

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.11543 of 2011

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the Lr.No.P1/756(6)/06-NLG, dated 04-10-2010 and Lr.No.P2/785(1)/2007-NLG, dated 22-11-2010 of the Depot Manager, APSRTC, Nalgonda Depot – 2nd respondent herein.

Heard Sri V. Vishwanatham, learned counsel for the petitioner and Sri A. Ravi Babu, learned Standing Counsel for A.P.S.R.T.C. for respondents, apart from perusing the material available before this Court.

The Petitioner was appointed as a Driver in the respondent Road Transport Corporation on 25-05-1982. While he was working under the 2nd respondent, the petitioner was issued a charge sheet on 31-03-1995, alleging un-authorized absence for two days and the petitioner was inflicted the punishment of deferment of annual increments for a period of six (6) months with cumulative effect vide final order No.P1/1(21)/95-NLG, dated 26-04-1995.

Assailing the said order, the petitioner earlier filed writ petition No.998 of 2007. By way of an order, dated 19-01-2007, this Court disposed of the said writ petition and the operative portion of the said order reads thus:

“The respondent is directed to treat the impugned order in proceedings No.P1/1(21)/05-NR3, dated 26-04-1995 as the one for stoppage of annual increment, for a period of six months without cumulative effect, and that the

petitioner shall not be entitled for any monetary benefits up to the date of this order. No costs.”

The petitioner retired from service on medical grounds on 28-02-2006 but the actual date of retirement on attaining the age of superannuation was 31-01-2009, as such, the left over service of the petitioner as on the date of retirement on medical grounds was 2 years 11 months. It is the case of the petitioner that despite the said orders of this Court, the 2nd respondent issued an order, dated 04-10-2010, turning down the request of the petitioner for monetary benefits.

According to the petitioner, the said situation cropped up as the respondent authorities did not treat the punishment as postponement of increments without cumulative effect as directed by this Court in W.P.No.998 of 2007. The petitioner herein, after receipt of the said order, dated 04-10-2010, got a legal notice issued on 09-11-2010, calling upon the respondents to act in accordance with the orders of this Court in W.P.No.998 of 2007 and to pay the difference of arrears. Thereafter the 2nd respondent vide order, dated 22-11-2010 turned down the said request on the ground that the petitioner retired from service on medical grounds prior to the date of orders of this Court i.e., on 19-01-2007.

According to the learned counsel for the petitioner, the said denial is highly arbitrary, illegal, unreasonable and violative of Article 14 of the Constitution of India and contrary to Regulation No.6A(5)(b) of the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964. In this connection it may be apt to refer to the said Regulation, which

reads thus:

“6A(5)(b) In the case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to One and Half month's emoluments (Pay + DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

Service of more than 6 months shall be treated as one year.”

The material available on record further discloses that the petitioner through his counsel issued a legal notice, dated 09-11-2010 and it would be contextual to refer to paragraphs Nos.2 to 6 of the said legal notice which read as follows:

“2. Our client states that, he was retired on 28-2-2006 on medical grounds, but whereas his actual retirement on superannuation was upto 31-1-2009. He was paid with all other service benefits upto 31-01-2009; Therefore, in view of the Hon'ble High Court Orders, our client is entitled for payment of difference amount pertaining to his annual increments duly treating the punishment of stoppage of increments for a period of 6 months without cumulative effect.

3. It is stated by our client that, the Regional Manager, APSRTC, Nalgonda as per the directions contained in the Hon'ble High Court order in above case has addressed a letter to Depot Manager, Nalgonda under Reference 2nd cited for implementation. Our client states that, on enquiry, it is learnt that the Depot Manager, Nalgonda after getting clarification from the personal officer, Nalgonda Region, worked out the difference of arrears to be paid to our client as Rs.82,162/-.

4. While that was the case, surprisingly our client was issued with a Letter under reference 3rd cited, stating that

our client is not on rolls as on the date of the Judgment i.e., 19-1-2007, and he is not entitled for any monetary benefits.

5. *It is to bring to your notice that, our client was retired on Medical grounds with effect from 28-2-2006, and that you have worked out the monetary benefits except the increments differed under impugned order dt.26-4-1995 till his actual retirement i.e., 31-1-2009 and paid to him. Now it is not open for you to say that, our client is not on the rolls of the Corporation and not entitled for monetary benefits.*

6. *It appears that, the 2nd of you has not properly read the Hon'ble High Court orders, and understand in its proper perspective. When our client is paid with all other service benefits upto 31-1-2009, it is not understood as to why the difference of increments after treating the period of punishment as without cumulative effect are paid to our client, more so when the difference of arrears are stated to have been calculated and arrived at Rs.82,162/- . From the above facts, it can be deduced that it is a clear case of deliberate and intentional violation of Hon'ble High Court orders."*

It is also the case of the petitioner in the affidavit filed in support of the writ petition that on 26-12-2009 the Regional Manager – 1st respondent ordered to comply with the orders of this Court in W.P.No.998 of 2007 and pursuant to which respondent No.2 got clarification from the Personal Officer and worked out the difference payable to the petitioner as Rs.82,162/- but surprisingly issued the impugned orders. In fact, the said averment is not denied in the counter-affidavit filed by the 2nd respondent.

A perusal of the material available on record, in vivid and candid terms, demonstrates that the 2nd respondent Depot Manager neither considered the points raised in the legal notice

nor the effect of the above referred Regulation No.6A(5)(b) of the Andhra Pradesh State Road Transport Corporation Employees' (Service) Regulations, 1964 and passed the impugned order, as such, this Court deems it apt to remand the issue to the respondents for fresh consideration after giving notice and opportunity of being heard to the petitioner herein.

For the aforesaid reasons, the writ petition is allowed, setting aside the orders issued by the 2nd respondent vide Lr.No.P1/756(6)/06-NLG, dated 04-10-2010 and Lr.No.P2/785(1)/2007-NLG, dated 22-11-2010 and the matter is remanded to the respondents for fresh consideration and for passing orders afresh, in accordance with law, after giving notice and opportunity of being heard to the petitioner herein, within a period of three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

January 21, 2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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