

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.956 OF 2009

ORDER:

The writ petition is filed challenging the award dated 14.09.2006, passed by the Labour Court, Guntur in I.D.No.12 of 2000.

The facts in brief are that the petitioner was engaged as a temporary driver with effect from 25.05.1997 and removed from service on 13.04.1998 on account of the alleged accident which has occurred on 30.09.1997. In the domestic enquiry, petitioner was found guilty of the misconduct of the driving of the bus bearing No.AP-9-Z-4359 in a rash and negligent driving and thereby caused a death of an individual. In the departmental appeal none of the witnesses cited by the Corporation supported the case of the petitioner and ultimately the same was ended up in dismissal. Aggrieved, thereby the petitioner filed I.D.No.12 of 2000 before the Labour Court and the Labour Court on examination of the record and after taking into consideration of the certificate issued by the Motor Vehicles Inspector came to the conclusion that there was no negligence on the part of the petitioner and the accident had occurred only on account of the mechanical defect due to leakage of break oil. Recording such findings, the Labour Court had set aside the dismissal of the petitioner from service and directed the reinstatement. However, the petitioner was denied back wages stating that the petitioner being a driver would have eaked out his livelihood by driving the private vehicles. Challenging the same, the present writ petition is filed.

Heard Sri P. Gopal Das, learned counsel for the petitioner, Sri P. Durga Prasad, learned Standing Counsel for A.P.S.R.T.C and the learned Government Pleader for Labour.

Learned counsel for the petitioner submits that in similar circumstances, Division Bench of this Court in **Depot Manager, A.P.S.R.T.C., Madhira Depot, Khammam District vs. K. Venkata Satyanarayana and another**¹ had allowed 50% of the back wages to be paid. He further submits that other similarly situated persons who are engaged on daily wage basis came to be regularized in the month of September/October, 1998 and if for not wrongful removal of the petitioner in service, the petitioner would have earned the same wages and in that view of the matter though the petitioner came to be reinstated in 2007, he has been deprived of the earnings and wages for a long period of eight years.

On the other hand, learned standing counsel for the Corporation while placing reliance on the judgments reported in 1) **General Manager, Haryana Roadways vs. Rudhan Singh**² and 2) **Bharat Sanchar Nigam Limited vs. Bhurumal**³ submits that award of back wages is not automatic and the Supreme Court had cautioned granting of back wages and it is to be awarded based on facts of each case.

Having considered the respective submissions, it may notice the guidelines which have been set out by the Supreme Court in case of this nature in **Bharat Sanchar Nigam Limited** (3 supra), wherein it was held:

32. "It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. He drew the attention of this Court to Coal India Ltd v. Ananta Saha ((2011) 5 SCC 142) and Metropolitan Transport Corpn., vs. V. Venkatesan ((2009) 9 SCC 601).
33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimization, unfair labour

¹ 2016 (2) ALD 146 (DB)

² (2005) 5 Supreme Court Cases 591

³ (2014) 7 Supreme Court Cases 177

practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.”

Applying the principles laid down in the above judgment, to the facts of the present case, it is not in dispute that the petitioner came to be appointed on daily wage basis and at relevant point of time, petitioner was paid at the rate of Rs.81/- per day. Services of the similarly situated persons were regularized in the same depot with effect from 1.8.1998 on a regular pay basis. The finding recorded by the Labour Court that the petitioner being a qualified driver would not have remained idle also totally cannot be brushed aside. Though the petitioner worked for a period of five months between 25.05.1997 to 30.09.1997, the day on which the accident had occurred if not for the wrongful suspension and wrongful termination of the petitioner, petitioner would have also been regularized with effect from 1.8.1999 along with others who were working on temporary basis in the same depot. The non working of the petitioner cannot be attributed to the petitioner in any manner. The reappointment came to be made in the year 2007 and the period between 1998 to 2007 is only the delay which has occurred on account of the proceedings pending before the Industrial Tribunal and the I.D was disposed of in the year 2006. For six long years, the case was pending before the Tribunal. The pendency of the case before the Labour Court cannot be put against the respondent-Corporation who is required to function on a commercial principles basis especially in the present times whether they are required to compete with private operators. Considering the totality of the circumstances, it would be just and the interest of justice would be served if the petitioner is directed to be paid 1/4th of back wages treating the petitioner

as deemed to have been appointed on the date from the date the others in the similarly situated persons in the same depot were regularly appointed.

Subject to the above, the Award dated 14.09.2006, passed by the Labour Court, Guntur in I.D.No.12 of 2000, stands modified to the extent indicated above.

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

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:19.09.2016,
Gk.



THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



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