

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.8478 of 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner/Conductor of the respondents/Corporation requesting to direct the respondents/Corporation to grant special grade increment to the petitioner on his completion of 12 years of service from the date of his initial appointment by counting continuity of service as per the Award of Labour Court with all consequential benefits including re-fixation of pay and pay arrears of pay and pass such other order or orders.

2. I have heard the submissions of Sri P. Govinda Rajulu, learned counsel for the petitioner, and of Sri B. Mayur Reddy, learned Standing Counsel for TSRTC, appearing for the respondents.

3. I have perused the material record.

4. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was appointed in the Corporation as a Conductor in the year 1988. His services were regularized on 01.09.1989. He is presently working as Conductor in the Corporation 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 Special Grade increment to the employees, who have put in 12

years or more service in the same category. The above Circular was issued based on settlement with the Unions of the Corporation. As per the above Circular, the petitioner is entitled to stagnation/special grade increment in the year 2000-01 immediately after completion of 12 years of service from the date of his initial appointment. However, the respondents have not granted the special grade increment immediately on completion of 12 years of service from the date of his initial appointment on the ground that he had not worked continuously for 12 years. His representation, dated 29.12.2005, was not considered by the respondents. The inaction of the respondents in sanctioning the stagnation increment by counting the continuity of service granted in the Awards of the Labour Court and as per the judgment, dated 15.06.1999, passed by this Court in Writ Petition No.26584 of 1996 is contrary to law and facts. The respondents shall count continuity of service as granted by the Labour Court in Award, dated 18.07.2001, in I.D.No.27 of 1999 and Award, dated 09.08.2005, in I.D.No.17 of 2004 for the purpose of granting stagnation increment. On account of non-granting of special grade increment, the petitioner is drawing lesser salary every month and is facing financial problems. Hence, the Writ Petition is filed.

5. The case of the respondent/Corporation and the submissions made on its behalf, in brief, are as follows:

The petitioner was appointed as Conductor, on 01.09.1989. He is working at Nagarkurnool Depot from 09.05.2005. As per the

Circular instructions given from time to time, employees working in one category for 12 years continuously without any break and who are not promoted will be placed on special grade/stagnation increment. The petitioner was involved in cash and ticket irregularities twice and was removed twice from service. He once filed I.D.No.27 of 1999 against the removal order, dated 15.01.1998. Against the removal order, dated 12.05.2003, he filed I.D.No.17 of 2004. In I.D.No.27 of 1999, the Labour Court ordered reinstatement with continuity of service but without back wages and also imposed a penalty of deferment of two annual increments with cumulative effect. In I.D.No.17 of 2004, reinstatement of the petitioner with continuity of service but without back wages and attendant benefits was ordered. By virtue of the two removal orders, the petitioner was out of service for a period of 7 years and 2 months. Hence, he is not entitled to special grade increment in view of his out of service period. As per law, there is a difference between 'an order of reinstatement accompanied by a simple direction for continuity of service' and 'an order directing reinstatement accompanied by a specific direction that the employee shall be entitled to all consequential benefits' or 'an order accompanied by specific direction that the employee shall be entitled to the benefit of increments earned during the period of absence'. The Labour Court in one of the Awards specifically directed that reinstatement shall be without back wages. There is no specific direction that the employee would be entitled to all consequential benefits. Merely because an employee has been

directed to be reinstated without back wages, he cannot claim benefit of increments, which he would have earned during the period when he was not on duty or during the period when he was out of service. In view of the facts and legal position obtaining, the petitioner is not entitled to claim the relief and the Writ Petition is liable to be dismissed.

6. Learned counsel for both the parties advanced arguments in line with the respective pleadings of the parties, which are stated supra.

7. The learned counsel for the petitioner while reiterating the pleaded case of the petitioner would submit as follows: 'The Circular was issued as per the settlement arrived at with the Unions of the Corporation. After reinstatement into service, the petitioner worked without any remark or complaint from any quarter and to the satisfaction of his superiors. He is, therefore, entitled to stagnation/special grade increment in the year 2000-01 as by that time he had completed 12 years of service from the date of his initial appointment. The stagnation increment was not granted even after completion of 12 years continuous service from the date of his initial appointment on the alleged ground that the petitioner did not work continuously for 12 years. The Labour Court, in the Awards, while ordering reinstatement, granted the benefit of continuity of service to the petitioner, though without back wages. Therefore, when the relief of continuity of service was granted, the respondents are not justified in not counting the service on the ground that the petitioner was

removed from service twice by two removal orders, which were set aside. Even the representation, dated 29.12.2005, of the petitioner was not considered by the respondents. Therefore, the petitioner is drawing a lesser salary than the salary which he is actually entitled to draw. The contention that the employee cannot claim increments and consequential benefits unless the order of reinstatement is accompanied by a direction that the employee is entitled to all consequential benefits, is incorrect. As the relief of continuity of service is granted, the petitioner is entitled to the stagnation increment.'

7.1 Per contra, learned Standing Counsel for the Corporation while elaborating the case urged in the counter would submit as follows: 'By the Award in I.D.No.27 of 1999, the petitioner was directed to be reinstated into service without back wages. Nonetheless, punishment of deferment of two annual increments with cumulative effect was also imposed upon him. Further, by the Award passed in I.D.No.17 of 2004, while ordering reinstatement with continuity of service, but, without back wages and attendant benefits, no direction was issued to the effect that the petitioner would be entitled to all consequential benefits or the benefit of the increments during the period of his absence from duty. Therefore, as per the facts of the present case and the settled legal position, the petitioner is not entitled to the relief claimed.'

8. I have bestowed my attention to the facts and submissions.

9. It is not in dispute that in I.D.No.27 of 1999, by the Award, dated 18.07.2001, eventually, the following penalty was imposed against the petitioner/conductor.

“Reinstatement of petitioner with continuity of service, but, without back wages, and deferment of next falling two annual increments with cumulative effect.”

Similarly, in I.D.No.17 of 2004, by Award, dated 09.09.2005, eventually, the following punishment was imposed against the petitioner/conductor.

“Reinstatement as Conductor with continuity of service, but, without back wages and attendant benefits.”

In the backdrop of the above stated penalties that were imposed against the petitioner/conductor and the facts of the case & the submissions noted supra, before examining the claim of the petitioner that he had completed 12 years of continuous service by the year 2000-01 and that he is, therefore, entitled to special grade/stagnation increment, it is necessary to now examine the legal position obtaining.

9.1 Learned counsel for the petitioner/conductor placed reliance on the decision in **M.D. RAHAMATULLAH v. DEPOT MANAGER, APSRTC, GODAVARI KHANI DEPOT, AND OTHERS**¹. The question that fell for consideration in this cited case is “whether the period during which the petitioner was out of service prior to his reinstatement has to be counted for the purpose of special grade and

¹ 1999(4) ALT 515

stagnation increments”. In this cited case, the petitioner was granted special grade increment with effect from 01.10.1996, but, his grievance was that he ought to have been given the said increment with effect from 21.01.1993. Further, the facts of the cited case disclose that the petitioner was out of service for more than 3 years; and, by virtue of the Award of the Labour Court, he was reinstated with continuity of service and all other attendant benefits. Thus, in the cited case, the workman was not only granted the relief of reinstatement into service forthwith with continuity of service but all other attendant benefits as well. Hence, and in view of the ratios in the decisions of the supreme Court and a division bench of this Court referred to *infra*, the ratio in the above cited case is not helpful to the petitioner.

9.2 Learned counsel for the Corporation placed reliance on the decision in **APSRTC v. S. NARSA GOUD**². In this cited case, the facts disclose that the respondent, who was a Conductor, remained absent from duty during the periods between 05.06.1982 and 08.08.1982 and between 13.10.1992 and 01.11.1992 and that after departmental enquiry ended against him in a punishment of removal from service, a dispute was raised before the Labour Court and that the Labour Court while upholding the findings recorded by the enquiry officer, however, directed the Corporation to reinstate the petitioner into service with continuity of service but without back

² (2003) 2 Supreme Court Cases 212

wages; nonetheless, a learned Single Judge directed the appellant to fix the wages payable to the respondent/Conductor on his reinstatement by taking into account the increments that he would have earned had he been in service during the period of absence from duty. This finding of the learned Single Judge was confirmed by a Division Bench. However, the Supreme Court allowed the appeal preferred by the APSRTC holding *inter alia* as follows:

“We find merit in the submission so made. 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 unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.”

9.3 In **APSRTC v. ABDUL KAREEM**³, the question that fell for consideration before the Supreme Court was - ‘whether Labour Court’s Award of reinstatement without back wages would imply continuity of service and whether notional increments are to be given to the employee for the period for which he was not in service, in the absence of specific direction in that regard?’. While answering the said question, the Supreme Court followed the decision in **Narsa Goud** case (2nd supra) and observed that the aforesaid question was

³ 2005(6) ACJ 542

no longer *res integra*. In this cited case, the facts disclose that the Labour Court specifically directed that the reinstatement would be without back wages; further, there was no specific direction that the employee would be entitled to all consequential benefits; therefore, the Supreme Court held that 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. The Supreme Court further held that both the learned single judge and the Division Bench had erred in allowing the benefit of increments notionally to the employee during the period he was out of service.

9.4 A Division Bench of this Court in the decision in **APSRTC v. N. SUDHAKAR REDDY**⁴, while following the precedential guidance in the decision in **Narsa Goud** (2nd supra) held as follows: ‘...that an employee would qualify for increments, if only he has rendered effective service for the corresponding period. 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. The special increment stands on a higher footing in this behalf.’

9.5 Having regard to the legal position, which is succinctly crystallized by the Supreme Court in the decision of **Narsa Goud** (2nd supra), which was followed by the Division Bench of this Court, and

⁴ W.A.No.108 of 2006

the two penalties, referred to supra, that are awarded by the Labour Court, this Court finds that the petitioner is not entitled to the relief claimed and that the writ petition, which is devoid of merit is liable for dismissal.

10. Resultantly, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No costs.

M. SEETHARAMA MURTI, J

8th MARCH, 2017.

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