

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.1311 of 2012

Between :

V.S.Ravi Kumar, s/o. Sri V.H.Basavaiah,
Retired Statistical Officer, APSRTC,
Plot No.255, Prasanth Nagar, Vanasthalipuram,
Hyderabad.

.....Petitioner

and

Andhra Pradesh State Road Transport Corporation,
rep.by its Managing Director, Bus Bhavan,
Hyderabad and another.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 03.10.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NO.1311 OF 2012

% 03.10.2018

V.S.Ravi Kumar, s/o. Sri V.H.Basavaiah,
Retired Statistical Officer, APSRTC,
Plot No.255, Prasanth Nagar, Vanasthalipuram,
Hyderabad.

... Petitioner

Vs.

\$ Andhra Pradesh State Road Transport Corporation,
rep.by its Managing Director, Bus Bhavan,
Hyderabad and another.

.... Respondents

!Counsel for the petitioner : Sri A.G.Satyanarayana Rao

Counsel for the Respondents: Standing Counsel for
respondents

<Gist :

>Head Note:

? Cases referred:

1995 (1) LLJ 381
2001 Law Suit (Mad) 641= 2001 (2) LLJ 1457
2008(2) KarLJ 330= 2008 (2) LLJ 737
FMA No. 585 of 2009 High Court at Calcutta dt 8.8.2013
AIR 2018 SC 1545
LAWS (ALL) 2005 5 143
LAWS (KAR) 2007 10 77
LAWS (ORI) 1994 5 26

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.1311 OF 2012

ORDER:

Petitioner joined service as Traffic Apprentice on 21.05.1973. He was later appointed as Traffic Inspector Grade-II w.e.f. 01.12.1974 and earned promotions to various posts and by the time he attained the age of superannuation, he was working in the post of Statistical Officer in Class-I Junior Scale service and retired on 31.10.2010. The total service rendered by petitioner is 37 years 5 months and 10 days. According to petitioner, his service rendered from 21.05.1973 till he retired has to be computed for the purpose of determining the amount of gratuity payable to him. From out of 37 years, 5 months, 10 days, he was an apprentice from 21.05.1973 to 30.11.1974. He was placed under suspension in two spells. The first spell period was from 15.05.1987 to 27.11.1987 and second spell was from 02.08.2007 to 16.04.2008. The first spell of suspension was treated as 'on duty', whereas second spell was treated as 'not on duty'. While computing the gratuity payable to petitioner, the period of service rendered by him as trainee and period of suspension, which was treated as 'not on duty' were excluded. Petitioner claims these two periods also to be computed to arrive at total qualifying service to determine the gratuity payable to him. The claim of petitioner for computation of period of apprenticeship and suspension to determine gratuity was rejected by order dated 21.11.2011, impugned in this writ petition.

2.1. According to learned counsel for petitioner, based on the performance in the recruitment process, petitioner was appointed as Traffic Apprentice in the cadre post shown as Class-III post of

the service, followed by regular appointment. The post was governed by APSRTC Employees Recruitment Regulations, 1966 (Regulations, 1966). As per Regulation 25, Traffic Apprentice would be on probation for a period of one year after completion of prescribed period of training. On successful completion of training, he would be transferred as Traffic Inspector Grade II. He would submit that clause-7 of appointment order as Traffic Apprentice clearly hold that the service conditions are governed by regulations made from time to time. Further, proceedings dated 13.12.1974 would show that petitioner was absorbed as Traffic Inspector Grade-II. Thus, service rendered as Traffic Apprentice should also be computed. In support of this contention, learned counsel also placed reliance on the subsequent amendment to the service regulations, which incorporated the computation of trainee period as service. Traffic Apprentice is renamed as Traffic Supervisor (Trainee), post is classified as Class-II and training period is reduced to one year. He also placed reliance on the circular instructions issued by APSRTC on 16.09.1975, where under apprentice period is also directed to be computed towards qualifying service.

2.2. In support of his contention, learned counsel placed reliance on following decisions:

i) **Chairman cum Managing Director, Orissa Mining Corporation Limited Vs. Controlling Authority under Payment of Gratuity Act cum Assistant Labour Commissioner¹;**

ii) **S.Arunachalam Vs. Managing Director, Southern Structurals, Pattabiram, Madras-72²;**

¹ 1995 (1) LLJ 381

² 2001 Law Suit (Mad) 641= 2001 (2) LLJ 1457

iii) **H Ramappa Vs. General Manager, Sri Yellamma Cotton Woolen and Silk Mills, Davanagere district³;**

iv) **Sambunath Chatterjee Vs Eastern Coalfields Ltd & others⁴; and**

v) **Netram Sahu Vs State of Chhattisgarh and another⁵.**

2.3. With reference to computation of period under suspension, learned counsel placed reliance on the circular instructions of the Corporation dated 05.05.1977, more particularly on paragraphs – 5 and 6.

3.1. *Per contra*, according to learned standing counsel, apprenticeship period cannot be computed towards qualifying service. Petitioner was on apprenticeship and was paid only honorarium during that period and he was regularly appointed only on 01.12.1974 and therefore only service from 01.12.1974 would count. He would submit that the service regulations were amended on 16.11.2000 after he had completed apprenticeship, and, therefore, amended Regulations have no application to the case of petitioner.

3.2. With reference to treatment of period of suspension, learned standing counsel placed reliance on circular instructions issued on 20.10.1994, as clarified on 29.09.2009 and contended that when period of suspension is not treated as ‘on duty’, it cannot be counted towards total period of service to determine gratuity.

3.3. Learned standing counsel cited following decisions:

i) **Chairman cum Managing Director, Fertilizer Corporation of India Ltd Vs Regional Labour Commissioner (Central) and Appellate Authority⁶,**

³ 2008(2) KarLJ 330= 2008 (2) LLJ 737

⁴ FMA No. 585 of 2009 High Court at Calcutta dt 8.8.2013

⁵ AIR 2018 SC 1545

ii) **Ramappa H Vs General Manager, Sri Yellamma Cotton Woollen and Silk Mills, Davanagere district⁷**; and

iii) **Chairman cum Managing Director, Orissa Mining Vs Controlling Authority, Payment of Gratuity Act⁸**

4. I have carefully considered respective submissions and precedent decisions cited at the bar. In all fairness, learned standing counsel cited decisions which support him and are against his contentions. The same is highly appreciated.

5. Two issues need consideration in this writ petition:

- i) Whether apprentice/training period can be computed as 'qualifying service' to determine gratuity? and
- ii) Whether period under suspension from service treated as 'not on duty' can be computed as 'qualifying service' to determine gratuity?

6. The facts are not in dispute. The issues for consideration depend on interpretation of circular instructions of respondent-Corporation and provisions of Section 2, 2A read with Section 4 of the Payment of Gratuity Act, 1972 (for short, Act, 1972).

7. At the outset, it is to be noted that gratuity is a sum of money paid by employer to an employee for the service rendered by him. It is not a gratis. It is earned by employee for the service rendered by him and right accrues to him to get gratuity. No part of the service can be excluded at the whim of employer without valid reason. There must be clear provision to exclude any part of

⁶ LAWS (ALL) 2005 5 143

⁷ LAWS (KAR) 2007 10 77

⁸ LAWS (ORI) 1994 5 26

service from computation as 'qualifying service' to deny that part of the service.

ISSUE NO.1:

8. When petitioner joined service, he was governed by APSRTC (CC & A) Regulations, 1967. The post of Traffic Apprentice was shown as item 15 in Clause (g) Operating (Traffic) of Schedule III. Regulation 25 of APSRTC Employees (Recruitment) Regulations, 1966 deals with probation of officers under training and apprentices. It reads as under:

"25.Probation of Officers under training and apprentices: In the case of officers under training and apprentices serving in the Corporation, they shall be on probation for a period of one year after the completion of the prescribed period of training and shall be required to pass the departmental tests before their appointment on probation."

9. In the table appended to above Regulations, under Section 'D', Class III Services, item 13 deals with 'Traffic Apprentice'. Against this entry, under the caption, 'period of training' it reads, "12 months. On successful completion of training, the candidate will be transferred as Traffic Inspector Grade-II or Head Depot Clerk".

10. These provisions make it clear the scheme of recruitment. On following regular selection process to recruit against a cadre post, person recruited is initially taken as apprentice, trained, tested his ability and on successful completion of training he is absorbed as Traffic Inspector Grade-II. Even the post of Traffic Apprentice is part of the cadre.

11. It is to be noted that though by the time petitioner was kept on apprenticeship, regulations did not provide for computation of

said training period as service, but in the year 2000 service regulations were amended treating the period of training also as service. By then petitioner was in service and retired only in the year 2010. The amendment does not restrict the treatment of period as service to the employees who are empanelled as trainees and then appointed after the date of such amendment. It does not seek to classify employees based on cutoff date. All trainees, later appointed to service permanently, form into one homogenous group. There cannot be a mini-classification of a homogeneous group unless it is clearly expressed and such classification is based on clearly discernible factors. Cutoff date can be a factor. But, the regulation must clearly specify and express such intendment. In the absence of fixing cut-off date in the regulation, it is not permissible to deny the benefit flowing out of regulation based on artificial classification assumed by Executive Authority.

12. Further, qualifying service to determine gratuity is assessed at the time of retirement. By the time petitioner retired the regulation was amended treating training period also as service. Therefore, on this ground also benefit of year 2000 amendment cannot be denied to petitioner.

13. Further, even before this amendment to Regulations was carried out, the issue was considered by the respondent Corporation having regard to the provisions of the Act, 1972. By referring to provision in Section 2(c) and Section 4, it was clarified that service rendered on apprenticeship should also be computed to determine the qualifying service to grant gratuity. In fact, by this circular, the computation of qualifying service is also extended

to the workers working on casual and daily rate basis, who are subsequently decasualized, and their services are regularized. From this, it is also to be noted that when benefit is extended to casual/daily rated service, a person having been selected in regular selection process and on being employed, deputed to training cannot be put to worse position. Further, the year 2000 amendment only seeks to give statutory backing to executive decision and in terms thereof it should govern all serving employees. It cannot be assumed that regulation intended to take away benefits already accrued, more so when amendment intended to compute training period as service.

14. Further, in **Netram Sahu**, employee worked as daily rated employee for 22 years, later his services were regularized and having rendered 25 years of service he retired. Employer sought to ignore the service rendered on daily rated basis and denied gratuity. Hon,ble Supreme Court observed that it would be travesty of justice if employee is denied his legitimate claim of gratuity despite rendering 25 years and having utilized the services for such a long period the State has no justifiable reason to deny benefit of gratuity, a statutory right vested in the employee(paragraphs 17 & 18). Supreme Court further observed that ***'it being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the court to get his genuine claim'***(paragraph 18).

15. At this stage, it is also appropriate to note the definition of 'continuous service' and 'employee' as defined in the Act, 1972 and the scope of Sections 2(c), (e), 2A and 4 of the said Act.

Section 2. Definitions:-

(a) & (b) xxxx

(c) "*continuous service*" means continuous service as defined in Section 2A;

(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

Section 2A. Continuous service:- For the purposes of this Act,-

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

Section 4 : Payment of gratuity:- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years---

(a) on his superannuation

16. Act is a beneficial legislation. It recognizes the need to provide consolidated amount as gratuity to an employee leaving the service. The gratuity amount is determined based on service rendered by employee. It is a right vested in employee to draw gratuity for the service rendered by him. It is clearly discernible from the scheme of Act, 1972 an employee in any form is entitled for payment of gratuity on termination of service for the service rendered by him. An apprentice *per se* is not an employee. A person joins as apprentice in an Industrial establishment to hone up his skill in a trade and after a period of apprenticeship he leaves that establishment to take up employment in any other Industry/Organization or as self-employed. It is also possible to secure regular employment in the same establishment where he did his apprenticeship. Petitioner is not an apprentice to do apprenticeship governed by the Apprenticeship Act as part of training skills in the trade learnt by him. Ongoing through regular recruitment process, he was selected, inducted to service as an apprentice, trained and absorbed on successful completion of training. Thus, while considering the scope of definition of 'employee' (Section 2 (e) of Act, 1972) this finer distinction has to be kept in mind. Thus, this service cannot be ignored to determine the 'qualifying service' for computation of gratuity, more particularly having regard to the provisions in Sections 2, 2A and 4 of the Act, 1972. Thus, while computing 'qualifying service', service rendered as an apprentice cannot be ignored to determine gratuity.

17. Further, in view of the circular dated 16.09.1975 and amendment to Regulations in the year 2000, it is beyond pale of doubt that the service rendered as trainee/apprentice when it was

followed by regular appointment and there is no break in service shall compute towards qualifying service to determine gratuity. Thus, looking from any angle, service rendered by petitioner as trainee cannot be ignored towards determination of gratuity. Contrary action of respondent-Corporation is illegal.

ISSUE NO.2:

18. The Corporation issued circular instructions on 05.05.1977. This circular deals with the effect of suspension period when it is treated as NOT ON DUTY. The relevant portion of paragraph-5 and paragraph-6 read as under:

“5. When the period of absence by suspension or suspension followed by removal is treated either wholly or partly as ‘ON DUTY’ the authority competent to make an order for reinstatement has to specifically make a mention for what purpose or purposes the period, so treated, shall count for duty. **Likewise, in case of ‘NOT ON DUTY’ there must be a specific directive as to the purpose or purposes, to which the period so treated as “NOT ON DUTY” counts for.**

6. In the absence of any specific mention as to the effect of the period so treated as “NOT ON DUTY”, it shall not be counted for the purpose of increments and leave only. It shall also be confined only to the period that was treated as “NOT ON DUTY”. That is to say, the actual period, on and from the date of suspension and upto the date of reinstatement, by terminating the suspension or in consideration of an appeal, as the case may be, shall alone be taken for this purpose. **This will not affect seniority, continuity of service and Gratuity.** But in the case of “ON DUTY” the entire period will be counted for all benefits of service, if there is no specific mention as to the purpose or purposes the period so treated as “ON DUTY” counts for.

19. A plain reading of Circular makes it clear that if the order of competent authority treating the period of suspension as 'not on duty' does not specify the purpose for treating the period as 'not on duty', the same cannot be denied computing that service for gratuity.

20. However, the Corporation sought to rely on the circular instructions issued on 20.10.1994, as clarified on 29.09.2009. 20.10.1994 circular primarily deals with settlement of amounts of employees on the date of retirement, such as gratuity, provident fund, etc., It calls upon the competent authority to undertake the exercise well in advance and determine the amounts payable and to pay the amounts on the date of retirement itself. In that context, orders were passed in paragraph-8. To the extent relevant paragraph-8 reads as under:

"8. In order to ensure that the payment of Gratuity is also made to the retired employee on the date of his retirement, i.e., last working day, the following instructions are issued:-

GRATUITY:

(1) & (2) xxxx

(3) While calculating the Gratuity of an employee, the following periods should be deducted from the length of service for payment of gratuity.

(i) xxx

(ii) Period of suspension which is treated as NOT ON DUTY for all purposes or for the specific purpose of gratuity."

21. It appears from the extracted portion of circular dated 20.10.1994 that, period of suspension if treated as NOT ON DUTY 'for all purposes' or 'for the specific purpose of gratuity', the same should be deducted in determining length of service.

22. The contents of circular dated 20.10.1994 were reviewed and certain modifications were issued in Circular dated 29.09.2009. This circular mandate the competent authority to ignore sub-paragraph 3 (i) and (iv) of paragraph-8 of circular dated 20.10.1994 and further orders to reckon the service relating to removal period whenever the continuity of service is granted in favour of the employee by the Courts. This clarification issued on 29.09.2009 has application only with reference to paragraph - 3(i) and (iv) and, therefore, not applicable to paragraph-3(ii) extracted above. At this stage, it is also appropriate to note that there is no reference to the circular issued on 05.05.1977 in the circular dated 20.10.1994 and circular dated 29.09.2009. It is discernible from reading of these circulars, circular dated 05.05.1977 is not superseded.

23. Thus, the scope of extracted portion of 20.10.1994 circular must be construed in the light of circular dated 05.05.1977. From the plain reading of paragraphs-5 and 6 of the circular dated 05.05.1977, extracted above, it is clear that the competent authority has to specify the purpose for which period of suspension is treated as NOT ON DUTY and if it does not specify, the treatment of period of suspension as 'not on duty' would result in only depriving the 'increments' and 'Leave' for the said period and would not affect 'seniority', 'continuity of service' and 'gratuity'.

24. On careful reading of extracted portion of circular dated 20.10.1994, it mandates that if period of suspension is treated as NOT ON DUTY **for all purposes** or **for the specific purpose of gratuity**, then only that period cannot be counted to determine the 'continuity of service' to grant gratuity.

25. There is no conflict in these two circulars. Both emphasis on same aspect. On a combined reading of these two circulars, it is manifest that unless the order of competent authority treats the period of suspension as NOT ON DUTY **for all purposes** or for **the purpose of gratuity**, such period cannot be ignored to determine the 'qualifying service' to grant gratuity.

26. The effect of suspension is, employee is kept out of work pending enquiry/investigation into alleged misconduct. The purpose of suspension is to keep employee away from doing further mischief; not to interfere with enquiry; influence the witnesses; tamper the evidence on record; to convey message to all employees that misconduct cannot be tolerated. However, there is no severance of relationship. Depending on the outcome of disciplinary action this period is regulated. Thus, unless otherwise specified to ignore the period under suspension said period cannot be ignored in computing 'qualifying service'. The circulars only emphasis this aspect. Therefore, the action of respondent-Corporation ignoring the period of suspension from 02.08.2007 to 16.04.2008 is illegal.

27. On analyzing relevant provisions of the Gratuity Act, relevant Service Regulations and the circular instructions of respondent-Corporation, I am of the considered opinion that decision to deny request to compute period of apprenticeship/training and the period covered by suspension from service treated as 'NOT ON DUTY' without any further restriction on gratuity, towards determining the 'qualifying service' for computation of gratuity is erroneous and is therefore set aside.

28. Respondents are directed to re-determine the quantum of gratuity payable to petitioner by counting the training/apprenticeship period i.e., 31.05.1973 to 30.11.1974 and period from 02.08.2007 to 16.04.2008, which was the period of suspension from service treated as NOT ON DUTY towards 'qualifying service'. As petitioner was illegally denied appropriate gratuity when it was due, petitioner is entitled to interest at the rate of 8% p.a., for the amount now determined from the date of due till the date of payment. The entire exercise shall be completed, and amount determined be paid as expeditiously as possible, preferably within a period of six week from the date of receipt of copy of this order.

29. Writ Petition is accordingly allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 03.10.2018

Kkm/tvk

Note: L.R. copy to be marked : Yes

HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.1311 OF 2012

Date: 03.10.2018

kkm