

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT APPEAL No. 126 OF 2016

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Appeal under Clause 15 of the Letters Patent is directed against the order passed by the learned Single Judge on 30.07.2015 in Writ Petition No. 23391 of 2000. The Writ Petition referred to supra as well as the present Writ Appeal are preferred by the management of the State Road Transport Corporation.

The 1st respondent workman was employed as a Conductor with the State Road Transport Corporation. While he was conducting a service on 20.05.1984 plying between Medak and Degloor, the service was subjected to a surprise check at stage No. 23 at about 9.55 hours. When the checking officials noticed that several passengers were alighting from the bus without purchasing any tickets, the 1st respondent Conductor was subjected to disciplinary action on the ground that he had failed to collect the fare from the passengers, who boarded the bus and also failed to issue them the tickets. The defence of the 1st respondent Conductor was that the bus has stopped at the bus stop at Jukal, stage No. 22, but however, several passengers have boarded the bus after the bus has left Jukal bus stop and the distance between Jukal and the next stage No. 23 is too short a distance and in fact, the Conductor was in the process of issuing tickets. Since the bus has reached stage No. 23 and stopped as signalled by the checking officials, the Conductor is not completely at fault in not collecting fare and not issuing tickets to some of the passengers found in the bus. The explanation of the respondent Conductor was not accepted. The Corporation has proceeded to

impose on him the major punishment of removal from service, on 21.11.1984. Thereupon, an Industrial Dispute was raised under Section 2-A(2) of the Industrial Disputes Act, 1947. Ultimately, the said I.D. was re-numbered, upon being transferred from one forum to the other, as I.D.No. 248 of 1993. The Labour Court-II, Hyderabad decided that I.D.No. 248 of 1993 (old I.D. No. 36 of 1990) on 15.02.1994. In paragraph 5, this is what the Labour Court has observed:

“ In view of the above discussion and in the result, the respondent is directed to reinstate the petitioner into service without break in service but without backwages. The respondent shall also stop two annual grade increments with cumulative effect after his re-instatement.”

It is not in dispute that the 1st respondent has been reinstated to duty as a Conductor on 12.07.1994 and Sri A.K. Jayaprakash Rao, learned counsel appearing for the workman would also inform us that the workman has since attained the age of superannuation and retired from the service of the Corporation as well. However, taking the direction issued by the Labour Court of reinstatement into service without break in service as implying payment of notional increments, upon reinstatement, the workman has taken out M.P.No. 10 of 1996 before the Labour Court-II, Hyderabad. That Miscellaneous Petition has been moved under Section 33-C(2) of the Act. The management of the Corporation has resisted it, but however, by an order passed on 19.03.1999, the Labour Court directed the management to compute the entitled amount of the petitioner by taking into consideration that the petitioner's pay should be fixed at Rs.2,805/- and then calculate the entitled amount and thereafter two annual grade increments be deferred with cumulative effect and the balance amount is to be paid to the workman. This order dated

19.03.1999 has not been complied with by the management. Hence, the workman has initiated Execution Proceedings before the Deputy Commissioner of Labour seeking payment of Rs.78,986.55 Ps. The Deputy Commissioner of Labour transmitted the Execution Proceedings to the Court of the Chief Judicial Magistrate, who, in turn, forwarded the same to the Junior Civil Judge's Court at Narayankhed and the said Court passed an order on 14.11.2000 in E.P. No. 25 of 2000 for attaching one of the buses owned and operated by the Road Transport Corporation for recovery of amount of Rs.78,986.55 Ps. It is calling in question this order passed by the learned Junior Civil Judge's Court at Narayankhed, Writ Petition No. 23391 of 2000 was filed. In the affidavit filed in support of the said Writ Petition, in paragraph 8, this is what has been stated, *inter alia*,

“ I submit that assuming that the executing court has jurisdiction to recover the amount that became due for the period subsequent to 27.02.1996, the arrears would come to only Rs.62,002.15 Ps. but not Rs.78,986.55 Ps. as falsely calculated by the Deputy Commissioner of Labour.”

The learned Single Judge, who considered the matter entirely on its merit, had found no infirmity in the order passed by the learned Junior Civil Judge at Narayankhed and consequently, dismissed the Writ Petition. It is against that order, the present Writ Appeal is filed.

Heard learned Standing Counsel for the Corporation
Sri N. Vasudeva Reddy as well as Sri A.K. Jayaprakash Rao,
learned counsel for the workman.

The conduct of the appellant Corporation is consistently blameworthy. On the one hand, it has taken a specific plea that the amount due and payable to the workman was only Rs.62,002.15 Ps., but not Rs.78,986.55 Ps., as calculated by

the Deputy Commissioner. Instead of trying to concentrate on this disputed claim of amount payable, the very right of the workman to seek the said amount was sought to be debated. After considering the rival submissions, the learned Single Judge has agreed with the view that as per the Award passed on 15.02.1994 in I.D.No. 248 of 1993, it is plausible for one to make a claim for the differential amount, based upon the benefit of continuity of service.

It is a settled principle of law that an executing Court cannot go behind a decree passed by the competent civil Court. The appellant Corporation had an opportunity in contesting M.P.No. 10 of 1996 before the Labour Court-II, Hyderabad. The Labour Court has not quantified the amount and on the other hand, directed the Corporation to calculate the same and based thereon, pay the workman. That order was passed on 19.03.1999. Even thereafter, the Corporation has not moved. When the workman moved the Deputy Commissioner of Labour for executing the said order dated 19.03.1999, the Corporation had an opportunity to bring to his notice with regard to quantum of the amount. Even then, it has not done so. In those circumstances, the Deputy Commissioner of Labour has calculated it and worked out the amount payable as Rs.78,986.55 Ps. and for the purpose of securing payment of the same, the Deputy Commissioner of Labour has transmitted it to the civil Court. That is how the Court of Junior Civil Judge at Narayankhed came to entertain E.P.No. 25 of 2000 and then, finding the attitude of the Corporation as unhelpful, ordered for attachment of one of the RTC buses. Against that order, the Corporation has filed Writ Petition No. 23391 of 2000.

It is only appropriate to notice, at this stage, that while entertaining the Writ Petition, this Court directed the appellant Corporation to deposit a sum of Rs.50,000/- and upon such deposit

being made, the respondent - workman has been permitted to withdraw the same. Accordingly, the respondent - workman has withdrawn Rs.50,000/-. As a result, the area of scrutiny in this Appeal has, at best, become subject matter of Rs. 28,000/- or Rs. 12,000/-. Once the appellant Corporation itself has taken the plea that if properly calculated, the amount payable to the workman would work out to Rs.62,002.15 ps., but not Rs.78,986.55 ps., in all fairness, the Corporation should have first paid Rs.62,002.15 Ps. and then disputed the right of the workman to seek the balance amount of approximately Rs.16,000/-. That was not done.

Right at this stage, Sri A.K. Jayaprakash Rao, learned counsel for the 1st respondent workman has suggested to this Court that the amount agreed by the Corporation be directed to be paid, so that a quietus can be given to the controversy once and for all. We appreciate the attitude employed by the workman in this regard, all the more so, when he has already retired from the service of the Corporation.

While we leave it open for a more appropriate case for the Corporation to debate as to whether an Award like the one passed in I.D.No. 248 of 1993 will fetch the workman concerned the benefit of payment of notional increments, we direct the appellants to tender the balance amount of Rs.12,002/- drawn by way of a crossed account payee demand draft/pay order in the name of the 1st respondent workman and deliver it to him within a maximum period of 30 days from today.

We need to remind ourselves that when once a learned Single Judge exercised discretion and considered that the claim of the workman is not without any merit, and when we do not find any impropriety in such exercise of discretion, it is not proper for an

appellate Court to substitute its opinion to that of the well-considered opinion rendered by the learned Single Judge. Hence, for this reason also additionally, we are not inclined to entertain this Writ Appeal.

For the aforementioned reasons, the Writ Appeal fails and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

15th March 2016

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