

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION Nos.18792, 17991, 20057, 27465, 18878, 18875, 18800, 18814, 19027, 18819, 18837, 18848, 18850 & 21021 of 2014

COMMON ORDER:-

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All these Writ Petitions, under Article 226 of the Constitution of India, are filed by the drivers and conductors who were working on contract basis in APSRTC, to declare the order passed by the respondents in not ordering their re-engagement as contract drivers and contract conductors with continuity of service and back wages as bad and to declare the same as illegal, unjust and unreasonable, as the termination of the petitioners is against the procedure and violative of the principles of natural justice.

Since the issue involved in all these Writ Petitions is common, hence I find that it is expedient to decide these petitions by this common order.

Some of the petitioners were found guilty and terminated from service for their absenteeism without prior sanction of any kind of leave; and some of them were found guilty for their negligent act and ticket irregularities; with or without or *ex parte* enquiry by the respondents.

The following petitioners were terminated from service for their ABSENTEEISM without prior sanction of any kind of leave, with or without conducting enquiry.

Sl. No.	Writ Petition No.	Petitioner's name	With enquiry or without enquiry	Penalty imposed by the Depot Manager	Penalty modified by the Appellate/ revisional authority
1.	18792 of 2014	M.Srinu	<i>Ex Parte</i> enquiry	Termination of service	Re-engagement without continuity of service and back wages.
2.	18850 of 2014	B.Laxminarayana	<i>Ex parte</i> enquiry	Termination of service	Re-engagement without continuity of service and back wages.

3.	21021 2014	of	E. Seetha Ram Babu	<i>Ex parte</i> enquiry	Termination of service	Re- engagement without continuity of service and back wages.
4.	18837 2014	of	D.Mallaiah	Without enquiry	Termination of service	Re- engagement without continuity of service and back wages.
5.	18848 2014	of	B.Anjaiah	<i>Ex parte</i> enquiry	Termination of service	Re- engagement without continuity of service and back wages.
6.	20057 2014	of	T. Raja Reddy	Without enquiry	Termination of service	Re- engagement without continuity of service and back wages.
7.	18800 2014	of	N.Srilatha	Without enquiry	Termination of service	Re- engagement without continuity of service and back wages.
8.	17991 2014	of	B.Srihari	Without enquiry	Termination of service	Re- engagement without continuity of service and back wages.
9.	18819 2014	of	J.Prabhakar Reddy	Without enquiry	Termination of service	Re- engagement without continuity of service and back wages.
10.	18814 2014	of	M.Venkatesh	Without enquiry	Termination of service	Re- engagement without continuity of service and back wages.

The following petitioners were terminated from service for their NEGLIGENT ACT or for CASH AND TICKET IRREGULARITIES, with or without conducting enquiry.

Sl. No.	Writ Petition No.	Petitioner's name	With enquiry or without enquiry	Penalty imposed by the Depot Manager	Penalty modified by the Depot Manager or Appellate authority
1.	18878 of 2014	B.Bikshapathi	With enquiry	Termination of service	Re-engagement without continuity of service and back wages.
2.	27465 of 2014	M.Nagu	With enquiry	Termination of service	Re-engagement without continuity of service and back wages.
3.	18875 of 2014	B.Chandra Sekhar Rao	Without enquiry	Termination of service	Re-engagement without continuity of service and back wages.
4,	19027 of 2014	Shaik Basri	With enquiry	Termination of service	Re-engagement without continuity of service and back wages.

In view of the details mentioned above, the petitioners who were working on contract basis were terminated from service either with or without conducting enquiry on the allegations of misconduct referred in the tables *supra*.

As per the circular No.PD-05/2009, dated 23.2.2009 issued by the respondent-Corporation which provides remedies by way of appeal/revision against orders of each termination of contract employees, the petitioners challenged the termination orders before the appellate/revisional authority and by the impugned orders, the termination orders were set aside by the appellate/revisional authority and the petitioners were directed to be re-engaged afresh without continuity of service and other benefits. Aggrieved by the said orders, the present writ petitions are filed.

The principal grievance of the petitioners is that though they were appointed by following the rules relating to regular selection procedure, they were appointed as contract employees and on allegations of unauthorized absence, ticket irregularities and rash and negligent driving of the vehicle by some of the

drivers, termination orders were passed, by conducting enquiry in some cases and without conducting enquiry in some cases as shown in 4th column of table, in violation of principles of natural justice, imposed penalty, which is not prescribed in the Regulations of the APSRTC employees.

The respondent-Corporation filed a detailed counter denying the material allegations, while admitting the penalty imposed against the petitioners of removal from service by conducting enquiry in some matters and without conducting enquiry in some other matters, mostly in case of unauthorized absence shown in the table *supra*. Aggrieved of the imposition of penalty of termination from service, the petitioners preferred appeal/revision before the appellate/revisional authority and the competent authority passed orders as follows:-

- (a) to re-engage them into service as contract drivers;
- (b) The petitioners shall be re-engaged as contract drivers after obtaining fresh security deposit and fresh engagement duly verifying his identity and driving license. The earlier period of service is not accounted for all purposes;
- (c) The petitioners should obtain No Due Certificate from the Depot where he worked earlier.
- (d) The petitioners are directed to RM/SR for further posting orders;
- (e) The petitioners shall report to the unit posted within seven days from the date of receipt of posting order, failing which, the same shall stands cancelled.

The contention of the respondent Corporation is that the petitioners accepted the proceedings of their re-engagement as fresh conductors/drivers, joined in service of the Corporation as fresh contract drivers/conductors by entering into a fresh contract with the Corporation and having remained silent for a period of nine months, filed the present writ petitions based on untenable grounds stating that the proceedings of the 2nd respondent Corporation treating the re-engagement of the petitioners afresh is bad, illegal, unjust and arbitrary. Therefore, the petitioners having joined in service on fresh contract, are not entitled to claim any relief in the present writ petitions.

It is further contended by the respondents that similar question came up for consideration before this Court in W.P.No.2786 of 2012 and batch, wherein, this Court, while dealing with a similar situation, held that enquiry was not conducted before termination of services of the workmen in majority of the cases and in some cases though enquiry was conducted, the principles of natural justice were

not followed. Therefore, this Court, while passing orders dated 29.02.2012 in W.P.No.2786 of 2014 and batch, in paragraph No.6, observed that the principal grievance of the petitioners is that though they were appointed by following the rules relating to regular selection, they were appointed as contract employees and on allegations of unauthorized absence for few days and on allegations of other misconduct, termination orders were passed without conducting any enquiry and in some cases even though the enquiry was conducted, principles of natural justice were not followed. In the same judgment, this Court, while discussing about the cases on which reliance was placed by the learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation, observed in paragraph No.7 as follows:-

“In almost all these cases, this Court, on the premise that the termination orders were passed without conducting enquiry amounting to failure to adhere to principles of natural justice, passed consistent orders of confirming the orders of re-engagement and held that the petitioners are entitled to count their service from the date of termination till the date of re-engagement for the purpose of regularization.”

Thus, the observation of this Court fairly indicates that the cases that were dealt did not include those cases where full-fledged enquiry was conducted, where there was no violation of principles of natural justice etc. Therefore, disposing of earlier batch of writ petitions is of no assistance to the petitioners and on the strength of the judgment in batch of cases referred *supra*, the petitioners are not entitled to claim any benefit. Against the said orders of similar cases, Writ Appeals were filed and they were dismissed. Against the same, review petitions were filed, some review petitions are pending and the review petition filed against W.A.No.1665 of 2012 and batch were dismissed on 31.07.2013. The finding in the said order is that the plea of enquiry was not taken either in the writ petitions or in the Writ Appeals and, therefore, it cannot be clearly distinguished that in the present matters, a detailed enquiry was conducted and it is not covered by the judgment in W.P.No.2786 of 2012 and batch.

The further contention of the respondents is that the contract employees are not governed by the Regulations of the Corporation and that they are governed by contract and the Circular No.PD-05/2009 dated 23.02.2009. The authorities are required to follow the required instructions and they do not have power to grant either continuity of service or any other punishment, except termination.

Therefore, the order of the appellate authority or the review authority can only be in the parameters of removal or re-engagement under a fresh contract. Therefore, the order passed by the appellate/revisional authority is in accordance with law and it is totally consistent with the Circular No.PD-05/2009 dated 23.02.2009. Against the orders in W.P.No.2786 of 2012 and batch dated 29.02.2012 and W.A.No.1665 of 2013 and batch and the review petition filed against W.A.No.1665 of 2012 and batch which were dismissed on 31.07.2013, the Corporation filed SLPs before the Apex Court challenging the legality of the order passed by this Court. Some of the SLPs were admitted and some of the SLPs were dismissed. In some SLPs, the Apex Court granted stay on different dates as shown in the table below.

SL. NO.	W.P. No.	S.L.P. No.	STAY GRANTED ON
1.	27568 of 2012	18047 of 2013	25.11.2013
2.	4317 of 2012	18053 of 2013	25.11.2013
3.	21593 of 2012	16651 of 2013	25.11.2013
4.	34236 of 2012	16871 of 2013	25.11.2013
5.	30880 of 2012	16938 of 2013	25.11.2013
6.	29821 of 2012	26347 of 2013	25.11.2013
7.	29645 of 2012	17547 of 2013	25.11.2013
8.	26060 of 2012	27122 of 2013	25.11.2013
9.	17541 of 2012	7807 of 2014	06.03.2014
10.	30568 of 2012	7808 of 2014	06.03.2014
11.	27412 of 2012	7809 of 2014	06.03.2014
12.	25970 of 2012	7810 of 2014	06.03.2014
13.	5632 of 2012	7811 of 2014	06.03.2014
14.	34192 of 2012	7812 of 2014	06.03.2014

Thus, the respondents ultimately contended that the re-engagement of the petitioners on fresh contract is a dispute pending before the Supreme Court and in view of the same, this Court cannot allow these writ petitions at this stage granting relief in their favour and thereby, the petitioners are not entitled to claim any relief and that prayed for dismissal of these writ petitions.

During hearing, the learned counsel for the petitioners submitted that similar question came up for consideration before this Court on an earlier occasion in W.P.No.8090 of 2010 and batch, W.P.No.2786 of 2012 and batch and the subject matter of these writ petitions is squarely covered by the earlier judgments of this Court in W.P.No.8090 of 2010 and batch and W.P.No.2786 of 2012 and batch and apart from that, the punishment of removal from service

without conducting enquiry is illegal and that conversion of penalty of termination from service into re-engagement of the petitioners in service without continuity of service and without back wages is not a punishment contemplated under the Regulations of the APSRTC and, therefore, such re-engagement itself is violative of the Regulations and on this ground alone, the order passed by the appellate/revisonal authority is liable to be set aside as bad in law.

On the other hand, Sri N.Vasudeva Reddy, learned Standing Counsel for the APSRTC submitted that a batch of SLPs are pending before the Apex Court and the operation of the order in W.P.No.2786 of 2012 and Batch were stayed, and if for any reason those SLPs are allowed by the Apex court, the respondent Corporation would be put to much loss and hence, these writ petitions cannot be allowed and requested to pass appropriate orders.

In view of the rival contentions and on perusing the material available on record, the points that arise for consideration in these writ petitions are as follows:-

- 1) Whether the imposition of penalty of termination from service by the Depot Manager, APSRTC and conversion of the same by the appellate/revisonal authority into re-engagement of service on fresh contract basis without back wages and without continuity of service, is in accordance with The A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967; and if not, the penalty imposed by the appellate/revisonal authority be sustained?**
- 2) Whether the petitioners are entitled to claim continuity of service on their re-engagement on fresh contract basis?**

Point No.1:-

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The First and foremost contention of the learned counsel for the petitioners is that the penalty of re-engagement of the petitioners into service on fresh contract forfeiting their bond is not the punishment contemplated under The A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967, but whereas the learned counsel for the respondent Corporation contended that the petitioners are not governed by these Regulations and they are only governed by the Circular instructions in Circular No.PD-05/2009 dated 23.02.2009.

Undisputedly, the petitioners were appointed on contract basis after following due process of selection of regular employees. When the petitioners

were appointed after due process of selection of regular employees, their service cannot be terminated unilaterally, as they were appointed after following the procedure for selection of regular employees of APSRTC. When due selection process was followed in selection of the petitioners, though appointed on contract basis, the Depot Manager is having effective control over them. Therefore, they are entitled to claim all the benefits on par with the regular employees. Undisputedly, they are qualified to be appointed as regular conductors or regular drivers as they underwent process of selection as per the rules of the Corporation. Therefore, even to remove such employees who were engaged on contract basis, a regular enquiry has to be conducted. But without conducting such enquiry, their services were terminated. This Court, in W.P.No.2786 of 2012 and batch, had relied on various judgments passed by this Court in W.P.Nos. 8090 of 2010, 6720 of 2011, 17896 of 2011, 1671 of 2012, 23103 of 2011, 1657 of 2012, 1445 of 2012, 3684 of 2012, 32816 of 2011, 2288 of 2012, 2765 of 2012, 4277 of 2011, 4106 of 2011, 26242 of 2010, 2291 of 2012, 2603 of 2012, 2696 of 2012, 1445 of 2012, 32830 of 2010 and 22776 of 2011 and held that removal of any employee who is appointed by due process of selection, cannot be done without conducting enquiry. Therefore, a regular enquiry needs to be initiated and on completion of such enquiry, if the petitioners are found guilty of misconduct as per the Regulations referred above, the Corporation can impose appropriate penalty.

Before examining the contention of the petitioners that imposition of penalty of re-engagement of service of the petitioners on fresh contract without continuity of service and without back wages is not a punishment contemplated under the Regulations of the APSRTC, it is necessary to take note of the relevant statutory rules in this regard. The A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967 were made by the Corporation, after obtaining previous sanction of the Government of Andhra Pradesh under Section 45(1) of the Road Transport Corporations Act, 1950, was later approved by the Corporation in Resolution No. 172/1959, dated 29th September, 1959 and was notified in G.O.Ms.No.1566, dated 16-09- 1967. These regulations are statutory in character. Part-IV of these Regulations relate to discipline – penalties and Regulation-8 which prescribes the penalties reads thus:

- (1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-

(i) censure;

(ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;

(iii) fine, in the case of persons for whom such penalty is Permissible under these Regulations, vide sub-clause (3);

(iv) withholding of increments;

(v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;

(vi) suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;

(vii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;

(viii) removal from the service of the Corporation which does not disqualify from future employment.

(ix) Dismissal from the service of the Corporation which ordinarily disqualifies from future employment.

Explanation:-- The following shall not amount to a penalty with the meaning of the Regulation:

(1) withholding of increments of an employee for failure to pass a departmental examination or to qualify in certain duties or subjects in accordance with the regulations or orders governing the service or post or terms of his appointment.

(2) Stoppage of an employee at the efficiency bar in the time scale on the ground of his unfitness to cross the bar.

(3) Reversion to a lower service, grade or post of an employee officiating in a higher service, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct.

(4) Reversion to his permanent service, grade or post of an employee appointed on probation to another service, grade or post, during or at the end of the period of probation in accordance with the terms of his appointment or the regulations or resolution governing probation.

(5) Termination of the services:-

(a) of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the regulations or resolution governing probation; or

(b) of an employee in accordance with the general conditions of service applicable to permanent or temporary employment, as the case may be; or

(c) of an employee engaged under an agreement in accordance with the terms of such agreement; or

(d) for reasons of mental or physical incapacity duly certified by a medical officer specified by the Corporation in that behalf.

(2) The penalty of withholding or forfeiture of the privilege of free passes or privilege ticket orders shall be imposed only in connection with an abuse of the particular privilege and shall not be imposed as an alternative to any other penalty, e.g., reduction of pay. It may however be imposed in addition to any other penalty which may be inflicted in respect of the same act or omission on the part of an employee.

(3) The penalty of fine as such shall not be imposed on an employee in the Class I or Class II Services.

(4) The penalty of withholding of promotion may be imposed in addition to any of the other penalties that may be imposed in respect of the same act or omission on the part of an employee.

(5) The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders.

For absenteeism without sufficient cause, the penalty prescribed under the Regulation No.9 is termination from service. The Depot Manager, either with or without conducting regular departmental enquiry, passed the order of termination from service against the petitioners who were absent and against the other petitioners who were found guilty of cash and ticket irregularities as per law, as shown in the tables *supra*. But on appeal/revision by the petitioners, the appellate/revisional authority converted the said penalty into re-engagement of service on fresh contract without continuity of service and without back wages. In fact, such penalty of re-engagement into service on fresh contract basis without back wages and continuity of service is not contemplated in The A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967. A similar question came up for consideration before this Court in **K.C.Narayana Vs.**

Managing Director, APSRTC and others^[1], wherein, this Court, relying on the judgment of the Apex Court in **State Bank of India and others Vs. T.J.Paul**^[2] held that imposition of penalty which is not prescribed is contrary to the Regulations. In paragraph No.18 of the said judgment, it was held as follows:-

“In view of the judgment of the Supreme Court in **T.J.Paul**'s case (2 supra), the earlier judgments of this Court taking a contrary view must be held no longer as good law and as a result the impugned order of the reviewing authority, appointing the petitioner as a conductor afresh, must necessarily be set aside and the matter remanded to the 2nd respondent for his consideration on the question of penalty.”

Thus, in view of the principle laid down by this Court in **K.C.Narayana's** case (1 supra), the penalty of re-engagement of service on fresh contract basis without back wages and without continuity of service is not in accordance with law. Therefore, imposition of penalty under challenge is contrary to the Regulations and the same is liable to be set aside.

One of the contentions of the petitioners is that the petitioners, whose services were terminated on the ground of absenteeism without conducting any enquiry, is against the principles of natural justice as per the decision of this Court in W.P.No.8090 of 2010 and Batch and on this ground alone, the respondents can be directed to reinstate the petitioners into service with continuity of service and with back wages. However, in the matters shown in Table-II *supra*, penalty was imposed on some of the petitioners after conducting enquiry and some of the petitioners were imposed penalty based on *ex parte* enquiry. In these circumstances, by following the principle laid down in the judgments of this Court referred *supra* and the judgment of the Apex court in **T.J.Paul**'s case (2 supra), it is appropriate to issue directions to the appellate/revisional authority to impose appropriate penalty against whom regular departmental enquiry was conducted; and order fresh enquiry against the petitioners whose services were terminated based on *ex parte* enquiry, setting aside the order of penalty imposed by appellate/revisional authority. But such direction is unwarranted in the present circumstances for the reason the Department did not challenge the legality of penalty imposed against the petitioners. Such direction cannot be given in the petitions filed by the employees challenging the penalty. Hence, I hold that the penalty of re-engagement of petitioners afresh on contract basis without continuity of service, without back wages is illegal and contrary to the Regulations of The

A.P.S.R.T.C. Employees (Classification, Control and Appeal) Regulations, 1967. Accordingly, this point is answered in favour of the petitioners and against the respondents.

Point No.2

In the cases where the services of the petitioners were terminated without enquiry, the penalty imposed against them is liable to set aside. Accordingly, the same is set aside. However, the order of the appellate/revisional authority in terminating the services of the petitioner and re-engaging them afresh on contract basis without continuity of service and without back wages is bad in law. In other words, this Court granted relief of continuity of service to the petitioners, but without any monetary benefit and depending upon the facts and circumstances of each case, this Court granted liberty to the respondent-corporation to conduct enquiry into the allegations of misconduct and in some cases this Court directed that the period during which the employees remained unauthorizedly absent will not be counted for continuity of service and regularization. In some of the cases this Court held that the relief of continuity of service shall be counted only for the purpose of considering their cases for regularization, but not for any other purposes. All those orders are stated to have become final. However, in view of some minor distinctions in those orders, it is felt necessary to pass a comprehensive order, as far as possible, so as to cover various issues raised by the parties. A similar question came up for consideration in W.P.No.2786 of 2012 and batch and a learned single Judge of this Court issued the following guidelines and confirmed in W.A.No.1665 of 2013 and batch:-

- 1) In cases where the appellate/revisional authority has directed re-engagement of the contract employees as fresh employees, such employees shall be entitled to benefit of continuity of service from the date of termination till the date of re-engagement, except for the period during which they were absent, and the said continuity of service granted to the employees shall be without any monetary benefit and shall be counted only for the purpose of regularization at a future date.
- 2) The continuity of service so ordered in para (1) shall not, however, be counted for the purpose of seniority and shall not be allowed to affect the seniority of regularly working employees or for other benefits, but shall be counted only for the purpose of considering their cases for regularization.

- 3) There are also cases where the orders of termination are challenged, either before the appellate/revisional authorities or before this Court, after six or seven years of date of termination. In all such cases the benefit of continuity of service without any monetary benefit and re-engagement so ordered in para (1) shall be available to only to such of those employees who have approached the appellate/revisional authorities or this Court within three years from the date of termination.
- 4) In cases where appeals/revisions or writ petitions are filed after three years of the orders of termination, it is directed that the such petitioner/s shall be considered for reengagement as fresh contract employee/s, subject to medical fitness and other formalities, but he/they shall not be entitled to continuity of past service as under para (1) above.
- 5) In cases where contract employees have preferred appeals/revisions, but no orders have been passed therein, the appellate/revisional authorities shall entertain and dispose of those appeals/revisions in the light of the directions referred to above, preferably on or before 01.08.2016 (the date is mentioned for the purpose of these petitions).
- 6) In cases where no enquiry was conducted, the respondent-Corporation shall be free to conduct enquiry as per law into the allegations of unauthorized absence of its employees from duty or other allegations of misconduct.

As the single Judge of this Court issued the above guidelines which are confirmed by the Division Bench in appeals and in few SLPs by the Apex Court, propriety do not permit me to take any different view. Therefore, those guidelines are binding on the respondents and the respondents are directed to follow the same guidelines in this batch of writ petitions also.

Accordingly the respondents concerned in these writ petitions are directed to examine the case of each petitioner and pass consequential orders appropriately as per the directions given above.

Coming to the contention of the respondent Corporation that some SLPs concerning the subject matter of these writ petitions are admitted by the Apex Court and stay was granted in those cases, it is trite to note that pendency of

SLPs before the Apex Court and stay of operation of the judgment of this Court by the Apex Court is not sufficient to keep these matters pending till the disposal of the SLPs pending before the Apex Court. Therefore, I find no substance in this contention.

In similar cases, this Court issued the above guidelines and confirmed in the Writ Appeals and SLPs filed against some of the writ petitions were dismissed and some are admitted by the Apex Court, granting interim stay as shown in the table. In those circumstances, this Court cannot take a different view than the view expressed by Division Bench of this Court confirming the order of the single Judge to maintain judicial discipline. Hence, the directions issued in W.P.No.2786 of 2012 and batch, confirmed by the Division Bench in W.A.No.1665 of 2013 and batch are re-iterated in certain paragraphs, since the issue involved in the present batch of writ petitions is squarely covered by the judgment of the single Judge of this Court and confirmed by the Division Bench of this Court.

Accordingly, all these writ petitions are disposed of with the above directions, in terms of the earlier judgment of this Court in W.P.No.2786 of 2012 and batch. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in all these writ petitions stands closed.

M. Satyanarayana Murthy, J

03rd June, 2016
Bv

[\[1\]](#) 2007 (5) ALD 416

[\[2\]](#) AIR 1999 SC 1994