

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16651 OF 2001

ORDER:

The Superintending Engineer, O&M Circle, NSLC Unit, Tekulapalli, Khammam Distrit, filed this Writ Petition being aggrieved by the order dated 15.06.2001 passed in M.P.No.29 of 1998 in I.D.No.161 of 1990 by the Industrial Tribunal-cum-Labour Court, Warangal, whereby the Labour Court allowed the petition filed under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'I.D.Act') holding that the second respondent-workman is entitled for an amount of Rs.2,11,140/- as determined to be payable by the petitioner in terms of the award passed in I.D.No.161 of 1990 as confirmed in W.P.No.2783/1995 by this Court on reinstatement of the workman into service with continuity of service, as illegal and arbitrary.

Brief facts of the case are that the second respondent-workman was appointed as a Pump Operator on 21.11.1977 in Andhra Pradesh State Construction Corporation Limited, NSCL Unit, Khammam District, worked under the control of the petitioner and his service was terminated on 06.08.1979. Being aggrieved by his termination/disengagement, not on account of any misconduct, the workman raised an industrial dispute in I.D.No.161/1990. The Labour Court on considering the evidence on record, held that disengagement of the workman was illegal, and directed his reinstatement into service with continuity of service and back wages from the date of filing of the I.D. Against the award of the Labour Court, petitioner filed W.P.No.2783/1995 and the same was confirmed by this Court confirming the relief of reinstatement with continuity of service, however, denying the

relief of back wages from the date of filing of the industrial dispute. Accordingly, the workman was reinstated into service as NMR. For non-payment of salaries on par with regular employee from the date of coming into force of the award passed in I.D.No.161/1999, the workman filed M.P.No.29/1998 in I.D.No.161/1999 under Section 33-C (2) of the I.D. Act, claiming Rs.2,29,631/- for the period from 06.10.1994 to 28.02.1998. Thereafter, the workman filed revised calculation memo claiming Rs.2,11,148/-. The Labour Court on considering the evidence on record, came to the conclusion that the workman is entitled for notional increments without any claim for arrears, as the workman was reinstated into service with continuity of service and this Court in W.P.No.2783/1995 only modified the award denying back wages and confirmed the rest of the award and thereby the Labour Court allowed the petition determining the arrears of salaries payable to the workman amounting to Rs.2,11,148/-, in terms of award as modified by this Court in W.P.No.2783/1995. Being aggrieved by the same, the present writ petition came to be filed by the petitioner.

Learned Government Pleader appearing for the petitioner would contend that the workman was reinstated as per the award of the Labour Court passed in I.D.No.161/1999 as modified by this Court in W.P.No.2783/1995. As the petitioner was engaged as NMR, he is entitled for wages of NMR only and reiterated the contents of the counter filed in M.P.No.29/1998 in I.D.No.169/1999 before the Labour Court stating that the petition for payment of wages of Rs.2,29,631/- (revised for Rs.2,11,148/-) is not maintainable under Section 33-C (2) of the I.D.Act and the

Labour Court grossly erred in holding that the workman is entitled for regularization and for salaries on par with regular employees. The workman is entitled for regularisation as per the government orders after completing required period of NMR service. The workman cannot be placed on par with regular employees. The Labour Court ought not have conducted probing enquiry and assessed/determined the amounts of wages/salaries payable to the workman. The Labour Court travelled beyond its power under Section 33-C (2) of the I.D.Act and allowed the petition. The Labour Court being only an Executing Court, it cannot determine the amounts. The Labour Court under Section 33-C (2) of the I.D.Act can direct the petitioner Management to pay only the proved wages determined in the award, but not hypothetical wages claimed by the petitioner. In support of his contention, he relied on the judgment reported in ***Central Inland Water Transport Corporation Ltd. Vs. The Workmen and another***¹. He would further contend that the order of the Labour Court passed in M.P.No.29/1998 is illegal, arbitrary and contrary to the provisions of Section 33-C (2) of the I.D.Act. At best, the workman is entitled for delayed wages of NMR as he was disengaged as NMR worker only.

Per contra, Sri V.Narsimha Goud, learned counsel for the workman, would contend that the workman was engaged on 28.11.1977 as Pump Operator in A.P.State Construction Corporation Limited, NSLC Unit, Khammam, and he worked continuously. He was retrenched from service on 06.08.1979 without following the provisions of Section 25(F), 25 (G) and 25 (H)

¹ 1974 AIR 1604

of the I.D.Act. While the workman was retrenched from service, many of his juniors were continued. Even after retrenchment of the workman herein, some of his juniors who worked along with him were taken into service, but the petitioner was not given an opportunity and he was not re-engaged, in violation of provisions of Section 25(H) of the I.D.Act. Being aggrieved by the same, the workman raised an industrial dispute in I.D.No.161/1990. The Labour Court based on the evidence available on record held that the workman was illegally terminated and thereby ordered reinstatement of the workman into service with continuity of service and with back wages from the date of filing of the petition. The award of the Labour Court was confirmed by the Division Bench of this Court in W.P.No.2783 of 1995 except to the extent of denying backwages awarded by the Labour Court in I.D.No.161/1990. During the pendency of W.P.No.2783/1995, the workman was not paid even 17-B wages. After repeated representations, the workman was reinstated as NMR and paid daily wages, which is illegal and arbitrary. As per the award of the Labour Court passed in I.D.No.161/1990 as confirmed by the High Court in W.P.No.2783/1995, the workman is entitled to be reinstated into service with continuity of service as if he was in service and entitled for all the service benefits such as increments, regularization and scales of pay as was given to his juniors. In support of his contention, he relied on **G.Govinda Rajulu vs. The Andhra Pradesh State Construction Corporation Ltd.**² wherein the Hon'ble Supreme Court after noting that services of the employees of A.P. State Construction Corporation Limited sought to be terminated on account of closure of Corporation, directed to

² AIR 1987 SC 1801

continue the employees on some terms and conditions either in Government Department or Government Corporations. As such, after the disengagement of the workman, even if the Corporation is closed all the employees were continued in service and were absorbed in various Government Departments and Government Corporations. As such, the workman is entitled to be reinstated into service with continuity of service as per the orders passed in the Writ Petition in the petitioner-Organization as A.P. State Construction Corporation Limited is closed and the activities of the Corporation are taken over by the petitioner Organization. He would further contend that the workman was disengaged not for any misconduct or for the charge of proved misconduct, but he was simply disengaged on the alleged ground of closure of the Corporation, without following the provisions of Section 25 (F) and 25 (H) of the I.D.Act. Hence, the workman is entitled for reinstatement into service with continuity of service, payment of salaries and other benefits on par with regular employees. In support of his contention, he relied on **APSRTC vs. S.Narsagoud**³ wherein the Hon'ble Supreme Court held that reinstatement with continuity of service in the case of termination on proved misconduct, the workman is not entitled for the service benefits granting of notional increments for the period for which he was out of employment, does not arise unless the Labour Court grants reinstatement with continuity of service and all other attendant benefits. For mere reinstatement with continuity of service, the workman is not entitled to benefits of notional increments during the period the workman was out of service. Otherwise, the workman is entitled for notional increments when termination is

³ (2003) 2 SCC 212

not on account of proved misconduct or fraud. Learned counsel also relied on **J.K.Synthetics Ltd. Vs. K.P.Agrawal**⁴. In the case of misconduct, reinstatement with continuity of service, the workman even not automatically entitled for fixation of notional benefits and fixing the pay scale on reinstatement, and the workman is not entitled for calculating notional increments on retrospective reinstatement, but the workman is entitled for only prospective reinstatement and entitled for benefits. In the present case, as per the award of the Labour Court, the workman is reinstated with continuity of service with all attendant benefits as his termination was set aside, but the workman is entitled for all service benefits retrospectively from the date of illegal termination, not for any proved misconduct or fraud, and entitled for notional benefits only on his reinstatement along with fixation of his pay. Learned counsel also relied on the judgment reported in **A.P.State Textile Development Corporation Ltd. Vs. Presiding Officer, Hon'ble Labour Court, Guntur**⁵ wherein the appellant Corporation which is under the control of Government of AP, the Project Officer of SRP, Vijayawada, was created for implementation of SRP Rehabilitation Project, recruited the employees through Employment Exchange. On closure of the scheme on 31.03.1991 by the Central Government, the employees were absorbed in the Weavers Co-operative Society, holding that the employer and employee relationship exist between the parties. Hence, it cannot be said that the dispute of employee and employer relationship does not exist. The employees filed W.P.No.2490/1989 before this Court for implementation of the orders passed in M.P.No.11/1992

⁴ (2007) 2 SCC 433

⁵ 2013 (1) ALD 423

by the Labour Court. By its order dated 19.06.1990, this Court disposed of the writ petition observing that the employees have to approach the Labour Court seeking clarification and High Court cannot be used for modifying the orders of the Labour Court. It was further observed that the High Court cannot also act as the Executing Court to implement the orders of the Labour Court. Thereby, the employees approached the Labour Court by filing M.P.No.95/1990 claiming arrears of revised pay scales and also interest on the said amount. The Labour Court by order dated 12.07.2000 allowed the M.P. filed under Section 33-C of the I.D.Act with 12% interest. Aggrieved by the same, the respondents therein filed W.P.No.12161/2009. Being unsuccessful, filed W.A.No.917 of 2002 and the same was dismissed on 17.10.2012 holding that the employer and employee relationship exist between the parties and for payment of arrears of salaries, the petition under Section 33-C(2) of the I.D.Act is maintainable. The Labour Court after thorough enquiry and having examined all the material witnesses, rightly held that there was a dispute with regard to employee and employer relationship and the said dispute is raised only to deny the benefits which get accrued to the workmen-employees and the said finding of fact was upheld by the learned single Judge of this Court, on re-appreciating the material placed before the Court. The Labour Court after holding that the employees are entitled to the benefits under the said Government Order computed the benefits in terms of money. Further, as held by various judgements, the Labour Court under Section 33-C(2) of the Act has only interpreted the provisions of the Government Order on which the workman's rights vests, like the power of an Executing Court to interpret the decree for the purpose of

execution and nothing more than that. The said findings of the Labour Court cannot be found fault with, with the observations, the Division Bench dismissed the Writ Appeal. In the light of the said observations, learned counsel would submit that the Labour Court got ample power under the provisions of Section 33-C (2) of the I.D. Act to enquire into the benefits accrued to the workman/employees, as held by the Supreme Court in **Central Bank of India Ltd., vs. P.S.Rajagopalan**⁶ wherein it is held that the Labour Court has power to interpret the Award to assess the accrued rights of the workman in terms of money. On appreciation of the evidence before it, the Labour Court can pass an order under Section 33-C (2) of the I.D. Act directing the employer to pay the arrears of salaries and wages accrued to the employees. Hence, he would contend that the first respondent-workman is entitled for continuity of service on reinstatement as per the award of the Labour Court as modified by the High Court. Accordingly, the Labour Court has rightly allowed M.P.No.29/1998 and directed payment of the arrears of salaries amounting to Rs.2,11,148/-.

In the facts and circumstances of the case and having considered the rival contentions of the counsel, this Court found that the petitioner was appointed in the services of the then A.P. State Construction Corporation Limited, NSLC Unit, Khammam, on 28.01.1977. Thereafter, he was retrenched on 06.08.1979 without following the provisions of Section 25(F), 25(G) and 25(H) of the I.D. Act while continuing the services of the juniors of the workman and even some of the juniors of the workman were taken back whereas the second respondent-

⁶ AIR 1964 SC 743

workman was not taken to duty. Questioning the same, he raised I.D.No.161/1990 before the Labour Court. The Labour Court having considered the evidence on record before it passed the award directing reinstatement of the workman with continuity of service with back wages from the date of filing of the petition. Being aggrieved by the same, the petitioner filed W.P.No.2783 of 1995 before this Court. This Court confirmed the award of the Labour Court in all aspects except denying the back wages awarded by the Labour Court. As per the decision of the Hon'ble Supreme Court in **Govinda Rajulu (2 supra)** where the services of the co-employees of the A.P. State Construction Corporation Limited were sought to be terminated on account of closure of the Corporation, the Hon'ble Supreme Court directed to continue the employees on some terms conditions either in Government Department or any Government Corporations. Accordingly, all the employees and juniors who worked along with the workman were continued and their services were regularized and some of the employees were continued in petitioner Organization. Hence, without any hesitation, it could be concluded that the workman is entitled to be reinstated with continuity of service. He is also entitled for regularization and payment of salaries on par with juniors who were working along with him in the petitioner Organization, as per the decision in **G.Govinda Rajulu (2 supra)**. The workman is also entitled for fixation of notional increments from the date of his retrenchment to the date of his reinstatement and for fixation of his pay and salaries as the workman was not retrenched for any proved misconduct or fraud.

As contended by the learned counsel for the workman, placing reliance on the judgments in **S.Narasagoud (3 supra)** and **J.K.Synthetics (4 supra)**, when the arrears of salaries were not paid to the workman by fixing notional increments as per the award, he filed petition in M.P.No.29/1998 in I.D.No.169/1999 claiming an amount of Rs.2,11,148/- (revised calculation), the Labour Court had rightly entertained the petition under Section 33-C (2) of the I.D.Act. On enquiry and based on the calculation memo filed by the workman, duly serving on the counsel for the petitioner, the Labour Court rightly held that the petitioner is entitled for the salaries on par with his juniors, he is entitled for payment of arrears of salaries amount to Rs.2,11,148/- while rejecting the calculation memo filed calculating the wages on daily wage basis by the Assistant Government Pleader, in view of the judgment of this Court in **A.P.State Textile Development Corporation Ltd. (5 supra)**. For the reasons stated above, this Court finds that there is no error of fact or error of law in the award of the Labour Court, which warrants interference of this Court under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is dismissed.

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

(M.GANGA RAO, J)

24th August, 2018
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