

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.24154 of 2004

ORDER:

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus directing the respondent herein to grant Special Grade Increment by counting the out of service period as on duty with consequential benefits including arrears and pass such other necessary orders.

The facts leading to filing of the present writ petition are briefly as follows: The petitioner was appointed as Conductor in the respondent Corporation in the month of November 1986 on temporary basis and his services were regularized in the month of July 1987. The petitioner was removed from service on 29.03.1993 on the ground that he committed irregularity while issuing tickets, which act of the petitioner constitute misconduct. Feeling aggrieved by the orders of the respondent-Corporation, the petitioner approached the Industrial Tribunal by filing I.D.No.525 of 1993 on the file of the Labour Court-III, Hyderabad. After affording reasonable opportunity to both parties, the Tribunal allowed the I.D. on 17.07.1995. In pursuance of the orders of the Labour Court, the petitioner was reinstated into service on 26.04.1996. For one reason or other, the respondent has not sanctioned the special grade increment to the petitioner in the year 1999 and the same was sanctioned in the year 2003. In this writ petition, the petitioner is claiming that he is entitled to special grade increment from July, 1999.

Learned counsel for the petitioner Sri P.Govinda Rajulu strenuously submitted that the respondent has not released the special grade increment to the petitioner in the year 1999 for the reasons best known to it. On the other hand, learned Standing counsel for A.P.S.R.T.C. submitted that the petitioner is not entitled for the Special

Grade increment as he is out of service for a period of about four years from 1993 to 1996.

It is not in dispute that the respondent after following the procedure as contemplated under A.P.S.R.T.C. Service Regulations, 2007 terminated the petitioner from service on 29.09.1993. The petitioner was reinstated into service on 26.04.1996 in pursuance of the orders of the Labour Court dated 17.07.1995 in I.D.No.525 of 1993. The petitioner was out of service nearly for a period of four years, i.e., with effect from 29.03.1993 to 26.04.1996.

The crucial question that falls for consideration is whether this period can be counted for the purpose of granting of special grade increment. In order to appreciate the said fact, it is not out of place to extract the relevant portion of the award, which reads as follows:

“In the result, the order is passed in favour of the petitioner setting aside the removal order dated 29.03.1993 and directing the respondent to reinstate the petitioner into service with continuity of service and without attendant benefits. On the principles of ‘No Work No Pay’, the petitioner is not entitled to any back wages. Necessary orders shall be issued within thirty days of publication of the award.”

A careful perusal of the award clearly demonstrates that the petitioner is not entitled for back wages and also the attendant benefits. As rightly pointed out by the learned counsel for the petitioner, the petitioner was reinstated into service with continuity of service. When the Tribunal has not awarded the back wages as well as the attendant benefits, whether the petitioner is entitled to claim special grade increment. The contention of the learned counsel for the respondent is that in the absence of specific direction in the award, the petitioner is not entitled to claim special grade increment after completion of 12 years of service from the date of joining.

To substantiate his argument, learned counsel for the respondent has drawn my attention to the decision in **A.P.S.R.T.C. v**

S.NARSAGOUD^[1] wherein it was held at paragraph No.9 as follows:

“We find merit in the submission so made. 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.”

In an unreported judgment of division bench of this Court in

A.P.S.R.T.C. AND ANOTHER v. N. SUDHAKAR REDDY^[2] it was held that:

5. The Labour Court has set aside the order of removal and granted the relief in the following manner:

"In the result, the order of removal dated 29.8.1996 and the respondent is directed to re-instate the applicant into service with continuity of service but without backwages."

6. Not only the backwages were denied but also the relief of attendant benefits was not granted. The respondent understood the implication thereof in a proper manner. His immediate threat was about the denial of special grade increment. **The Regulations framed by the Corporation provide for grant of special grade increment for every employee, who completes 12 years of service from the date of initial recruitment. The Corporation however insisted that it is only when an employee has 12 years of active service that he would be entitled to such an increment.** They made their stand clear through memo, dated 11.07.1990.

7. Learned Single Judge did not modify the award much less did he grant the relief of continuity of service. In a way, he has upheld the award passed by the Labour Court. However, he has made an observation to the effect that the respondent is entitled to the benefit of special grade increment. He has

proceeded as though the entire service including the one during which the respondent was out of service must be taken into account.

8. The matter is no longer *res integra*. In APSRTC Vs. S. Narsagoud, (2003) 2 SCC 212, the identical question arose. There also, the relief granted by the Labour Court was the one of reinstatement into service, but without backwages, as in the instant case. The employee claimed the notional increments on the assumption that the period during which he was out of service must be counted in the context of working out the notional increments. This Court accepted his contention and granted the relief. The Supreme Court held that:

“The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of overstayal after the expiry of leave or joining time cannot count towards increments; unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of overstayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorized absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of overstayal. Ordinarily, **the increments are earned on account of the period actually spent on duty or during the period spent on leave the entitlement to which has been earned on account of the period actually spent on duty.** The direction of the 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.”

9. From thus, it is evident that an employee would qualify for increments, if only he has rendered the effective service for the corresponding period. In other words, if he is not in service at all, the mere fact that he is reinstated does not entitle him to get the benefit. The special increment stands on a higher footing in this behalf.

(emphasis supplied)

The facts of the case on hand are identical to the facts of the cases cited supra.

Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to

accede to the contention raised by the learned counsel for the petitioner that the petitioner is entitled to special grade increment with effect from July 1999. Hence, I see no merits in this writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, the miscellaneous petitions if any pending in this writ petition shall stand closed.

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T.SUNIL CHOWDARY, J

April 6, 2016.

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[\[1\]](#) (2003) 2 Supreme Court Cases 212

[\[2\]](#) W.A.No.108 of 2006