

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.2044 of 2010

Date: 31.01.2017

Between:

Y.Satyanarayana, S/o China Swamy,
Aged about 57 years, Occu: Employee,
R/o. 5-92/5/A, Alamuru, East Godavari Dt.

.....Petitioner

and

Andhra Pradesh State Road Transport Corporation,
Rep.by its Managing Director cum Chairman,
Bus Bhavan, near RTC 'X' Road, Musheerabad,
Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

On the allegation of indulging in misappropriation, the petitioner was placed under suspension by order dated 20.01.2005. Disciplinary action resulted in order of removal from service by proceedings dated 05.06.2006. Earlier petitioner filed W.P.No.18408 of 2006 challenging the removal order dated 05.06.2006. This Court while upholding the disciplinary action, however, came to the rescue of the petitioner by holding that punishment of removal from service is disproportionate to the delinquency alleged. Further, having regard to the peculiar facts of this case, Court also substituted the punishment. Court directed the respondents to impose a punishment 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. The order of this Court was complied with, petitioner was reinstated and petitioner retired from service on attaining the age of superannuation.

2. Petitioner made claims for grant of other benefits as a consequence to the decision rendered by this Court in the above writ petition including grant of benefits of subsistence allowance as a consequence to the Revised Pay Scales, 2005, annual increments for the years 2005 to 2007 and payment of encashment for 30 days for the years 2005 and 2006. By the order impugned, said request of petitioner was rejected.

3. Heard Sri E.Madan Mohan Rao, learned counsel for petitioner and Sri S.V.Ramana, learned standing counsel for respondents 1 to 5.

4. Learned counsel for petitioner contends that the Revised Pay Scales came into force w.e.f. 01.04.2005. Since order of removal is set aside by this Court, petitioner is deemed to be in service when Revised Pay Scales were implemented. As petitioner was under suspension till he was removed, he is entitled for the revision of subsistence allowance till the order of removal was passed. He further submits that as a consequence to the setting aside the removal order, petitioner is also entitled to annual increments for the years 2005 to 2007. Not granting those annual increments and not granting leave encashment is illegal.

5. Learned standing counsel Sri S.V.Ramana appearing for respondents submits that since the order of removal was modified by this Court to the punishment of withholding of annual increments for the remaining service, petitioner is not entitled to annual increments. He would further submit that in accordance with the judgment rendered by the Supreme Court in **APSRTC and another v. S.Narsagoud**¹, petitioner is not entitled to claim any other benefits as charges are held proved.

6. It is not in dispute that this Court upheld the finding recorded by the disciplinary authority on the charges levelled against the petitioner. Relief granted by this Court is only with reference to the quantum of punishment. Thus, this Court modified the punishment of removal to that of withholding of

¹ (2003) 2 SCC 212

annual increments for the remaining period of service. In view of the modification of the punishment, the modified punishment came into force from the date when the order of removal was passed. Thus, petitioner is not entitled to annual increments from 2005.

7. Prior to removal from service, petitioner was placed under suspension. The order of suspension merges into removal. Punishment is not set aside by this Court, but only modified the punishment to that of withholding of annual increments. Learned counsel for petitioner vehemently contended that since this Court granted continuity of service, petitioner is entitled to all other benefits. The continuity of service in the context of the order passed by this Court, is only for the purpose of computing previous service rendered by him prior to the order of removal to get retirement benefits. As no other benefits were granted to the petitioner, petitioner is not entitled to any benefits, including revision of subsistence allowance.

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.

Supreme Court held as under:

“9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. ***In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.***”

9. With reference to the payment of encashment for 30 days for the year 2005-06, it is to be seen that petitioner was placed under suspension on 05.02.2005, which culminated in the order of removal dated 05.06.2006. This Court modified the order of removal to that of withholding of annual increments till the petitioner attained the age of superannuation. Thus, after 05.02.2005, petitioner has not rendered a single day service. Question of accumulation of leave for encashment would arise only if service is rendered. It is not a case of reinstatement with continuity of service, back wages and attendant benefits. No attendant benefits were granted. The Court modified the punishment and granted continuity of service only to count the service rendered by the petitioner before his termination for the purpose of retirement benefits. Thus, I do not see any illegality in

the order impugned warranting interference by this Court. Writ petition is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 31.01.2017

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