

HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.7443 OF 2003

Dated 2-3-2016

Between:

S.K.Mukthar.

_____.
..Petitioner.

And:

Labour Court-II, represented by its Presiding Officer,
4th Floor, Chandra Vihar Building, Nampally, Hyderabad and
another.

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..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.7443 OF 2003

ORDER:

This writ petition is filed seeking a direction in nature of writ of certiorari and quash award dated 5-1-2002 in ID No.4 of 1999 published on 18-4-2002.

Writ petitioner herein joined in APSRTC, Medak Depot as driver in the year 1988. His services were regularized with effect from 1-9-1989. While he was under the control of Depot Manager, APSRTC, Medak, he was suspended on 26-11-1991 as he was involved in a case of road accident that took place on 21-10-1991 while discharging his duties on vehicle No.AEZ 3760. Subsequently, on the basis of departmental enquiry, he was removed from service as per the order dated 8-10-1992. He preferred departmental appeals and those were rejected on 31-8-1993 and 30-3-1994. After the criminal appeal filed by him was allowed, he was acquitted of all the criminal charges, then he submitted an application to the second respondent in July, 1996 seeking reinstatement into service and as no orders are passed, he issued legal notice on 8-12-1998 and as no reply was given, he raised dispute before Labour court on 21-12-1998 under I.D.No.4 of 1999. Labour

court on a consideration of material available on record and also on a consideration of criminal court judgment, ordered for reinstatement into service with continuity of service but without back wages and passed award dated 5-1-2002. Now petitioner filed this writ petition questioning the award of the Labour court to the extent of not granting back wages.

Petitioner filed his affidavit reiterating above referred facts and prayed for a direction as referred above.

Second respondent filed counter disputing the claim of the petitioner.

It is contended that punishment was imposed on the basis of enquiry report and the appeal and review preferred by the petitioner questioning the removal order, were dismissed and that five years thereafter petitioner filed application before Labour Court and the Labour Court by considering the facts of the case refused back wages. It is further contended that simply because, removal order was set aside and reinstatement was given, petitioner is not automatically entitled for back wages and it depends on several factors and the Labour court exercised its discretion and disallowed back wages and therefore, there are no merits in the writ petition.

Heard both sides.

Advocate for writ petitioner mainly contended that denying of back wages by labour court is contrary to settled principles of law. He further submitted that first respondent disallowed back wages on the ground of delay and the said denial is contrary to the law laid down by the Honourable Supreme Court. He further submitted that there was no delay on the part of petitioner in approaching Labour Court because he submitted representation to Regional Manager and only after the Regional Manager failed to pass any orders on the representation of the petitioner and when there was no response for the legal notice dated 8-12-1998, he approached Labour court on 21-12-1998 and as such, there is no delay. He further submitted that though there was no fault on the part of petitioner for his removal and the Labour Court having accepted that there is no

material against the petitioner for both the charges leveled against him in the departmental enquiry, ordered reinstatement on that ground but failed to grant back wages which is illegal.

He further submitted that when the petitioner was unemployed, he could not get any alternative appointment, from the date of his removal in the year 1992 and till his reinstatement into service on 3-6-2002, Labour court failed to grant back wages and the award of the Labour court to that extent is arbitrary, unjust and violative of principles of natural justice.

On the other hand, advocate for second respondent submitted that Labour court while ordering reinstatement granted continuity of service and rightly refused back wages on the principle "No work, No pay". He submitted that Labour court while denying back wages recorded its reasons for giving that relief and this court cannot disturb the findings based on factual aspects and that the relief claimed is not at all tenable.

He further submitted that when cogent reasons are given for denying back wages, this court while exercising powers of writ, cannot interfere with such cogent reasons as this court cannot sit as appellate court. He further submitted that there is no error of law nor there is any material to show that the Labour court acted arbitrarily.

He further submitted that there are no merits in the writ and the same is liable to be dismissed.

Now the point that would arise for consideration in this writ petition is whether there are any grounds to declare the award dated 5-1-2002 as arbitrary, unjust and violative of principles of natural justice to the extent of denying back wages and thereby direct the second respondent to pay back wages.

POINT:

It is the case of petitioner that he joined as driver in the Corporation in the year 1988 through selection process and the services were regularized with effect from 1-9-1989.

On the charge that the petitioner drove the bus in a

rash and negligent manner and caused fatal accident to a cyclist near Dharmavaram village at about 5 P.M., on 21-10-1991 while discharging his duties as driver on bus bearing No.AEZ 3760, a departmental enquiry was conducted whereunder he was found guilty and he was removed from service through order dated 8-10-1992.

Petitioner preferred appeal which was also rejected holding that the petitioner is responsible for the accident. In respect of the same charge, police filed charge sheet against the petitioner and trial court found the petitioner guilty for the offence under Section 304-A I.P.C. and challenging that judgment, petitioner preferred Crl.A.No.48 of 1994 and the appellate court allowed the appeal on 8-11-1995 and acquitted him of the said charge. After the criminal court's judgment, he approached Regional Manager, Medak Region i.e., second respondent in 1996 seeking reinstatement into service, and as no action was taken by second respondent, he raised a dispute before Labour Court on 21-12-1998 which was registered as I.D.No.4 of 1999. Labour Court while recording that there is nothing on record to show that petitioner drove the vehicle due to lack of anticipation and without taking precautionary methods to avert the accident and found that the findings of the Enquiry Officer are perverse and the second respondent was not justified in removing the petitioner from service but while directing the respondent corporation to reinstate the petitioner and while granting continuity of service refused to grant back wages holding that there is a delay of more than 5 ½ years in raising Industrial Dispute. Aggrieved by the order in not granting back wages, present writ petition is filed.

During pendency of this writ petitioner, the writ petitioner died and his wife was brought on record as legal representative as per the orders of this court dated 27-12-2013.

Advocate for petitioner contended that Labour Court is not justified in refusing back wages as there is no limitation prescribed to raise industrial dispute and that the order of the Labour Court to the extent of refusing back wages is to be

set aside.

Learned counsel for writ petitioner relied on judgment of Supreme Court in *RAGHUBIR SINGH v. GENERAL MANAGER, HARYANA ROADWAYS, HISSAR* (^[1]) for the proposition that law of limitation is inapplicable to a reference under industrial dispute Act.

Other side has not disputed the above proposition with regard to period of limitation.

Learned counsel for the petitioner submitted that when the deceased employee was found not guilty, orders of reinstatement without wages is against principles of natural justice. He further submitted that Honourable Supreme Court in similar set of facts granted 50% of back wages towards full and final satisfaction, at least the same may be granted to the petitioner.

On the other hand, advocate for respondent submitted that there is no perversity in the findings of the Labour Court, therefore, this court cannot interfere with the award. To support his submission, he relied on decisions of Supreme Court in *SYED YAKOOB v. K.S.RADHAKRISHNAN AND OTHERS* (^[2]) and *UNION OF INDIA AND OTHERS v. P.GUNASEKARAN* (^[3]).

In both the above referred decisions, it was clarified that High Court in exercise of its power under Sections 226 and 227 cannot venture into reappreciation of evidence or interfere with the conclusions in enquiry proceedings if the same are conducted in accordance with law or go into reliability or adequacy of evidence.

Here the objection of the writ petitioner is not with regard to findings of the Labour Court or with regard to appreciation of evidence but objection is about denial of back wages on ground of delay in approaching Labour Court. Therefore, as rightly pointed out by advocate for writ petitioner, it is not a case challenged on the ground of perversity or wrong appreciation of evidence, therefore, the principle laid down in the above two referred Supreme Court decisions, has no application to the case on hand.

In *ANIL KUMAR PURI v. PRESIDING OFFICER, LABOUR COURT, CHANDIGARH AND ANOTHER* ([4]), Honourable Supreme Court held that employee is entitled to 50% of back wages from the date of termination till he was actually reinstated. In that case, there was no deliberate delay on the part of workman for raising industrial dispute and in peculiar facts of that case, the Honourable Supreme Court granted 50% of back wages.

In *GURMAIL SINGH v. PRINCIPAL GOVERNMENT COLLEGE OF EDUCATION AND OTHERS* ([5]), the employee therein was reinstated with continuity of service but back wages were not granted. Supreme Court denied back wages from the date of termination till the date of raising dispute before Industrial tribunal but granted 50% of wages from the date of raising dispute till the date of reinstatement.

If *GURMAIL SINGH* case (5th cited) is applied, petitioner herein will not be entitled for the back wages from the date of termination i.e., 8-10-1992 till date of raising dispute i.e., 21-12-1998. Supreme Court only granted 50% of the back wages but not full wages, even for the subsequent period.

Relying on *GURMAIL SINGH*'s case, I am of the view that petitioner at best entitled for 50% of back wages from 22-12-1998 till date of reinstatement since he was given clean chit of the charge alleged against him by the Labour court.

For the above reasons, this Writ Petition is allowed in part directing second respondent-corporation to pay 50% of back wages towards full and final satisfaction of deceased employee's claim from 22-12-1998 till date of reinstatement. No costs.

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

JUSTICE S.RAVI
KUMAR

Dated 2-3-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs

[1] (2014) 10 SCC 301
[2] (1964) 5 SCR 64 : AIR 1964 SC 477
[3] (2015) 2 SCC 610
[4] (2000) 9 SCC 129
[5] (2000) 9 SCC 496