

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

WRIT APPEAL No.968 of 2017

Between:

APSRTC, presently TSRTC,
reptd by its Regional Manager,
Khammam Region and another.

... Appellants

And

T.K.Rao,
S/o Kanakaiah

... Respondent

JUDGMENT PRONOUNCED ON 14.9.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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< Gist:

> Head Note:

! Counsel for the appellants: Mr. G.Vidyasagar

Learned senior counsel &

Mr. B.Mayur Reddy

Standing Counsel

^ Counsel for the Respondent: Mr. G.Ravi Mohan

? Cases Referred:

NIL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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Counsel for the appellants: Mr. G.Vidyasagar

Learned senior counsel &

Mr. B.Mayur Reddy

Standing Counsel

Counsel for the respondent: Mr. G.Ravi Mohan

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Appeal arises out of order, dated 17.3.2016, in Writ Petition No.30001 of 2012.

We have heard Mr. G.Vidya Sagar, learned senior counsel and Mr. B.Mayur Reddy, learned Standing Counsel, appearing for the appellants and Mr. G.Ravi Mohan, learned counsel for the respondent.

The respondent was a Conductor working with the appellants. By order, dated 23.02.1991, his services were terminated. He questioned his termination by raising Industrial Dispute, vide I.D.No.153 of 1991 on the file of the Industrial Tribunal-cum-Labour Court, Warangal (for short 'the Tribunal'). The Tribunal by award, dated 12.01.1994, dismissed the said I.D. Assailing the said award, the respondent filed Writ Petition No.19750 of 1999. The said Writ Petition was disposed of by a learned single Judge by order, dated 02.8.2005, directing the appellants to reinstate the respondent into service as a fresh Conductor without continuity of service or any other benefits for the service rendered by him before his termination or during the period in which he was kept out of employment. The appellants have challenged the afore-mentioned order of the learned single Judge in Writ Appeal No.674 of 2006 and on 16.6.2006, they have secured interim stay of the order of the

learned single Judge. This Writ Appeal came to be dismissed on 17.8.2010. However, as a result of the interim stay obtained by the appellants in the said Writ Appeal, the respondent was kept out of employment. Only by order, dated 07.12.2011, the respondent was appointed as fresh Conductor. His representation made on 14.3.2012, to relate back his date of appointment to the time of allowing of Writ Petition No.19750 of 1999, *i.e.*, 02.8.2005, was not favourably considered by the appellants. Therefore, the respondent was constrained to file Writ Petition No.30001 of 2012, wherein he sought for a Writ of *Mandamus* to declare the action of the respondents in not fixing the date of his appointment with effect from the date of order, *i.e.*, 02.8.2005, in Writ Petition No.19750 of 1999, as illegal. The respondent also sought for a consequential relief of granting him continuity of service and other benefits such as backwages with effect from 02.8.2005. After hearing both sides, the learned single Judge has allowed the said Writ Petition by directing the appellants to treat the respondent's appointment as dating back to 02.8.2005. It is this order, which is assailed in the present Writ Appeal.

Learned counsel for the appellants have submitted that as the latter have availed the legal remedy of filing a Writ Appeal and secured an interim order, as a result of which the

appointment order, as directed by the learned single Judge, could not be issued to the respondent, they cannot be mulcted with the liability of payment of salary for the period during which the respondent was not reinstated. An alternative submission has been made that even if the respondent is entitled to be treated as having been appointed with retrospective effect, the learned single Judge ought to have fixed the date by taking into consideration the reasonable period required for the appellants to issue appointment order in due compliance of the order of the learned single Judge in Writ Petition No.19750 of 1997.

Mr. G.Ravi Mohan, learned counsel for the respondent, opposed the above submissions and argued that the appellants having been unsuccessful in Writ Appeal No.674 of 2006 cannot be permitted to get away by avoiding payment of salary to the respondent for the period during which they have secured interim stay.

We have considered the respective submissions of the learned counsel for both parties with reference to the material on record.

The appellants have filed Writ Appeal No.674 of 2006 against the order of the learned single Judge in Writ Petition No.19798 of 1994 and secured an interim order, on the

strength of which, they have not issued appointment order to the respondent. When they have eventually failed in the said Writ Appeal, the respondent is entitled to be restored to the same position as he would have been placed, but for the appellants filing a Writ Appeal and securing the order of stay therein.

The legal maxim *Actus curiae neminem gravabit*, which means, the act of the Court shall prejudice no man applies to the present case. For no fault on the part of the respondent, he was denied the appointment in view of the interim order secured by the appellants from this Court in the afore-mentioned Writ Appeal.

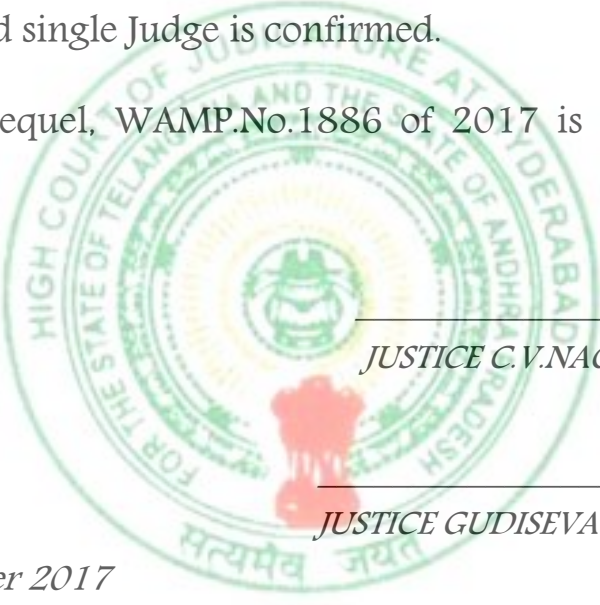
In the light of the above discussion, we do not find any reason to interfere with the impugned order of the learned single Judge to the extent of holding that the respondent is deemed to have been appointed with retrospective effect and also directing the appellants for payment of consequential financial benefits including salary to the respondent.

As regards the submission of the learned counsel for the appellants that the learned single Judge ought to have granted some reasonable time to them for due compliance of the order in Writ Petition No.19750 of 1999, we do find merit in this submission. As the said Writ Petition was disposed of on

02.8.2005, at least two months' time is required for the Organization to comply with the said order. Therefore, we are of the opinion that the appointment of the respondent must date back to 02.10.2005 instead of '02.8.2005'. The impugned order of the learned single Judge is modified only to the above limited extent.

The Writ Appeal is, accordingly, partly allowed only to the extent indicated above. In all other respects, the impugned order of the learned single Judge is confirmed.

As a sequel, WAMP.No.1886 of 2017 is disposed of as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

14th September 2017

Note:

LR copies to be marked.

B/o

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