

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 1421 of 2011

Date :25.7.2016

Between :

D Govinda Rao S/o Venkatrao
R/o Nallagonda village, Karimnagar district

Petitioner

And

APSRTC
Rep by its VC & MD
Musheerabad, Hyderabad and another

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 1421 of 2011

ORAL ORDER:

On the allegations of ticket irregularities, petitioner was removed from the service by order dated 22.12.1977. Aggrieved by the said order, petitioner raised Industrial Dispute in I D No. 536 of 1989 on the file of the Labour

Court, Godavarikhani. The Labour Court held that in the facts of the case, the punishment of removal is disproportionate. The Labour Court having noticed the fact that petitioner has lot of service by the time the award was passed, granted the relief of reinstatement with continuity of service but without attendant benefits and backwages. As a consequence to the award, the benefits flowing out of the said award were granted to the petitioner. Petitioner retired from service on attaining the age of superannuation on 30.9.2005. This writ petition is filed seeking direction to the respondents to pay earned leave amount for the period from 21.5.1985 to 15.12.1991.

2. Learned counsel for petitioner submits that in view of the award passed by the Labour Court, petitioner is entitled to treatment of said period as on duty and therefore entitled to computation of the said period for the purpose of accumulation of the earned leave and on his retirement for payment of amounts on earned leave accumulated and denial of the same is arbitrary, discriminatory and in clear violation of the award passed by the Labour Court.

3. Stand of the respondents is that since petitioner has not rendered any service during the said period, he is not entitled to computation of said period as earned leave. In support of said contention, reliance is placed on Regulations 7 and 34 (A) of the APSRTC Employees Leave Regulations, 1963.

4. The only issue for consideration is whether petitioner is entitled to computation of the period out of employment for the purpose of accumulation of earned leave ?

5. Learned counsel for petitioner placed reliance on the award passed by the Labour Court in support of his case.

5.1. To appreciate the claim of the petitioner, it is useful to extract relevant portion of the award of the Labour Court, it reads as under:

“.....As the SR is not closed though there is gross dereliction of duty on the part of the petitioner in not giving tickets to them 18 passengers within a reasonable time of their boarding the bus in view of the fact that route in question is a naxalites or extremist porn area the explanation offered by the petitioner is somewhat plausible though not quite satisfactory and since he has not closed the tray numbers malafide intention cannot be attributed to him. But at the same time the petitioner should have taken all precautions to collect the fact before the passengers alight from the bus. Taking into consideration the totality of circumstances present in this case the extreme punishment of removing the petitioner from service once for all is not called for nor just and proper. ***But as the petitioner is out of job since the time of his***

removal from service i.e., from 25.10.1985 denial of backwages and also denial of all other attendant benefits will be sufficient punishment for him. Under those circumstances and in view of my above discussion I hereby set aside the orders of removal of the petitioner passed by the respondent management on 25.10.1985 under Ex.M2 and ***I hereby direct the respondent management to reinstate the petitioner into service with continuity of service but with attendant benefits without arrears thereof*** and the petitioner is also not entitled to any back wages. The petitioner is entitled to his salary from the date of publication of this award. I decide points 1 and 2 accordingly and the award is passed as aforesaid.”

6. A bare perusal of award would disclose that Labour Court was holding that imposition of punishment of removal was excessive. Labour Court observed that though petitioner was guilty of not closing the SR and petitioner ought to have been careful to collect the fare before the passengers alighted from the bus, however, taking totality of the circumstances punishment of removal was unjust. The Labour Court noticed that petitioner was out of service from 25.10.1995 and therefore if backwages and attendant benefits were denied it would suffice the delinquency alleged and proved. Having said so, the Labour Court set aside the order of removal. Though, Labour Court observed in the earlier portion of the award on denial of the attendant benefits and backwages, but in the operative portion word “WITH” is typed. Petitioner places reliance on the last sentence of the award to count the period out of employment for the purpose of accumulation of earned leave.

7. It is clear from the reading of the award that the petitioner was not exonerated of the charges leveled but only on the ground that punishment of removal was excessive, it was set aside. Thus, Labour Court clearly observed that petitioner is not entitled to attendant benefits and backwages. The contents of award in entirety have to be seen to understand the purport of the operative portion of the award. It appears there was typographical mistake in the operative portion of the award and petitioner seeks to take advantage of the same. Having regard to the discussion in the award, it cannot be said that the petitioner, as a matter of course, is entitled to claim the entire period of out of employment as on duty for the purpose of accumulation of earned leave. Further, as per Regulation 7 of the Regulations, unless a person performs actual duties he will not be entitled to accumulation of earned leave. Thus, petitioner is not entitled to computation of earned leave

for the period he was out of service prior to his retirement. I therefore see no merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 25.7.2016
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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