

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.23160 of 2012

Date : 18.04.2017

Between :

G.Subrahmanyam, S/o G.B.S.Chetty,
Aged 59 years, Occu: Retired ADC,
Chittoore-1 Depot, Chittoor District
and two others.

.... Petitioners

And

A.P.S.R.T.C. rep.by its VC & MD,
Musheerabad, Hyderabad and others.

....Respondents



The Court made the following:

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ORDER:

Heard Sri P.Govinda Rajulu, learned counsel for petitioner, learned standing counsel for respondents.

2. Petitioners retired from service as Assistant Depot Clerks on attaining the age of superannuation on 30.06.2010 and 30.06.2011 respectively. This writ petition is filed praying to declare that period from the date of suspension till date of reinstatement be counted as duty for all purposes, fix pay by allowing notional increments, grant 12 and 20 years stagnation increments, Grade I increment, notional promotion as ADC and to pay consequential arrears and further to pay all retirement benefits including Earned Leave, Gratuity and Provident Fund, based on the pay re-fixed as prayed with 18% interest for the delayed payments.

3. At the relevant point of time, petitioners were working as Conductors. On the allegation that petitioners accepted fake police warrants and issued tickets to the value mentioned on the reverse of the warrants, thereby causing loss of revenue to the respondent Corporation, they were placed under suspension and domestic enquiry was ordered. The enquiry officer held charges as proved. Based on the report of the enquiry officer, punishment of removal from service was imposed. Appeal and review filed against the removal orders were rejected. Aggrieved thereby, petitioners raised industrial disputes under Section 2-A(2) of the Industrial Disputes Act. The disputes raised by them were registered as ID Nos. 36 of

2002 and batch. Labour Court by common award dated 18.06.2003 dismissed the said IDs. Aggrieved thereby petitioners filed WP Nos. 8315, 9277 and 7769 of 2004. The said writ petitions were also dismissed. Challenging the order of learned single Judge, petitioners filed Writ Appeal Nos. 1957, 1839 and 1908 of 2005. These three Writ Appeals were considered along with five other writ appeals on the same issue and the Division Bench by judgment dated 28.07.2009, having held that findings of the enquiry officer was not based on the evidence on record and requires a fresh enquiry, however taking note of the fact that most of the appellants were on the verge of retirement or already retired, instead of remanding, passed orders setting aside the removal order and imposed punishment of stoppage of two increments with cumulative effect and directed reinstatement wherever employee did not retire by the time the judgment was rendered. This order of the Division Bench has become final.

4. In terms of Division Bench orders, petitioners were reinstated as conductors and were promoted as Assistant Depot Clerks on 3.12.2009, 3.12.2009 and 26.12.2009 respectively.

5. Learned counsel for petitioners contended that having regard to the judgment of the Division Bench and as a consequence to the reinstatement by imposing the punishment of stoppage of two increments with cumulative effect, petitioners are entitled to all the consequential benefits including treatment of their service from the date of removal as continuous service and all other consequential benefits flowing there from. He would submit that denial of such benefits is illegal and amounts to arbitrary exercise of power.

6. Learned standing counsel submitted that as petitioners were not exonerated, they are not entitled to the benefits claimed by them. Division Bench did not set aside the disciplinary action. Though Division Bench was of the opinion that fresh enquiry ought to be conducted, having regard to the fact that the appellants were due for retirement or already retired, in the peculiar facts of the cases, substituted the punishment. Thus, it does not amount to exoneration and once petitioners are not exonerated, but visited with punishment, petitioners are not entitled to claim continuity of service and attendant benefits.

7. He would further submit that Division Bench has not granted those benefits and, therefore, by treating the punishment as imposed, service conditions have to be regulated. He would further submit that as petitioners were out of duty, they are not entitled to computation of that service for the purpose of payment of Special Grade and other increments.

8. He would further submit that 12 years special grade increment was sanctioned in the year 1990 and they are not entitled to 20 years stagnation increment as petitioners were under order of removal from service and on reinstatement pursuant to the judgment of the Division Bench, they were promoted. They are not entitled to claim notional benefits. He would submit that gratuity was calculated based on the total service rendered as 33 years, and no further gratuity is payable and that for the out of employment period, petitioners cannot claim Earned Leave as no work was rendered by them during that period.

9. The point for consideration is whether petitioners are entitled to claim benefits of continuity of service with all attendant

benefits as a consequence to the judgment of the Division Bench in the writ appeals filed by them?.

10. It is not in dispute that Division Bench of this Court did not quash the disciplinary proceedings. Though the Division Bench was of the opinion that matter requires remittance to conduct enquiry afresh, as the Court was informed that some of the appellants retired and others were on the verge of retirement, Court itself substituted the punishment to give quietus to the litigation. Thus, it is not a case of exoneration from the disciplinary action. Only in the case of exoneration, employee is entitled to all benefits including treatment of the period of suspension as duty. It is also appropriate to notice further that the Division Bench has not granted continuity of service nor ordered payment of attendant benefits as a consequence to the reinstatement.

11. At this stage, it is also relevant to note that two persons similarly situated to the petitioners, aggrieved by the award of Labour Court rejecting their dispute and action of the employer in removing them from service, filed WP Nos.120 and 1443 of 2004. Those two writ petitions were disposed of by common order dated 13.11.2009, after the disposal of the writ appeals. The learned single Judge having took note of the judgment of the Division Bench, sets aside the order of removal and imposed punishment of withholding of two increments with cumulative effect. Learned single Judge directed that the punishment of withholding of two increments with cumulative effect be substituted to that of the removal and would take effect from the date of order of removal. The Court directed grant of continuity of service and to take into

account same for reckoning pensionary benefits after giving effect to the punishment.

12. Contempt Case No.397 of 2010 was filed alleging disobedience of the orders of the learned single Judge in the above two writ petitions. It was contended on behalf of the petitioners that as petitioners retired from service, question of imposing punishment of withholding of two increments with cumulative effect would not arise and, therefore, they are entitled to consequential benefits as if punishment did not exist. This contention was negated. Learned single Judge observed that as direction issued was to substitute the punishment of removal, the substituted punishment would relate back to the date of removal. On behalf of the respondent Corporation, Court was informed that in due compliance of the orders of the Court, basic pay was re-fixed from the date of removal till the date of their attaining the age of superannuation after withholding two annual increments and were paid difference of pensionary benefits. Having regard to these facts, Court held that there was no contempt committed by the respondents. As against the directions issued by the learned single Judge, in those two writ petitions, it is seen from the directions issued by the Division Bench, no such further directions were given by the Division Bench as noted above.

13. The scope of grant of attendant benefits as a consequence to the award passed by the Labour Court was considered by the Supreme Court in **APSRTC and another vs. S.Narsagoud**¹.

14. In **Narsagoud**, disciplinary action was upheld, but relief of reinstatement was granted on equities. Considering the judgment

¹ (2003) 2 SCC 212

of Supreme Court in Narsa Goud, in the case of **Md.Jahangir v. Regional Manager, APsRTC, Hyderabad and another**², this Court held as under:

“13.B. In *Narsagoud’s case* (supra), disciplinary action was initiated on the allegation of unauthorized absence in two spells, that resulted in imposing punishment of removal. In the industrial dispute raised by him, Labour Court while upholding the disciplinary action, directed reinstatement with continuity of service and denied back wages for the period of out of employment. Aggrieved by the said portion of the order denying back wages, *Narsagoud* filed writ petition before this Court. During the course of hearing, plea raised was that though he was reinstated, while fixing his wages, on reinstatement, periodical increments for the period of out of employment were not taken into consideration. Learned single Judge of this Court directed computation of periodical increments he would have earned had he been in service and further directed to fix his wages, by computing his periodical increments. It was contended that when the absence from service by an employee is unauthorized, even though a direction was issued to reinstate him with continuity of service, but if there was no direction for release of consequential benefits, particularly the retirement benefits, such service cannot be counted to draw increments. Supreme Court upheld the said contention of the respondent corporation.

15. The issue in identical factual background as in the present case, was considered by this Court in WP No.2044 of 2010.

16. The petitioner in the said writ petition earlier filed WP No.18408 of 2006 challenging his removal. This Court while upholding the disciplinary action held punishment of removal as disproportionate to the delinquency alleged and substituted the punishment to that of stoppage of increments till the petitioner attained the age of superannuation. Respondents were directed to reinstate the petitioner with continuity of service, but without back-wages. Petitioner claimed grant of all other benefits, such as, subsistence allowance as per the Revised Pay Scales of 2005, annual increments for the years 2005 to 2007 and payment of leave encashment for 30 days for the years 2005 and 2006. The claim was rejected. This Court held as under:

² 2017 (1) ALD 232

“8. The benefits that can be granted to the employee, when the order of removal is subsequently modified by the Court with continuity of service, was considered by the Supreme Court in **S.Narsagoud** case. It was contended on behalf of the respondent corporation that even though employee is reinstituted as consequent to the judgment rendered by the High Court, in spite of being held guilt of unauthorized absence from duty, he would continue to earn increments, but there is no payment of wages for the period of absence, this would result in an incongruous situation. The Supreme Court found merit in the said submission.”

17. This Court also rejected the claim for payment of encashment of earned leave holding that as petitioner was under suspension and on removal never discharged services to the employer, is not entitled to accumulation of earned leave. The Court held that as continuity of service with attendant benefits were not granted, the employee is not entitled to consequential benefits.

18. Petitioners were out of service for 9 years and on reinstatement they were granted promotion. Removal order stood modified to stoppage of two annual increments with cumulative effect. Second petitioner was appointed on 21.9.1977 and third petitioner was appointed on 27.12.1976. Even assuming that petitioners are entitled to 20 years scale, such entitlement was available to petitioners 2 and 3 and relates back to the period prior to their removal from service. An issue which pertains to period prior to removal from service and cause of action arose then, it is not open to the petitioners 2 and 3 to raise that issue as a consequence to the reinstatement to service pursuant to the judgment of the Division Bench. Claim for 20 years scale to petitioners 2 and 3 do not flow out of the decision of the Division Bench. In so far as first petitioner is concerned, he was appointed only in the year 1997, therefore he is not entitled to 20 years scale.

Thus, in the peculiar facts of this case, petitioners are not entitled to 20 years increment.

19. The modified punishment of stoppage of two annual increments with cumulative effect comes into effect from the date of removal from service and therefore petitioners are deemed to be in service from that date. Therefore, petitioners are entitled to benefit of revision of scales of pay effected after the date of removal and they could not have been put into pre-revised scale till they retired. Pay scales of employees were revised at an interval of four years in 2001, 2005 and 2009 and such revised benefits should be extended to them. Not extending the revised scales is erroneous and amounts to illegal exercise of power. Thus, petitioners' pay has to be revised in all three pay revision scales duly taking note of punishment inflicted on them. As a consequence, they are also entitled to revision of retirement benefits and gratuity.

20. Having regard to the history of the litigation and that this writ petition was filed three years after they were reinstated, the petitioners are not entitled to backwages resulting from revision of scales.

21. The writ petition is accordingly disposed of. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

DATE:18.04.2017
Kkm/tvk

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