

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.1388 of 2010

Date: 07.02.2017

Between :

Thupalli Sathi Reddy, s/o. Ramachandra Reddy,
43 years, Electrician, Godavarikhani 10 Incline,
Ramagundam-III, Karimnagar District and
others.

... Petitioners

and

The Singareni Collieries Company Limited,
(A Government of India Company) Corporate Office,
Hyderabad, rep.by its Managing Director and
others.

... Respondents



The Court made the following:

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ORDER:

Heard Sri G.Vidya Sagar, learned counsel for petitioners and Sri Nandigam Krishna Rao, learned standing counsel for respondents.

2. Petitioners were selected as Electricians and inducted training for one year. On successful completion of their training in Category-I, they were appointed in Category-II as Electricians/Helpers w.e.f. 05.05.1991. On completion of one year of service in Grade II, they were inducted to Category-IV by order dated 24.03.1992. Further promoted to Category-V by orders dated 21.05.1995 and by order dated 31.03.2010, they were promoted to Technical and Supervisory Grade and w.e.f. 01.09.2007, they were placed in Grade-C. National Coal Wage Agreement envisages granting of various benefits. One of the benefits provided is for every three years of service rendered, employee is entitled to one increment with maximum of two increments to be granted w.e.f. 01.07.1996. This provision was incorporated in clause 3.9.4 of the National Coal Wage Agreement. The grievance of the petitioners is, in terms of the said clause, though petitioners are entitled to two increments, they were granted only one increment on the ground that petitioners have not rendered six years of service before they entered into Technical and Supervisory grade. This anomaly occurred on account of non-computation of training period rendered by the petitioners for one year.

3.1. Learned senior counsel contended that after regular recruitment process, they were inducted and were sent for training. It is not a case where apprentices later absorbed in regular employment. He, therefore, submits that entire service should be counted for the purpose of granting increments and training period cannot be excluded.

3.2. In support of their contention, learned senior counsel for petitioners placed reliance on the Circular dated 17.04.2009 of the Chief General Manager (Personnel), Singareni Collieries Company Limited, where under training period is computed for the purpose of determination of payment of gratuity. Learned senior counsel contended that when training period can be counted for determination of payment of gratuity, the same cannot be denied for the purpose of grant of other benefits including computation of service for increments.

3.3. Learned senior counsel further contended that there is discrimination in applying the benefits, inasmuch as in several other units of the Company, benefits of two increments are granted, whereas petitioners are denied the said benefit.

4.1. Learned standing counsel for respondents submits that on selection, petitioners were sent for training and they were appointed regularly after completion of one year training period. Service for the purpose of grant of two increments was counted only after petitioners were appointed regularly. As petitioners have not completed six years of service after their regular appointment, before they were inducted into Supervisory grade, second

increment was not granted to them. He would further submit that the orders issued on 17.04.2009 are only applicable for gratuity and same cannot be relied to claim increments. He, therefore, submits that respondents have not violated the National Coal Wage Agreement and as petitioners have not fulfilled the requirements only, the benefit is not extended.

4.2. Learned standing counsel further submits that as per the memorandum of settlement dated 03.03.1989, a person is first appointed as Trainee and after successful completion of training, he will be inducted into Category-II and only on that induction, he is treated as regular employee. Thus, service rendered prior to his regular appointment cannot be computed for service benefits including grant of increment as he was only trainee till then. He further submits that petitioners were appointed in the year 1990. National Coal Wage Agreement was notified on 23.12.2000. The Circular concerning payment of gratuity was issued in the year 2009. Petitioners instituted the writ petition in the year 2010. They were granted one increment in accordance with the National Coal Wage Agreement. At no point of time, they protested to grant only one increment and, therefore, the writ petition has to be dismissed on the ground of inordinate delay in invoking jurisdiction of this Court. In support of the said contention, learned standing counsel placed reliance on the decision of the Supreme Court in **Londhe Prakash Bhagwan v. Dattatraya Enkath Mane and others**¹ and decision of Full Bench of this Court in **P.V.Narayana v. APSRTC, Hyderabad and others**².

¹ (2013) 10 SCC 627

² 2013 (4) ALD 386 (FB)

5. In reply, learned senior counsel submits that there is no delay in invoking jurisdiction of this Court. For the first time, in the Circular dated 17.04.2009, Company clarified that the service rendered while on training, on appointment, from the year 1989 onwards would count towards computation of service for gratuity and the same principle also applies to grant additional increment. Immediately thereafter, this writ petition is filed and learned senior counsel further contended that this Circular clearly clarifies that in terms of memorandum of settlement dated 03.03.1989, the service rendered while on training should also be treated as part of the service and, therefore, exclusion of the service rendered while on training is *ex facie* illegal.

6. The issue for consideration in this writ petition is, whether petitioners are entitled to claim computation of training period for the purpose of calculation of service to grant two increments in accordance with clause 3.9.4 of National Coal Wage Agreement-IV.

7. Clause 3.9.4 reads as under:

“In addition to one general increment as per clause 2.9.2. one service linked increment for every three years of service subject to a maximum of two increments will be granted from 01.07.1996 (Clause 2.9.4.)”

8. In terms of the said clause, employee is entitled to one service increment for every three years of service subject to a maximum of two increments and this increment would be granted from 01.07.1996. Petitioners were promoted to Category-IV by order dated 24.03.1992. Thus, if the training period is counted,

petitioners completed six years of service before they were promoted to Category-IV and, therefore, would be entitled to two service increments. The respondent management granted only one service increment on the ground that petitioners did not complete six years of service before they were inducted into Category-IV as the management has excluded the training period towards such computation.

9. To appreciate the respective contentions and entitlement of petitioners, it is necessary to look into the orders issued after selections were conducted. It is not in dispute that these orders were issued in favour of the petitioners inducting them into service after the notification of memorandum of settlement dated 03.03.1989. First of the orders was issued on 14.12.1989. Subject of the order is "provisional offer of appointment as Electrician Trainee in Category-I". Petitioners were informed that they would be on training for a period of one year. On 30.01.1990, Office Order was issued appointing provisionally the candidates listed therein including the petitioners as Electrician/Fitters trainees. They were asked to report to the concerned Head of the Mine/Departments. After completion of training, on 05.05.1991, Office Order was issued appointing them as Electrician Helpers in Category-II and they were placed on probation for a period of three months. On 24/25.03.1992, Office Order was issued holding that the petitioners have satisfactorily completed one year of service in Category-II and, therefore, promoted as Electricians in Category-IV.

10. It is relevant to notice that in none of these orders, it was shown that petitioners were treated as apprentices and would be

continued to be treated as apprentices until they were regularly appointed and the said service would not be computed for any service benefits.

11. Though great emphasis is laid by the learned standing counsel on the memorandum of settlement dated 03.03.1989 to contend that this settlement envisaged initial appointment as Trainee and regular appointment only after successful completion of training, the circular issued by the respondent management on 17.04.2009 assumes significance. Since the circular has great significance for consideration of the issue in this case, the entire circular filed as exhibit P2 at page 20 of writ petition paper book is extracted. It reads as under:

THE SINGARENI COLLIERIES COMPANY LIMITED
(A Government Company)
PERSONNEL MANAGEMENT WING

REP.CRP/PER/PM/4/EPR/798(A) CORPORATE,
DT.17/04/2009

CIRCULAR

All Area CGMs/GMs – CGM/RG-I

Sub: Reckoning the period of service rendered as Trainee
by the Tradesmen under Company's Training
Scheme for the purpose of computation of Gratuity
– Reg.

Earlier to 03.03.1989, the Tradesmen Trainees were appointed for ONE year on stipend under Company's Training Scheme and after completion of training period of one year successfully and passing the trade test they were given Cat.IV.

In terms MOS dated 03.03.1989, Tradesmen Trainees are appointed in Cat.I (Basic + DA) for a period of ONE year and after completion of one year training period and passing Trade Test, they are directed to Cat.II. After completion of ONE year in Cat.II, they are promoted to Cat.IV in the respective trade on the basis of Assessment report.

Clarification is sought from some of the Areas whether the training period of ONE year (on fixed stipend) under Company's Training Scheme earlier to 03.03.1989 and the period of ONE year training in Cat.I after 03.03.1989 under MOS dated 03.03.1989 are to be treated as service for the purpose of Gratuity.

The issue has been examined in detail.

It is hereby clarified that the service rendered by the above persons under Company's Training Scheme is to be treated as service for the purpose of payment of Gratuity. Accordingly, their initial date of appointment in the Company is to be reckoned from the date they were appointed as Tradesmen Trainee under Company's Training Scheme.

Action may please be taken accordingly.

Sd/-
CHIEF GENERAL MANAGER
(PERSONNEL)

12. It is seen that clarification was sought from subordinate establishments of the respondent company, whether to count the training period of one year (on fixed stipend) under Company's Training Scheme earlier to 03.03.1989 and the period of one year training in Category-I after 03.03.1989. From the reading of the Circular, it is clear that the Management made a distinction between the training prior to the MOS and after MOS. Further, clarification does not make any distinction on extension of service benefits and holds that service rendered by the persons under the Company's Training Scheme is to be treated as service for the purpose of payment of gratuity and that initial date of appointment in the Company is to be reckoned from the date they were appointed as Tradesmen Trainee. Normally, an employee earns increment on satisfactory rendering of the period of service prescribed. In this case, it is not in dispute that petitioners were put to training on being recruited and during training period also, they were rendering the service. This was recognized and the same was counted for the purpose of determination of gratuity claim. Thus, I do not see any justification in not computing the petitioners training period after their appointment in December, 1989 towards grant of second service increment in accordance

with Clause 3.9.4 of National Coal Wage Agreement-IV, dated 05.01.2001.

13. It is not in dispute that respondent employer issued clarification on 17.04.2009 holding that training period counts towards service for the purpose of determination of gratuity benefits. Soon thereafter the writ petition is filed. Thus, it is not a case of inordinate delay in ventilating their grievance and invoking jurisdiction of this Court to dismiss the writ petition on that ground. Thus, two decisions relied upon by the learned standing counsel do not come to his rescue. More so, on merits, claim of the petitioners is valid and illegally petitioners are denied second increment in accordance with Clause 3.9.4 of the National Coal Wage Agreement-IV, which is binding on the respondent management.

14. Thus, writ petition is accordingly allowed and respondents are directed to grant second increment to petitioners in accordance with clause 3.9.4 of National Coal Wage Agreement-IV dated 05.01.2001. Such exercise shall be completed and arrears amount shall be paid within a period of two months from the date of receipt of copy of this order.

Miscellaneous petitions if any pending shall stand closed.
There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 07.02.2017
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