

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.2668 OF 2003

Dated 10-3-2016

Between:

_____ R.Sudakar Rao.

_____..Petitioner.

And:

_____ Andhra Pradesh State Road Transport Corporation,
represented by its Vice-Chairman and Managing Director,
Musheerabad, Hyderabad and another.

_____..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.2668 OF 2003

ORDER: _____

This writ petition is filed to issue direction, more particularly in the nature of mandamus directing respondents to fix the pay of petitioner by allowing increments notionally during the period out of employment and to pay arrears from the date of his reinstatement and pass appropriate orders.

The case of the petitioner as per his affidavit is as follows:

While he was working as conductor in Godavarikhani, Depot Manager through proceedings dated 27-8-1983 removed him from service on the allegation that he has not issued tickets to the passengers. He questioned the removal order before Labour Court Godavarikhani in I.D.No.139 of 1989 and the Labour Court through award dated 18-7-1989 ordered reinstatement with continuity of service and full back wages. According to him, he was reinstated as conductor and posted to Karimnagar-I Depot. Depot Manager Godavarikhani filed writ petition No.11412 of 1990 questioning the award of the Labour Court and this court

disposed of the writ by modifying the award and denied back wages from the date of removal to the date of reinstatement. Respondent management, while counting on duty period has not calculated the increments for the period for which the back wages were not granted but they are bound to grant notional increments for that period. According to petitioner, the respondent management ought to have extended all benefits to him on par with other employees who are physically in service and due to non-fixation of notional increments, his juniors are drawing high salaries and he is drawing less salary. He further stated that in similar case, a Division Bench of this court in batch cases held that workmen are entitled for all increments notionally during out of employment period and also entitled for arrears from the date of reinstatement and that his case is covered by the said judgment which is decided in *APSRTC, KHAMMAM REGION, KHAMMAM AND ANOTHER v. P.NAGESWARA RAO* (^[1]). Petitioner contended that in spite of his several requests, Management has not fixed his pay and not paid arrears till today and having no other alternative, he invoked jurisdiction of this court under Article 226 of Constitution of India and that he is entitled for the reliefs claimed.

Respondents filed counter affidavit disputing the averments of the petitioner and their contentions are as follows:

As per the order of this court in writ petition No.14744 of 1992, services of petitioner were counted with continuity and fixation was done as per revision of pay scales, 1985,1989, 1993, 1997 but increments were allowed from the reinstatement. It is further contended that this Honourable Court awarded only continuity of service and no other benefits either attendant benefits or back wages were given to the petitioner and increments will be allowed only in case, where attendant benefits are specifically granted by Labour Court or this court as no

such benefit is extended petitioner is not eligible for the increment for the period he was out of service and only allowed for continuity of service and the pay was fixed as per eligibility.

It is further contended that as per decision of Supreme Court in *ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, HYDERABAD v. S.NARSA GOUD* (^[2]), petitioner is not entitled for adding of notional increments for the period he was not on duty and that there are no merits in the writ petition.

Heard arguments.

Advocate for petitioner submitted that when the petitioner is entitled for reinstatement with continuity of service denying notional increments for that period, is not legal and the same is contrary to the Division Bench decision of this court decided in batch cases *APSRTC, KHAMMAM REGION, KHAMMAM AND ANOTHER v. P.NAGESWARA RAO* (1st cited). He further submitted that petitioner is entitled for notional increments for the period from the date of removal till the date of reinstatement also, as the petitioner has no other alternative, he has approached this court and that he is entitled for the relief.

On the other hand, advocate for respondents submitted that every employee is entitled for increments only for the period of work and when the petitioner has not worked, he cannot claim the increments and continuity of service is only without giving break of service for the purpose of calculating terminal benefits and increment is not a right and that the claim of the petitioner is not tenable. He further submitted that Honourable Supreme Court in *ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, HYDERABAD v. S.NARSA GOUD* (2nd cited) held that employee is not entitled for notional increment for the period not on duty and in view of that decision, the Division Bench decision

of this court relied on by the advocate for petitioner has no application.

Now the point that would arise for my consideration in this writ petition is whether respondents are liable to fix the pay of petitioner and pay its arrears from the date of his reinstatement?

POINT:

The main controversy between the parties is whether the petitioner is entitled for notional increments as claimed for the period he was out of employment.

As already referred above, petitioner relied on decision of Division Bench of this court and respondents relied on judgment of Supreme Court.

In *APSRTC, KHAMMAM REGION, KHAMMAM AND ANOTHER v. P.NAGESWARA RAO* (1st cited) in batch of matters, Division Bench of this Court held that “When the employee is reinstated with continuity of service while fixing the pay, the department has to take into consideration the notional increments from the date of removal till the date of reinstatement.”

Honourable Supreme Court in *ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION, HYDERABAD v. S.NARSA GOUD* (2nd cited) held as follows:

“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 unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.”

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In that case, respondent therein was a conductor and on the basis of departmental enquiry report, he was inflicted with punishment of removal from service and an Industrial dispute was raised before the Labour Court and Labour Court ordered for reinstatement with continuity of service without back wages and that was challenged by way of writ before the High Court and a single judge directed to compute periodical increments for that period also and the same was confirmed by the Division Bench. While setting aside the order of the Division Bench, Honourable Supreme Court held that “direction of High Court entitling the respondent to earn increments during the period of unauthorized 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.”

So as rightly pointed out by advocate for respondents, the period from the date of removal till the date of reinstatement was treated as continuity of service only for terminal benefit and notional increment cannot be granted as there was no payment of wages for that period. Increments are granted on successful completion of yearly service and when petitioner was out of service during relevant period, he cannot get any increments. Therefore, relying on the above referred Supreme Court Judgment, I am of the view that the claim of the petitioner for notional increment as claimed for the period from date of removal till the date of reinstatement is not tenable.

Therefore, this writ petition is dismissed as devoid of merits. No costs.

As a sequel to the disposal of this writ petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 10-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs

[\[1\]](#) 2001 (4) ALD 568 (DB).

[\[2\]](#) LAWS (SC)-2003-1-30.