

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.23554 of 2013

ORDER:

Heard the learned counsel for the petitioner, and Sri N.Vasudeva Reddy, the learned Standing Counsel for the APSRTC, appearing for the respondents.

2. Petitioner has filed this Writ Petition challenging the action of respondents in not paying the sum of Rs.41,170/- towards his Provident fund and Rs.14,084/- towards salary of 23 days of un-availed earned leave and seeks a direction to the respondents to pay the same with 18% interest from due date i.e. 01-12-2010.

3. However, at the hearing of the Writ Petition, learned counsel for the petitioner stated that except the amount payable towards unavailed earned leave, the petitioner had received everything else.

4. There was a dispute about date of birth of the petitioner. While the petitioner contended that the date of birth was 10-11-1952, the Corporation contended that it was 05-12-1949. Treating the petitioner as having attained superannuation on 31-2-2007, 1st respondent retired him from service. He thereafter approached Labour Court by filing I.D.No.72 of 2006. It passed award on 03-06-2009 and directed the respondents to reinstate him into service with continuity of service but without back-wages.

5. Petitioner filed W.P.No.16974 of 2009 to declare that the proceeding dt.03-08-2009 retiring him from service is illegal and sought a direction that he should be continued in service from 30-11-2010. The said Writ Petition was allowed on 30-12-2009 and the W.A.No.1053 of 2010 filed by the respondents was dismissed on 22-12-2011. Subsequently petitioner was continued in service till 30-11-2010. Petitioner, therefore, seeks amounts due towards un-availed earned leaves for the period out of service i.e. from 03-08-2009 to 09-05-2010, and contends that for these 23 days he is entitled to salary since he did not avail the earned leave.

6. In the counter affidavit filed by the respondents, it is stated that as per Regulation 34 of Leave Regulations, 1963, the earned leave is admissible to permanent employee shall be a twelfth of the period spent on duty only. It is contended that since the Labour Court merely directed reinstatement with continuity of service, but did not grant back-wages and since the other amounts claimed by the petitioner were already paid, the respondents need not pay salary for these 23 days.

7. Admittedly, the petitioner was prevented from discharging his duties as driver by the action of the respondents for the period 03-08-2009 to 09-05-2010. Therefore, the respondents cannot take advantage of their own wrong and deny to the petitioner the benefit of claims towards un-availed earned leave for the period

03-08-2009 to 09-05-2010 since he had been directed to be reinstated by the Labour Court with continuity of service.

8. Therefore, the Writ petition is allowed and the respondents are directed to pay the petitioner sum of Rs.14,084/- towards salary of 23 days of un-availed earned leave with interest @ 9% per annum from 09-05-2010 till the date of payment. No costs.

9. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-06-2017
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