

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.4276 of 2004

(Arising out of order dated 14-5-2004 passed by the State Industrial Court, Chhattisgarh, Raipur in C.A.No.173/MPIR Act/A/II/2002)

General Manager (P&A), Bharat Aluminium Co. Ltd., Balco, Korba
----- Petitioner

Versus

1. R.S. Soni, S/o Shri S. Soni, PO: Balco Nagar, Distt. Korba (C.G.)
2. President, Industrial Court of Chhattisgarh, Mahanadi Khand, Near Dau Kalyan Singh Bhavan (Mantralaya), Raipur (C.G.)
3. Presiding Officer, Labour Court, Bilaspur (C.G.)

----- Respondents

For Petitioner: Mr. N.K. Vyas, Advocate.
For Respondent No.1: None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/08/2017

1. Respondent No.1 herein was removed from service after domestic enquiry by the petitioner BALCO which he challenged by filing application under Section 31 (3) of the Chhattisgarh Industrial Relations Act, 1960 before the Labour Court. The Labour Court allowed the application and granted reinstatement along with back-wages that was led to filing of appeal by the employer BALCO before the Industrial Court. The Industrial Court allowed the appeal of the employer in part holding that the order of reinstatement to be maintained but without back-wages and dismissed the appeal filed by the employee. Accordingly, the employee was reinstated on 6-

10-2000. Thereafter, on 27-8-2001, the employee filed application for granting back-wages particularly notional benefits from 1992 to 31-7-2001 amounting to ₹ 4,24,550/-. The Labour Court allowed the application 30-4-2002 holding that he is entitled for actual increment from 18-8-1994 till 6-10-2000 against which the petitioner employer preferred appeal before the Industrial Court and the Industrial Court held by the impugned order that the respondent employee will not be entitled to get conveyance allowance, canteen allowance, incentive allowance, LTC and interest for the period from 18-8-1998 to 6-10-2000. Questioning that order of the Industrial Court, the present writ petition has been preferred by the employer BALCO and similar contention raised by the petitioner is that the respondent employee having been reinstated without back-wages is not entitled for actual increment on the said amount.

2. Mr. N.K. Vyas, learned counsel for the petitioner employer, submits that once the respondent employee has been reinstated without back-wages and there is no specific direction that the employee would be entitled for all consequential benefits, the employee is neither entitled for notional increment during the date of removal till reinstatement nor he is entitled for actual increment. He placed reliance upon the decisions of the Supreme Court in the matters of **A.P. SRTC and another v. S. Narsagoud**¹ and **Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and others v.**

¹ (2003) 2 SCC 212

Abdul Kareem².

3. I have heard learned counsel for the petitioner employer and perused the order impugned as also the other material / documents available on record with utmost circumspection.
4. None present for respondent No.1.
5. It is correct to say that the Labour Court though directed for reinstatement with 25% back-wages but in appeal preferred by the employer, the order directing payment of back-wages was set aside. The only grievance which has been highlighted in this writ petition is that the respondent employee is not entitled for actual increment.
6. The Supreme Court in **S. Narsagoud's** case (supra) pointed out the difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction of consequential benefit and observed as under: -

“9. ... There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the

benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service.”

7. Likewise, in **Abdul Kareem's** case (supra), Their Lordships of the Supreme Court have followed the decision in **S. Narsagoud's** case (supra) relied upon by learned counsel for the petitioner herein-above and in paragraph 11 held as under: -

“11. Reverting to the facts of the case at hand, as already noticed, the Labour Court specifically directed that the reinstatement would be without back-wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back-wages, he could not claim a benefit of increments notionally earned during the period when he was not on duty or during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence.”

8. In view of the above, it is crystal clear that the employee is not entitled for actual increments from the date of termination till the date of reinstatement. However, as stated by Mr. Vyas, learned counsel for the petitioner employer, notional benefits given to the respondent employee, if any, shall not be taken away by the employer.

9. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma