

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.22839 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner-Conductor requesting to direct the respondents-Corporation to grant special grade increment and consequential benefits including re-fixation of pay and pay the arrears to the petitioner-Conductor, by counting continuity of service from the year 2000-2001, as he has completed 12 years of service.

2. I have heard the submissions of *Sri P. Govindarajulu*, learned counsel appearing for the writ petitioner, and of *Ms. Vladimeer Khatoon*, learned counsel representing Sri A. Ravi Babu, learned standing counsel for TSRTC. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf in support of the said request, in brief, are as follows:

The petitioner was appointed as a Conductor in the year 1988. His services were regularised, on 26.10.1989. As on the date of the filing of the writ petition, he was working as a Conductor within the region of the 2nd respondent, the Regional Manager, APSRTC Karimnagar, that is, at Godavarikhani Depot. He was discharging his duties to the utmost satisfaction of his superiors. While so, the Corporation issued a Circular No. PD. 65/ 1989, dated 03.05.1989, extending one increment as a special grade increment to the employees who have put in service of 12 or more years in the same category. The Circular was based on a settlement arrived at by the Corporation with the Unions. As per the said circular, the petitioner is entitled to special grade increment in the year 2000-2001, that is,

immediately on his completion of 12 years of service from the date of his initial appointment. However, on the ground that he has not worked continuously for 12 years, he was not granted special grade increment immediately after completion of 12 years of service from the date of his initial appointment. The petitioner was removed from service by order 20.02.1991; however, the said order was set aside by the Labour Court vide Award, dated 03.03.1997, in I.D.No.126 of 1991. By the said Award, the management was directed to reinstate the petitioner with continuity of service and attendant benefits in respect of increments only and without back wages. However, the said Award also directed to withhold two increments as a means of penalty. That Award of the Labour Court became final. Despite such findings in the Award, the representations of the petitioner were not considered for sanction of stagnation increment by counting continuity of service granted by the Labour Court. The petitioner is entitled to the said stagnation increment as claimed as per the judgment of this Court in M.D.Rahamatullah v. Depot Manager, APSRTC¹. The action of the respondents-Corporation is therefore illegal and arbitrary.

4. Per contra, the case of the respondents-Corporation in brief is this:

As per the Circular, dated 03.05.1989, the benefit of special grade increment is extendable to the employees who have completed 12 years of active service. The petitioner was appointed as Conductor on 26.10.1989. Had he worked without any break of service and completed 12 years of service by 25.10.2001, he would have become eligible for special grade increment with effect from 01.08.2002. However, the petitioner was placed under suspension on 02.11.1990. Thereafter, he was removed from service. Pursuant to the Award of the Labour Court, dated 03.03.1997, in ID.No.126 of 1991, he was reinstated into service with continuity of service and attendant

¹ 1999 (4) ALT 515

benefits in respect of increments only and without back wages but two of his increments were withheld by way of penalty. The petitioner reported to duty on 15.07.1997, as per the Award of the Labour Court. Thus, he was not in active service from 02.11.1990 to 14.07.1997, that is, for a period of six years eight months and 12 days. The said period is to be treated as 'non active service' for the purpose of granting a special grade increment. For the purposes of the eligibility of stagnation increment, the period during which the employee was on loss of pay has to be excluded. The petitioner was on loss of pay for a period of 9 months. Hence, the petitioner is not entitled to stagnation increment.

5. I have given detailed and thoughtful consideration to the facts and submissions.

6. In view of the admitted facts including the vital fact that the petitioner who was suspended from service by orders dated 02.11.1990 and was removed from service by orders dated 20.02.1991 was reinstated by the Award of the Labour Court, dated 03.03.1997, in I.D.No.126 of 1991 and that by the said Award, the management was directed to reinstate the petitioner with continuity of service and attendant benefits in respect of increments only and without back wages, the short question is as to whether the petitioner would be entitled to claim stagnation or special grade increment. However, it is not in dispute that the said Award also directed for withholding of two increments of the petitioner as a means of penalty.

7.1 While reiterating the contentions that the petitioner was not in active service from 02.11.1990 to 14.07.1997, that is, for a period of six years eight months and 12 days and that the petitioner was on loss of pay for a period of 9 months, the learned Standing Counsel for the Corporation placed reliance upon a division Bench decision of this Court in APSRTC v. N. Sudhakar

Reddy². The facts of the cited case are as follows: - 'Against the respondent-conductor proceedings were initiated by issuing a charge sheet dated 15.04.1996; he was eventually removed from the services; however, he filed ID.No.241 of 2007 before the Labour Court, Guntur; in exercise of powers under Section 11-A of the ID Act, the order of removal was set aside and the relief of reinstatement with continuity of service without back wages was granted; the respondent filed WP.No.17644 of 2005 before this Court assailing the Award of the Labour Court; he urged that he is entitled to the benefit of special grade increment/ stagnation increment which will be generally granted on completion of 12 years of service from the date of initial appointment; a learned single Judge held that the respondent-conductor is entitled to the special grade increment and that for that purpose the entire service including the one during which he was under suspension and out of service on account of order of removal shall be taken into account; aggrieved thereby, the Corporation preferred the appeal.' A Division Bench of this Court noted that while setting aside the order of removal, the Labour Court directed to reinstate the applicant into service with continuity of service but without back wages and that the learned single Judge of this Court did not modify the Award while granting the stagnation increment or special grade increment to the respondent. This Court also noted the ratio in the decision in APSRTC v. S. Narsagoud³ wherein the facts are identical with the facts of the cited case, that is, to say the employee's reinstatement into service was ordered without back wages.' In the decision in Narsagoud the employee claimed the notional increments on the assumption that the period during which he was out of service must be counted in the context of working out the notional increments. Finally, the Division Bench of this Court following the ratio in the decision of the Supreme Court held that an employee would qualify for increments if only he has rendered the effective service for the corresponding

² Laws (APHC) 2014 (10) 61

³ 2003 (1) SCR 386

period and that in other words if he is not in service at all, the mere fact that he is reinstated into service and that the relief of continuity of service was granted does not entitle him to get the benefit and that the special increment stands on a higher footing in this behalf. Having so held, the Division Bench allowed the writ appeal and set aside the order of the learned Single Judge insofar as the finding that the respondent is entitled to special grade increment.

7.2 It is apposite to refer to the relevant observations/ findings in the judgment of the Supreme Court in Narsagoud (3 supra).

‘The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of over-stayal after the expiry of leave or joining time cannot count towards increments; unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of over-stayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of over-stayal. Ordinarily, the increments are earned on account of the period actually spent on duty or during the period spent on leave the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period of unauthorised absence from duty though held liable to be punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee.’

8. Per contra, learned counsel for the petitioner laid emphasis on the Award of the Labour Court wherein the management was directed to reinstate the petitioner though without back wages but with continuity of service and attendant benefits in respect of increments only and contended that since the continuity of service and attendant benefits in respect of increments are specifically granted and since the petitioner was accordingly granted increment by counting the service, he is perceptibly entitled to special

grade/ stagnation increment and that the ratio in the decision of the Division Bench relied upon by the Corporation is not applicable to the facts of the case as in that case while granting the relief of continuity of service and denying back wages the attendant benefits were also denied and there is no specific observation that the respondent-conductor therein would be entitled to continuity of service and attendant benefits in respect of increments only. In the decision in M.D.Rahamatullah (1st supra) relied upon by the petitioner, the question that fell for consideration was whether the period during which the petitioner was out of service prior to his reinstatement is to be counted for continuity of service for the purpose of Special Grade or stagnation increment. The facts of the cited case show that the petitioner therein who was appointed as Conductor on 21.01.1981 was removed from service on 06.01.1987 on the ground that he committed certain acts of misconduct; however, the Labour Court by Award, dated 19.08.1989, passed in ID.no.215 of 1989, directed his reinstatement into service with continuity of service and all other attendant benefits; thus, according to him, he completed 12 years of service and became eligible for special grade increment; however his representation was not considered by the officer of the Corporation; he was orally informed that he is not entitled to special grade increment in view of the circular dated 11.07.1990; the petitioner filed WP.no.13810 of 1996 for a direction to sanction stagnation increment counting 12 years of service on the basis of continuation of service with effect from 21.01.1991 as per the Award of the Labour Court; that writ petition was resisted on the ground that he is not entitled to the special grade increment as per the impugned circular; the petitioner specifically asserted that he had no knowledge of the impugned circular till counter is filed in WP.no.13810 of 1996 and hence he could not challenge the same earlier; however, a challenge was made to the circular as bad in law and is discriminatory and violative of Articles 14 and 16 of the Constitution. In this setting of facts of the cited case, the learned single

Judge of this Court followed the decision of this court in T. Narayana v. Managing Director, APSRTC, Hyderabad (1998 (3) ALD 304) and held as follows:

In T. Narayana's case (supra) this Court considered a similar case where a conductor was removed from service with effect from 17-11-1986 as a disciplinary measure and when the removal was challenged before the Labour Court an Award directing his reinstatement with continuity of service but without backwages was passed. He was out of employment between 17-11-1986 and the date of reinstatement in October, 1993. The question was whether that period should be taken into consideration for the purpose of fixing his wage. This Court held:

"It is needless to state that though under the Award passed by the Labour Court, the petitioner is not entitled to the back wages, since the Labour Court has awarded continuity of service, it goes without saying that after reinstatement, the management, while fixing the wage payable to the petitioner, should take into account the continuity of service of the petitioner between 17-11-1986 and the date on which he was reinstated into service. It is well settled that whenever an Industrial Court or any other Court grants continuity of service to an employee, the effect of such grant is that the employee should be deemed to have been in service when he was out of employment. This is a legal fiction flowing from grant of continuity of service."

It is noteworthy that the above judgment has been confirmed in W.A. No. 1269 of 1998 dated 13-8-1998 by a Division Bench of this Court.

In WA No.2164 of 1998 another Division Bench comprising of the Acting Chief Justice P. Venkatarama Reddi, J., and myself - following the decisions of this Court in WA No.1060 of 1998, 1321 of 1997, 395 of 1996 and WP No.11585 of 1988, out of which the judgment in WA No.395 of 1996 was confirmed in SLP No.20096 of 1996 by the Apex Court, took a similar view and held that the benefit of continuity of service cannot be restricted only to the computation of seniority or for pensionary benefits.

In the light of the aforesaid authorities and the conclusion reached by me, can the impugned Circular imposing restriction upon reckoning the above service for the purpose of sanction of Special Grade stand the test of law.

An employee who has succeeded before the Labour Court and who has been directed to be reinstated with continuity of service has to be treated on par with all other employees. Otherwise, a stigma will be attached to the employees who are reinstated by virtue of the Award of the Labour Court, if the impugned Circular is allowed to continue. In my considered view, the Circular is discriminatory and hence it is violative of Articles 14 and 16 of the Constitution.

9. In the case on hand though the period of removal from service till reinstatement is not a period spent on active duty, the Labour Court while ordering reinstatement into service granted the relief of continuity of service and specifically added a rider that the reinstatement shall be with continuity of service and attendant benefits in respect of increments only. Having regard to the relief granted to the petitioner specifically that the reinstatement is with continuity of service and attendant benefits in respect of increments only, the present case on hand is distinguishable on facts and the petitioner shall be deemed to have been in service in view of the relief granted to him, otherwise it would amount to denying the relief which was already granted to him by the Labour court and which has become final. The specific direction in the Award or the clear relief that was granted to the effect 'the reinstatement shall be with continuity of service and attendant benefits in respect of increments only' clinches the issue in favour of the petitioner herein.

10. Before parting with the case, it is to be noted that the learned standing counsel for the Corporation having placed reliance on the decision in *Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu*⁴ contended that the writ petition is liable to be dismissed on the ground of delay and laches as the petitioner came to Court in the year 2006. Be it noted that the petitioner's initial appointment was in the year 1988 and his services were regularised on 26.10.1989. Therefore, he became entitled to claim stagnation increment in the year 2001. He gave a representation on 16.05.2004. When his request was not considered he filed the writ petition in November, 2006, after waiting for a reasonable time. On facts of the case, this Court finds that the delay is not fatal and does not disentitle the

⁴ (2014) 4 SCC 108

petitioner to the relief which was denied to him despite the orders in his favour in a judicial proceeding.

11. Viewed thus, this Court finds that the request of the petitioner merits consideration and resultantly the writ petition deserves to be allowed.

12. In the result, the Writ Petition is allowed as prayed for. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

18.04.2017
Vjl

