

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT APPEAL No.1226 of 2017

Date: 29.08.2017

Between:

Abid Ali,
Banswada, Kamareddy District.
(The Then Nizamabad District)

.. Appellant

and

The APSRTC (Now TSRTC),
Rep. by its Depot Manager,
Kamareddy, Kamareddy District,
(The Then Nizamabad District).

.. Respondent

Counsel for the appellant: Sri V. Narasimha Goud

**Counsel for the respondent: Sri N. Praveen Reddy
for Sri N. Vasudeva Reddy,
learned Standing Counsel for APSRTC**

The Court made the following:

JUDGMENT: *(Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

Feeling aggrieved by order dated 17.01.2017 in W.P.No.6193 of 2007 of the learned Single Judge, to the extent he is denied back wages, the writ petitioner filed this writ appeal.

At the outset, it is relevant to mention that against the same order of the learned Single Judge, which is questioned in this writ appeal, the respondent has filed Writ Appeal No.1062 of 2017. This Court, by judgment dated 31.07.2017, has dismissed the said writ appeal.

The grievance of the appellant is that the learned Single Judge having held that the order of removal of the appellant from service is illegal, has committed an error in denying back wages to him.

At the hearing, Sri V. Narasimha Goud, learned counsel for the appellant, argued that the co-delinquent of the appellant, by name, Ch. Narsimhulu, succeeded before the Labour Court, which ordered not only his reinstatement but also full back wages and that the said award of the Labour Court was implemented by the respondent.

Mr. N. Praveen Reddy, learned counsel representing Mr. N. Vasudeva Reddy, learned Standing Counsel for A.P.S.R.T.C., has fairly did not dispute the above submission of the learned counsel for the appellant.

Indeed, the learned Single Judge while considering the relief granted to Ch.Narsimhulu, made the following observations:

“Therefore, his evidence also does not disclose any incriminating material to come to a safe conclusion that the petitioner was responsible for the theft and that the charge leveled against him stands proved. In fact, the Enquiry Officer came to a conclusion that the charges leveled against the petitioner are proved by taking into consideration four circumstances, which are as follows:

- “1. The vehicle No.2642 contained excess material when checked by the security personnel.
2. There is no possibility for committing the theft of the excess material individually, but it must be committed jointly by a group of persons of Kamareddy depot when deputed to hand over the scrap material.
3. After completion of the work of the petitioner at Zonal Workshop in the early hours there is no necessity for the petitioner to stay till late hours unless he has mala fide intention of committing theft.
4. If the security persons have not suspected and did not check the vehicle 2642 the stolen material worth Rs.7400/- would have been taken away from the zonal workshop and as such as per the recorded evidence there is the hand of the petitioner in committing theft of material in connivance with other staff of Kamareddy depot.”

Even if the said observations of the enquiry officer are cumulatively considered, it is not possible to come to a conclusion that the charges of theft leveled against the petitioner are proved as required under facts and in law. In the same set of circumstances, the Labour Court, while allowing the ID 218 of 1999 filed by Narsimhulu has set aside the finding of the Enquiry Officer and also the punishment imposed against Narsimhulu and directed his reinstatement with all benefits and back wages.”

The learned Single Judge distinguished the case of Ch. Narsimhulu with that of the appellant mainly on the

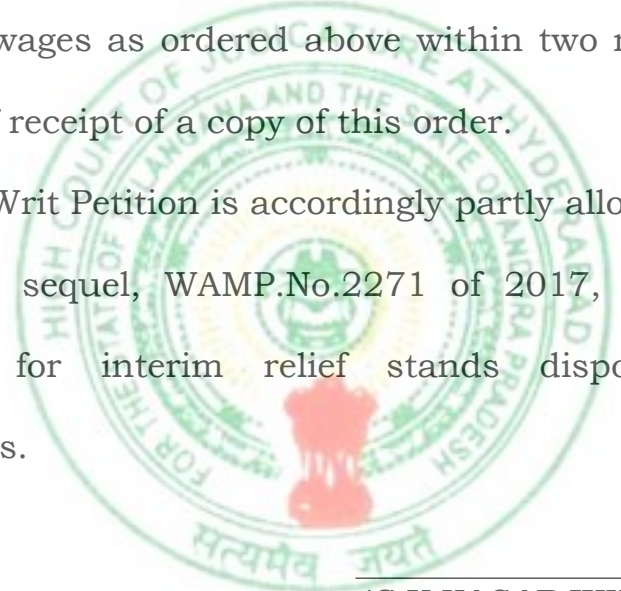
ground that the appellant has challenged his removal from service in the year 2000 and that he did not produce a copy of the award in I.D.No.218 of 1999 filed by Ch. Narsimhulu before the Labour Court. The learned Single Judge further observed that on account of laches and on the principle of 'no work no pay', the appellant is not entitled to claim back wages.

In our opinion, while laches play an important role in considering award of back wages, where an employee has been held not guilty by a Forum or Court, ordinarily, he is entitled to back wages as for no fault on his part, he is denied employment during the interregnum between the date of his removal till his reinstatement. The employer therefore cannot be allowed to take advantage of his own wrong. Denial of back wages without just and reasonable cause adds to the hardship already suffered by the employee on account of his being out of employment. Even if the appellant has approached the Labour Court one year after his removal, it would have been just if he was denied back wages for that period. Further, the Industrial Dispute raised by the appellant was dismissed for default on 29.10.2003 and the same was restored on 20.02.2006. Even for this period also, the appellant is not entitled for back wages.

In the absence of any justification, it would be highly inequitable to completely deny back wages to the appellant. Therefore, in the facts and circumstances of the case, we award 1/3rd of the back wages to the appellant. The order of the learned Single Judge is accordingly modified to this extent. The respondent shall calculate the back wages by applying the pay scale and other permissible allowances for the five years period immediately preceding the appellant's retirement i.e., from 2011 to 2016. The respondent shall pay back wages as ordered above within two months from the date of receipt of a copy of this order.

The Writ Petition is accordingly partly allowed.

As a sequel, WAMP.No.2271 of 2017, filed by the appellant for interim relief stands disposed of as infructuous.



(C.V.NAGARJUNA REDDY, J)

(G. SHYAM PRASAD, J)

Date: 29.08.2017

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