back wages, he was constrained to file O.A.No.5971 of 2011. The petitioners resisted the said O.A. However, the Tribunal, by the impugned order, dated 21.11.2013, allowed the O.A. by directing payment of back wages and salary to respondent No.1 from 27.02.2001 to 15.10.2009, the period during which he was out of employment. Feeling aggrieved by this order, this writ petition is filed by the respondents in the said O.A.

3. We have heard the learned Government Pleader for Services (TS) appearing for the petitioners and Mr.P.Raghavender Reddy, learned counsel for respondent No.1.

4. It is no doubt true that neither respondent No.1 claimed back wages in the previous O.As. filed by him following his discontinuance nor any direction was issued either by the Tribunal or by this Court prior to the order, dated 21.11.2013, passed in O.A.No.5971 of 2011

for payment of back wages. Ordinarily, payment of back wages and continuity of service are concomitant reliefs, which follow the order of reinstatement, based on the finding that discontinuance of the workmen is illegal. However, the workmen cannot claim back wages as a matter of course or as of vested right. The law has recognized the concept of gainful employment, which is generally applied in disputes arising under the Industrial Disputes Act, 1947 before the Labour Court and the Industrial Tribunal. As noted above, respondent No.1 has neither claimed back wages in the previous rounds of litigation nor asserted that he was not gainfully employed in O.A.No.5971 of 2011. Therefore, we are of the opinion that the impugned order of the Tribunal under which the relief of payment of back wages for the entire period including the period from 27.02.2001 to 15.10.2009 during which respondent No.1 was out of employment cannot be sustained.

5. Here, we shall, however, have to notice the conduct of the petitioners. Respondent No.1 has succeeded in O.A.No.2127 of 1999 in securing a direction to the petitioners for his reinstatement on 27.02.2001. Despite the fact that the said order was in force, for nearly seven months the petitioners have not reinstated respondent No.1 into service. After the petitioners secured an interim order on 04.09.2001 in W.P.M.P.No.22454 of 2001 in W.P.No.17918 of 2001 staying the operation of the order, dated 27.02.2001, in O.A.No.2127 of 1999, of the Tribunal, this Court directed the petitioners to reinstate respondent No.1, *vide* order, dated 14.08.2007, in W.P.M.P.No.16459 of 2007 in the said writ petition. Even this order was not complied with by the petitioners. Though the said order was made absolute on 18.06.2008 in W.V.M.P.No.705 of 2008 in the said writ petition, still respondent No.1 was not re-engaged. Even after the disposal of the said writ petition on 01.04.2009, for more than six months respondent No.1 was not re-engaged. Thus, at least for a period of two years, the petitioners have not implemented the orders of either the Tribunal or of this Court.

Had the petitioners complied with the Tribunal orders as referred to above, respondent No.1 would have been permitted to work as NMR and earned his wages/salaries during that period.

6. Therefore, in the above facts and circumstances of the case, we feel that respondent No.1 is entitled to back wages, at least for a period of two years calculated at the wages prevailing immediately preceding his re-engagement/reinstatement. The impugned order, dated 21.11.2013, in O.A.No.5971 of 2011 of the Tribunal is, accordingly, modified to this extent and the same is confirmed in all other respects. The petitioners are granted two months time from today for payment of back wages to respondent No.1.

7. Subject to the above modification of the impugned order, this Writ Petition is disposed of.

8. As a sequel to disposal of the writ petition, W.P.M.P.No.8226 of 2016 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

11th March, 2016

Note: L.R. copies to be marked.

(B/o)

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