

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.20798 of 2002

ORDER :

The short point which arises for consideration in this Writ Petition is whether the Labour Court-I, Hyderabad (2nd respondent) while granting relief of reinstatement to 1st respondent with continuity of service by setting aside the order dt.21.08.1995 dismissing him from service, was entitled to grant full backwages.

2. The contention of Writ Petitioners / employer (APSRTC) is that the 1st respondent was only a casual worker engaged on daily-wage basis from 25.11.1993; that he was involved in causing a fatal accident on 21.03.1994 within four months from the date of his joining of service; that he was therefore removed on 21.08.1995 for misconduct which was held proved in the disciplinary enquiry; and in these circumstances, award of full backwages to 1st respondent by the 2nd respondent was not proper.

3. The counsel for petitioners placed reliance on the decision of the Supreme Court in **General Manager, Haryana Roadways v. Rudhan Singh**¹.

4. The said case relates to an order passed by the Industrial Tribunal-cum-Labour Court in favour of the respondent therein directing his reinstatement when his services were terminated in violation of Section 25-F of the Industrial Disputes Act, 1947. No

¹ (2005) 5 SCC 591

doubt in the said case, it was held that if the total length of service rendered by a workman is very small, the award of backwages for the complete period from the date of termination till the date of the award would be inappropriate, and that the nature of employment is also an important factor. It held that a regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

5. The said decision was rendered by a Three-Judge Bench of the Supreme Court.

6. The counsel for 1st respondent however contended that the said decision cannot be applied to the instant case, because the instant case is not one where there is a violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act'), but it is a case of wrongful termination from service for misconduct.

7. The counsel for 1st respondent placed reliance on the judgment of the Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**².

8. The said case did not relate to Industrial Disputes Act, 1947 but dealt with the case of a teacher whose services were terminated for misconduct. However, the Supreme Court in that case reviewed the entire case law from 1964 to 2012 including several cases under the Industrial Disputes Act, 1947 and summed up the legal propositions /

² (2013) 10 SCC 324

ratio in para no.38. It held that in a case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule (para no.38.1), and that this rule is subject to the rider that while deciding the issue of backwages the adjudicating authority or the court may take into consideration the length of service of a workman, the nature of misconduct, if any, found proved against a workman and the financial condition of the employer and similar other factors. Thus, this decision also directs consideration of the factor of length of service of the workman in the matter relating to award of back wages where reinstatement is ordered of an employee, who has been wrongfully terminated for misconduct.

9. So I cannot agree with the contention of counsel for 1st respondent that the length of service of a workman is a factor which is not relevant to be taken into account while considering the award of backwages, and that such a consideration is only relevant while dealing with a case of violation of Section 25-F of the Act.

10. In the present case, the 1st respondent has admittedly been engaged as a casual driver on 25.11.1993 and the fatal accident in which he was involved occurred on 21.03.1994, shortly four months after he joined service. In this factual background, awarding full backwages to 1st respondent would not be appropriate since the length of service of 1st respondent is meager.

11. Therefore, I am of the opinion that interests of justice would be served if the quantum of backwages is reduced to 50% and not 100% as awarded by the 2nd respondent.

12. Accordingly, the Writ Petition is allowed. The impugned order dt.18.03.2002 in I.D.No.93 of 1998 of the 2nd respondent insofar as it awarded full backwages to 1st respondent is set aside, and it is declared that 1st respondent is entitled to 50% of backwages only. No order as to costs.

13. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-10-2017

Ndr/*

