

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

Writ Petition No.24461 of 2008

B.S.V.S.V.Prasad,

....Petitioner

Vs.

The Vice Chairman & Managing Director,
APSCCFC Limited,
5th Floor, Telugu Samkshema Bhavan,
Masab Tank, Hyderabad & 2 others.

....Respondents

Date of Judgment Pronounced: 08.11.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V. SESA SAI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE A.V. SESA SAI

*** THE HON'BLE SRI JUSTICE A.V. SESA SAI****+WRIT PETITION No.24461 OF 2008**

% Dated 08.11.2017

B.S.V.S.V.Prasad,
S/o Perriraju, 42 years,
Asst.Engineer, APSCCFC Limited,
Narsapuram Sub-Division,
West Godavari District.

....Petitioner

Vs.

\$ The Vice Chairman & Managing Director,
APSCCFC Limited,
5th Floor, Telugu Samkshema Bhavan,
Masab Tank, Hyderabad & 2 others.

....Respondents

! Counsel for Petitioner : Sri N.Subba Rao.

^Counsel for respondents : Sri G.Seena Kumar,
Learned Standing Counsel

<GIST:

> HEAD NOTE:

? Cases referred

- 1.2013 (10) SCC 1024
2. 2000 (6) Supreme 136
- 3.(1991) 4 Supreme Court Cases 109



THE HON'BLE SRI JUSTICE A.V.SESHA SAI**WRIT PETITION No.24461 of 2008****ORDER:**

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

“.. to issue writ order or direction more particularly one in the nature of writ of Mandamus directing the respondents 1) to promote the petitioner as Deputy Executive Engineer on par with his juniors 2) to give all the benefits, which were given to the petitioner junior, viz. Sri P.Venkateswara Rao with effect from 19.10.2000 till the petitioner was promoted on par with the petitioner juniors 3) to direct the respondents to promote the petitioner to the post of Deputy Executive Engineer with effect from 19.10.2000 and place the petitioner in the seniority list in the respondent Nos.2 and 3 corporations by counting the petitioner's seniority as a Deputy Engineer with effect from 19.10.2000 and consequently direct the respondents to give all the benefits, which the petitioner is entitled, as if no such proceedings was initiated against the petitioner pursuant to the trap laid by the ACB authorities on 30.07.2000, pending disposal of the Writ Petition.”

Petitioner herein was initially appointed in the respondent-organization on 07.06.1985. While he was working in the said category, a trap by Anti Corruption Bureau took place which resulted in initiation of prosecution against the petitioner herein vide C.C.No.21/2001 on the file of the learned Special Judge for SPE and ACB Cases, Vijayawada, for the alleged offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The learned Special Judge, by virtue of the judgment, dated 17.06.2006, acquitted the petitioner of the charges.

Subsequently, the State Government, after thoroughly examining the issue, issued G.O.Rt.No.269 Social Welfare (SER.II) Department, dated 30.5.2007, dropping further action against the petitioner. By way of a representation, dated 09.03.2008, petitioner herein requested the respondents herein for regularization of the

suspension period and for promotion to the post of the Deputy Executive Engineer with retrospective effect. In the above background, questioning the inaction on the part of the respondent authorities, in taking action in terms of the request made by the petitioner herein, the present Writ Petition came to be filed.

Heard Sri N.Subba Rao, learned counsel for the petitioner, and Sri G.Seena Kumar, learned Standing Counsel for respondents, apart from perusing the material available on record.

It is contended by the learned counsel for the petitioner that the impugned action on the part of the respondents herein, in not extending the benefits as a consequence of clean acquittal by the ACB Court is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. In elaboration, it is submitted by the learned counsel that there is absolutely no justification on the part of the respondents in denying the consequential benefits. It is further submitted that the reasons assigned by the respondents herein in the counter-affidavit are neither sustainable nor tenable. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgments of the Honourable Apex Court in **DEEPALI GUNDU v. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA (D.Ed) AND OTHERS¹** and **DELHI JAL BOARD v. MAHINDER SINGH²**.

On the contrary, it is strenuously contended by the learned Standing Counsel for the respondents, Sri G.Seena Kumar, that there is no illegality nor there exists any infirmity in the impugned action and, in the absence of the same, interference of this Court

¹ 2013 (10) SCC 1024

² 2000 (6) Supreme 136

under Article 226 of the Constitution of India is impermissible and the impugned action is not amenable for any judicial review. It is further contended that the principle of 'no work no pay' is squarely applicable to the facts of the present case and the petitioner herein is not entitled for any benefits. It is further contended that, in view of the pendency of another departmental enquiry initiated in the year 2007, petitioner herein cannot be given any benefit in the present Writ Petition. To bolster his submissions and contentions learned Standing Counsel for the respondents takes the support of the judgment of the Honourable Apex Court in **UNION OF INDIA AND OTHERS V. K.V.JANKIRAMAN AND OTHERS**³.

In the above background, now the issues that emerge for consideration in the present Writ Petition are:

1. *Whether the respondent authorities are justified in declining to grant the relief as sought by the petitioner herein? and*
2. *Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India ?*

The information available before this Court manifestly discloses that as per the seniority list in the category of Assistant Executive Engineers and Assistant Engineers working in the respondent-organization, at the relevant point of time, the petitioner herein stood at S.No.1 and the name of one Sri P.Venkateswara Rao was shown at S.No.2. According to the learned counsel for the petitioner, the said Sri P.Venkateswara Rao is no more. There is also no controversy on the reality that the Special Judge for SPE & ACB Cases, Vijayawada, cleanly acquitted the petitioner herein and categorically found him not guilty of the

³ (1991) 4 Supreme Court Cases 109

charges. It is also very much clear from a reading of the judgment of the Special Court that, while exonerating the petitioner herein, the learned Judge found that P.W.1-complainant committed the offence punishable under Section 193 IPC and also opined that it would be expedient in the interest of justice that a complaint be made to the concerned Magistrate against P.W.1. The learned Judge also found that P.W.1 himself misused the process of criminal justice system. The Special Judge rendered the said judgment on 17.06.2006, completely exonerating the petitioner of the charges. There is also no dispute with regard to the fact that pending criminal prosecution, petitioner herein was reinstated into service on 07.07.2003. In fact, taking all these significant aspects into consideration and on thorough examination of the issue, the State Government dropped further action also by way of issuing an order vide G.O.Rt.No.269, dated 30.05.2007.

In the above background, now it is to be seen whether there is any justification on the part of the respondents herein in denying the benefits sought by the petitioner herein in the present Writ Petition. In this context, it may be appropriate and apposite to refer to the judgment of the Honourable Apex Court in **DEEPALI GUNDU** (first cited supra). In the said judgment, at paragraphs 22, 24 and 38, the Honourable Apex Court held as under:

22. *The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of*

sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

24. Another three-Judge Bench considered the same issue in *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*⁸ and observed: (SCC p. 447, para 6)

“6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the

adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of

infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees.

38.7. *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal⁵ that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman”.*

The principles laid down in the above referred judgment are squarely applicable to the facts of the present case. Coming to the judgment cited by the learned Standing Counsel for the respondents in **UNION OF INDIA AND OTHERS** (second cited supra), at paragraph No.26, the Honourable Apex Court, held as follows:

“We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc.”

In the instant Writ Petition, it is not all the case of the respondents herein that criminal prosecution got delayed at the instance of the employee nor is the case of the respondents that the Special Judge for SPE & ACB Cases exonerated the petitioner of the charges by giving the benefit of doubt.

On the other hand, a perusal of the judgment of the learned Special Judge, in vivid and candid terms, reveals that the petitioner herein was cleanly acquitted of the charges. It is also significant to note that, as mentioned supra, the learned Special judge also directed prosecution against the complainant in the said criminal case. Therefore, in the considered opinion of this Court, the judgment on which the Standing Counsel for the respondents placed reliance would not render any assistance to the respondents herein to sustain the impugned action.

For the aforesaid reasons, the Writ Petition is allowed, directing the respondents herein to promote the petitioner on par with his juniors, to give all benefits which were given to his junior, namely, Sri P.Venkateswara Rao, with effect from 19.10.2000 and to grant all other consequential reliefs including monetary and seniority benefits.

As a sequel thereto, miscellaneous Petitions pending, if any, in this Writ Petition, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI,J

08th November, 2017
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