

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.3978 OF 2001

ORDER:

Petitioner, who worked as a driver in respondent-APSRTC, filed this Writ Petition seeking to direct the respondents to re-fix the petitioner's pay duly granting notional increments from 22.04.1992 to 11.08.1997 as he was reinstated into service with continuity of service and all other benefits except back wages.

Case of the petitioner is that he was appointed as a driver in the Corporation and later he was removed from service for the misconduct of causing accident, vide removal order dated 22.04.1992. His appeal and review were rejected. Petitioner raised I.D.No.9/1994 before Labour Court-II, Hyderabad, claiming reinstatement with continuity of service and back wages by setting aside the removal order dated 22.04.1992. The Labour Court after considering the evidence before it came to the conclusion that removal is illegal and thereby set aside the removal order and directed the respondents to reinstate the petitioner into service with all benefits like continuity of service, etc. but without back wages, vide Award dated 17.01.1997. Thereafter, the petitioner was reinstated into service on 11.08.1997 and his pay was fixed at basic pay of Rs.1800/-. Thereafter, his pay was re-fixed at Rs.3,228/- but said fixation was not properly done as notional increments were not allowed though he is entitled to the same as per the Award of the Labour Court. If notional increments were granted, his pay could have been fixed at Rs.5306/-. His request for proper fixation of pay by allowing notional increments for the period for which he was out of service from 22.04.1992 to 11.08.1997, was not considered. Being aggrieved by the same, the present writ petition is filed.

Counter is filed on behalf of respondents stating that as per the award dated 17.01.1997 passed by the Labour Court in I.D.No.9/1994, the petitioner was reinstated into service with continuity of service at Banswada Depot w.e.f.11.08.1997. Initially, petitioner was allowed pay of minimum time scale on reinstatement. Subsequently, revised pay fixation was done in the revised pay scales of 1993 and 1997 duly taking the last pay drawn by him and his pay was fixed at Rs.3,228/- w.e.f.11.08.1997 i.e. from the date of his reinstatement. Petitioner has undergone punishment of deferment of increments. Therefore, his pay as on 11.08.1997 was fixed taking into consideration those punishments. Further, it is stated that circular No.91/99 dated 30.09.1999 was kept in abeyance until further orders through Circular No.PD.74/2000 dated 15.12.2000. While fixing pay as per RPS 1993 and RPS 1997 service weightage was allowed on his reinstatement with continuity of service and on account of pay fixation, his pay was arrived at Rs.3228+15 PP which was allowed from the date of reinstatement. Hence, the writ petition is misconceived and liable to be dismissed.

Sri K.Vasudeva Reddy, learned counsel appearing for the petitioner, would contend that as on the date of termination of the petitioner on 22.04.1992, he was drawing the pay of Rs.1230/-. As per the award dated 17.01.1997 passed by the Labour Court in I.D.No.9/1994, the petitioner was reinstated into service on 11.08.1997 with continuity of service and all other benefits without backwages. On reinstatement, he was allowed minimum pay of Rs.1800/-, thereafter, his pay was re-fixed at Rs.3228/-. While fixing the pay, notional increments from the date of termination i.e.22.04.1992 till the date of reinstatement i.e. 11.08.1997 were

not taken into consideration and thereby his pay was erroneously fixed. If the notional increments were allowed, his pay would have been fixed at Rs.5,300/- and the same was not done. Petitioner is entitled for re-fixation by taking into consideration the notional increments and the petitioner is also entitled for payment of arrears of salaries, in view of re-fixation. *In spite of* representations, the respondent authorities have failed to redress the pay anomaly and pay the arrears of salaries.

Per contra, Sri N.Vasudeva Reddy, learned Standing Counsel appearing for the respondents, would contend that the petitioner was drawing pay of Rs.1230 + 15 PP at the time of his removal. Based on the same, his pay fixation was done as per RPS 1993 and RPS 1997 duly allowing service weightage as he was reinstated with continuity of service. As the petitioner was imposed punishment of deferment of increments, till completion of the punishment, he cannot draw the increments. He would further contend that the Managing Director of APSRTC issued Circular No.91/99 dated 30.09.1999 stating that whenever there is a direction for reinstatement with continuity of service, the concerned employee is entitled for grant of notional increments from the date of termination to the date of reinstatement. But, the said Circular was kept in abeyance until further orders through Circular No.PD 74/2000 dated 15.12.2000. He would further submit that the employee is not entitled for notional increments for the period for which he was out of employment even though continuity of service is ordered in the award of the Labour Court. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in **APSRTC vs. S.Narsagoud**¹ and the

¹ (2003) 2 SCC 212

petitioner is not entitled for notional increments. However, as per the award of the Labour Court, he was allowed notional increments after taking into consideration his punishments of deferment of increments suffered before his termination.

In the facts and circumstances of the case and in considered view of this Court, the petitioner, while working as a driver in the respondent Corporation, was removed from service on 22.04.1992 after conducting departmental enquiry, as per rules. Petitioner raised I.D.No.9/1994 before the Labour Court, Hyderabad. The Labour Court, after considering the evidence before it, while setting aside the termination order, directed the respondents to reinstate the petitioner into service with all benefits like continuity of service, etc, but without any backwages. As per the award dated 17.01.1997, the petitioner was reinstated into service on 11.08.1997 with continuity of service. On reinstatement, his pay was fixed in the minimum scale as he has suffered punishment of deferment of increments. Later, his pay was re-fixed duly allowing service weightage as he was reinstated with continuity of service and all other benefits. In RPS 1993 and RPS 1997 his pay was fixed at Rs.3,278/- + 15 PP which was allowed from the date of reinstatement i.e.11.08.1997. Petitioner claimed pay parity with another employee Mr.G.Chandraiah (E.097538)–driver Banswada Depot, who was drawing the pay of Rs.5306/-. The difference of pay parity with that of the similarly situated employee could be seen as the petitioner had suffered punishment of deferment of increments.

In **Narsa Goud case (supra)**, the Hon'ble Supreme Court, based on the factual matrix of the case, held that if the Labour Court directed reinstatement with continuity of service and without

any specific direction for consequential benefits, the employee could not be granted notional increments. But, as rightly contended by the learned counsel for the petitioner, in **Narsa Goud case (1 supra)** the Hon'ble Supreme Court had denied the benefits on the ground that the workman was removed from service for serious mis-conduct of embezzlement of funds or fraud. In such a situation, the Hon'ble Supreme Court held that the workman is not entitled for any other benefits when the award is only with regard to continuity of service and granting all other benefits would amount to granting bonus for their serious misconduct.

In **J.K.Synthetics Ltd. vs. K.P.Agarwal²**, the Hon'ble Supreme Court held that in case employee is exonerated of the misconduct and it is found that the employee was being victimized etc., then the principles applicable would be as those in case of illegal termination. In the present case, the petitioner was reinstated with continuity of service by the Labour Court on the ground of illegal termination. Continuity of service means they are entitled for notional benefits as the petitioner was not entitled for pecuniary benefits.

This Court found that no doubt the petitioner is entitled for notional increments as per the Award of the Labour Court as he was reinstated into service with continuity of service and all other benefits, etc. without back wages. In view of the decision of the Hon'ble supreme Court in **J.K.Synthetics Case (2 supra)**, as the Labour Court ordered reinstatement of the petitioner into service with continuity of service and all other benefits etc. without back wages by setting aside the removal order, the petitioner is entitled

² (2007) 2 SCC 433

for grant of notional increments from the date of removal to the date of reinstatement. This Court found, as per the averments of the counter, that on reinstatement, the petitioner was given minimum pay scale instead of allowing pay drawn at the time of removal and thereafter it appears that his pay was re-fixed duly giving service weightage as he was reinstated into service with continuity of service and all other attendant benefits without back wages by virtue of Award of the Labour Court. Pursuant to fixation in terms of RPS 1993 and RPS 1997, the pay of the petitioner was re-fixed at Rs.3228 + 15 PP taking into consideration the pay which was allowed on the date of his reinstatement i.e.11.08.1997. It appears there is a pay anomaly as the petitioner was not allowed the pay on reinstatement which he was drawing at the time of his removal.

For the reasons stated supra, the Writ Petition is disposed of directing the respondents to re-fix the pay of the petitioner by allowing notional increments for the period for which he was out of service from 22.04.1992 to 11.08.1997 and pay arrears of salaries. The respondents are directed to complete the said exercise within a period of two months from the date of receipt of a copy of this order and settle all the amounts payable to the petitioner.

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

(M.GANGA RAO, J)

28th September, 2018
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