

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.6607 of 2005

ORDER:

This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with M.P.No.18 of 2001 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, and quash the award dated 14.9.2004 passed therein, by holding it as illegal and arbitrary.

It is the case of the petitioner Corporation that the respondent workman was employed as a driver and he absented from duty without any leave and the same was construed as misconduct and initiated disciplinary proceedings against the respondent workman, and after conducting detailed enquiry, imposed the punishment of removal from service. Thereafter, the respondent workman has unsuccessfully preferred an appeal. The respondent workman also preferred review before the Regional Manager and the Regional Manager has ordered reinstatement of the respondent workman, subject to medical examination. In the medical examination, the respondent workman was found to be unfit for A-1 category post as he has defective eyesight and hence, the reviewing authority has withdrawn the reinstatement orders. Aggrieved by the same, the respondent workman filed I.D.No.220 of 1989 before the Labour Court challenging the orders of removal and also orders of withdrawal of his reinstatement by the reviewing authority.

The Labour Court, vide orders dated 12.10.1993 passed orders in favour of the respondent workman directing the petitioner Corporation to provide job to the respondent workman in a Cleaner post and that he shall be given pay protection. Thereafter, the respondent workman filed M.P.No.18 of 2001 under Section 33-C (2) of the I.D. Act claiming wages and notional increments. The Labour Court, vide orders dated 14.9.2004 had directed the petitioner Corporation to pay a sum of Rs.1,24,288/- to the respondent workman. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner corporation submits that this Court, vide orders dated 30.3.2005 granted interim stay of the orders passed in M.P.No.18 of 2001 dated 14.9.2004 subject to the condition that the petitioners shall deposit Rs.90,000/- and in pursuance of the said direction, they have deposited an amount of Rs.90,000/- and the balance amount of Rs.34,288/- has to be paid. Learned counsel further submits that the Labour Court erred in directing to pay an amount of Rs.1,24,288/- towards notional increments to which the respondent workman is not entitled to in view of the decision reported in **APSRTC v. S. NarsaGoud**¹ wherein the Hon'b'le Supreme Court held that unless and until a specific direction is given in respect of notional increments, the workman is not entitled for notional increments for out of employment period. In the present case, there is no specific direction to grant notional increments in favour of the respondent workman in I.D.No.220 of 1989 dated 12.10.1993 and in the absence of specific

¹ (2003) 2 Supreme Court Cases 212

direction, the Labour Court had erroneously granted Rs.24,026/- in favour of the respondent workman towards notional increment. Learned counsel for the petitioner Corporation further contended that, the portion of award where the Labour Court had directed to pay Rs.24,026/- to the respondent workman towards notional increments is liable to be set aside.

This Court having considered the submissions made by the learned counsel for the petitioner Corporation, is of the considered view that the Labour Court erred in granting Rs.24,026/- to the respondent workman towards notional increments, more so, when there is no specific direction from the Labour Court in I.D.No.220 of 1989 to grant notional increments for out of employment period.

Accordingly, the Writ Petition is partly allowed setting aside the order of the Labour Court in M.P.No.18 of 2001 dated 14.9.2004 to the extent of granting Rs.24,026/- towards notional increments to the respondent workman and the rest of the order of the Labour Court is confirmed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 21/12/2018

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