

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.18730 OF 2014

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ORDER:

The petitioner filed this writ petition to declare that the proceedings No.E1/785(34)/10-RM.NZB, dated 23.07.2002, treating the petitioner's regularization only w.e.f.01.08.2004 instead of 01.01.2000 as illegal, arbitrary and discriminatory, violative of Articles 14, 16 and 21 of the Constitution of India and consequently, set aside the same regularizing the services of the petitioner from 01.01.2000 when the services of his batch mates were regularized.

2. The petitioner joined in services of the Corporation as driver on 24.04.1997, after due process of selection on daily wage basis against regular vacancies. Since the date of his joining, he is continuing the work in the same post but his services were terminated vide letter dated 24.07.1999, without conducting any enquiry. Thereupon, the petitioner preferred an appeal before the Deputy Chief Traffic Manager, who in turn passed order dated 25.03.2000, whereunder he was directed to be re-engaged as fresh driver. Accordingly he was working from April, 2000. Questioning the order of removal from services dated 24.07.1999 as well as the appeal order, the petitioner approached the Industrial Tribunal by filing I.D.No.46 of 2006 before the Labour Court-II, Hyderabad, which ended in dismissal by order dated 12.11.2008 published on 13.02.2009. Aggrieved by it, the petitioner filed W.P.No.22317 of 2010 and the same was disposed of on 07.09.2010, directing the respondents to count the service from the date of termination i.e., from 24.07.1999 till he was re-engaged as in service with continuity of service for the purpose of regularization.

3. Based on the order of this Court in W.P. referred supra, the

petitioner made a representation dated 16.08.2011 to the 2nd respondent for regularization of his services w.e.f. 01.01.2000. But the 2nd respondent issued proceedings in Lr.No.E1/785(34)/10-RM:NZB dated 23.07.2012 regularizing his services w.e.f.01.08.2004 instead of 01.01.2000. Therefore, the regularization of services from 01.08.2004 is discriminatory and in violation of direction issued by this Court in W.P.No.22317 of 2010. Hence, prayed to regularize the services of the petitioner, strictly adhering to the order in the writ petition.

4. The respondents filed counter while admitting the various proceedings including termination of the petitioner, filing of W.P.No.22317 of 2010 and order issued thereunder, directing the respondents to re-engage services of the petitioner while ordering regularization of services from 24.07.1999 till his re-engagement without any monetary benefit of back wages and denial of regularization from 01.01.2000 since his regularization was deferred for two years and passed an order regularizing services of the petitioner w.e.f. 01.08.2004. In view of deferment of regularization, the services of the petitioner were regularized only from 01.08.2004. Therefore, there is no discrimination between the petitioner and other batch mates and the same cannot be declared as arbitrary and prayed for dismissal of writ petition.

5. During arguments, Sri V.Narasimha Goud, learned counsel for the petitioner contended that when this Court directed the respondents to regularize the services from the date of termination till his re-engagement into service, failure to consider the same and deferring regularization of the petitioner for two years is arbitrary and totally discriminatory and consequently the same is liable to be set aside.

6. Whereas, the learned counsel for the respondents contended that the appellate authority confirmed the order passed by the 1st respondent and the tribunal did not interfere with the order passed by the appellate authority in I.D.No.46 of 2006. But the order passed by

this Court in W.P.No.22317 of 2010, this Court failed to discuss anything about the order passed by the appellate authority, deferring regularization of the petitioner services etc., and therefore in the absence of any discussion and finding about the same, no illegality is committed by the respondents while passing the impugned order and prayed to dismiss the petition.

7. However, the learned counsel for the respondents further admitted in pursuance of the interim order dated 17.09.2010 regularized the services of the petitioner from 01.08.2004, which is actually in dispute.

8. Undisputedly, the petitioner was removed from service without conducting enquiry. However, the finding of the 1st respondent was confirmed by the appellate authority and the challenge before the Labour Court in I.D.No.46 of 2006 became an abortive litigation. The award of the Industrial Tribunal in I.D.No.46 of 2006 was set aside by this Court in W.P.No.22317 of 2010 dated 17.09.2010. When the writ petition was allowed by this Court, the order passed by the 1st respondent-appellate authority and the nil award passed by the Labour Court are deemed to have been merged and consequently the original order passed by the 1st respondent was set aside. While allowing the writ petition this Court directed respondents 1 to 3 to regularize the services of the petitioner from 24.07.1999 till re-engagement of the petitioner into services, without back wages but instead of regularizing the services of the petitioner on par with his batch mates from 01.08.2002 his services were regularized from 01.08.2004, on account of deferment of regularization of services of the petitioner. The deferment of regularization for two years is contemplated in Regulation 4 of the regulations of APSRTC. However, the modification of the punishment was set aside by this Court in the said writ petition. Therefore, the alleged deferment of regularization for two years is deemed to have been set aside by this Court in

W.P.No.22317 of 2010. Hence, regularization of services of the petitioner from 01.08.2004 instead of 01.08.2002, when services of his batch mates were regularized it is nothing but discriminating the employees, who were placed in the same position or similarly situated. It is undue discrimination of employees more particularly, when the punishment imposed by the 1st respondent and ratified by the 2nd respondent were set aside in the order passed by this Court in W.P.No.22317 of 2010. Thus, as on the date of regularization, no punishment imposed against the petitioner was subsisting and consequently the regularization of services of the petitioner from 01.08.2004 instead of 01.08.2002 is discriminatory, illegal and arbitrary and the same is hereby set aside.

9. In the result, this Writ Petition is allowed directing respondents to regularize the services of the petitioner w.e.f. 01.08.2002, when the services of his batch mates were regularized with all consequential benefits. No costs.

10. Miscellaneous petitions pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date.12.04.2016
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