

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.7718 OF 2002

ORDER:

The Management-APSRTC filed this Writ Petition being aggrieved by the order dated 04.09.2001 passed in P.W.Case No.27/2000 by the Authority under Payment of Wages Act and Assistant Commissioner of Labour, Nizamabad, whereby the said authority directed the petitioner-management to pay an amount of Rs.26,372/- to the first respondent and Rs.28,412/- to the second respondent, towards due wages.

Brief facts the case are that the respondents while working in the petitioner Corporation as Conductors were removed from service and on appeal they were appointed as fresh conductors. Aggrieved by the same, the respondents filed I.D.Nos.48/1992 and 49/1992 before the Labour Court-II, Hyderabad. The Labour Court granted continuity of service. Questioning the award dated 28.05.1993 passed in I.D.No.49/1992, the Corporation filed W.P.No.4557 of 1994 before this Court and the same was dismissed on 21.10.1996. Thereafter, the Regional Manager, Nizamabad, vide proceedings No.L1/785 (107)/96-RM, Nizamabad dated 10.01.1996 ordered to treat the services of the respondents as continuous service for all purposes except back wages. The Managing Director, APSRTC, Hyderabad, also issued Circular Instructions in PD 91/1999 dated 30.09.1999 instructed all the officers that notional Increments must be given while fixing the pay irrespective of the fact whether the Labour Court in its award directed the relief of attendant benefits or not. While restoring continuous service to the respondents, the Regional Manager also

given them promotions vide Proceedings No.E2/255 (1)/97 RM-NZB dated 27.02.1997. But when their pay was not properly fixed by giving notional increments, they approached the Assistant Commissioner of Labour by filing P.W.Case No.27/2000. After hearing both the parties and perusing the material on record, the authority allowed the claim of the respondents vide order dated 04.09.2001 directing the petitioner Corporation to pay a sum of Rs.26,372/- to the first respondent and Rs.28,412/- to the second respondent, within a period of thirty days. Being aggrieved by the same, the Corporation filed the present Writ Petition.

Sri N.Vasudeva Reddy, learned counsel appearing for the petitioner Corporation, would contend that the respondents are not entitled for notional increments as the Labour Court has granted only continuity of service. Respondents' application under Sections 15 (2) and 16 of The Payment of Wages Act, 1936 (for short 'Act, 1936') is not maintainable as both the respondents are drawing salary more than Rs.1600/- per month and thereby they cannot invoke provisions of the Act, 1936 as held by this Court in W.P.No.7137 of 1992 on 20.08.1999. He would further contend that the claim before the authority under the Act, 1936 is not maintainable as the same was filed after four years after dismissal of W.P.No.4557 of 1994 and the limitation prescribed under the Act for approaching the authority is 12 months. Thus, he would contend that the impugned order is illegal, arbitrary and contrary to the evidence on record and liable to be set aside. In support of his contention reliance is placed on **APSRTC vs. S.Narsagoud**¹.

¹ (2003) 2 SCC 212

Per contra, Sri K.Vasudeva Reddy, learned counsel appearing for the respondents, would contend that the respondents while working as Conductors in petitioner-Corporation were illegally removed from service. On appeal, they were appointed as fresh Conductors. Petitioners approached Labour Court-II, Hyderabad, raising industrial disputes vide I.D.Nos.48/2002 and 49/2002. After appreciating the evidence before it, the Labour Court rightly granted continuity of service. The writ petition filed by the Management in W.P.No.4557/1994 questioning the award passed in I.D.No.49/2002 was dismissed. Hence, the Regional Manager vide proceedings dated 10.01.1996 ordered to treat the services of the respondents as continuous service for all purposes except back wages. Further, the Managing Director of the Corporation also issued Circular instructions dated 30.09.1999 instructing all the Officers, irrespective of the fact whether the Labour Court in its award directed the relief of attendant benefits or not, the workman should be given the Notional Increments while fixing the pay. The respondents herein were also given promotions vide proceedings dated 27.02.1997 issued by the Regional Manager. But, when their pay was not fixed properly, they approached the authority under the Act. Vide impugned order, the authority directed the petitioner Management to pay due wages to the respondents. Hence, there is no illegality or irregularity in passing the impugned order and the writ petition is liable to be dismissed. Placing reliance on the decision of the Supreme Court in **J.K.Synthetics Ltd. vs. K.P.Agarwal**² he

² (2007) 2 SCC 433

would contend that the respondents are entitled for continuity of service, attendant benefits and fixation of notional increments.

In the facts and circumstances of the case and in considered view of this Court, the respondents' application under Section 15 (2) and 16 of the Act, 1936 is maintainable for payment of wages due on fixation of notional increments as per the awards of the Labour Court passed in I.D.No.48 of 1992 and I.D.No.49 of 1992. Against the award passed in I.D.No.49 of 1992, the Corporation filed W.P.No.4557 of 1994 and the same was dismissed by this Court on 21.10.1996.

The contention of the learned counsel for the petitioner Corporation that there is a delay of four years in making the claim before the authority under the Act, 1936 as the limitation for approaching the authority under the Act, 1936 is only 12 months, merit no consideration as the said plea was not taken before the authority under the Act, 1936. As the Labour Court has granted continuity of service to the respondents, the Regional Manager vide proceedings dated 10.01.1996 ordered to treat the service of the respondents as continuous service. Further, the respondents were also given promotions vide proceedings of the Regional Manager dated 27.01.1997.

The plea of the petitioner's counsel that as the respondents are drawing salary more than Rs.1600/- per month, their application before the authority under the Act, 1936 is not maintainable. Such a plea was not taken before the authority, which is contrary to the provisions of the Act, 1936 as there is no embargo or prohibition for the workman drawing salary more than

Rs.1600/- per month to file application under Section 15 (2) of the Act, 1936.

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 respondents, in ***Narsa Goud case (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 ***Synthetic case (2 supra)***, 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 respondents were 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 respondents were not entitled for pecuniary benefits.

For the reasons stated above, this Court finds that there is no irregularity or illegality in the impugned order, which warrants

interference of this Court under Article 226 of the Constitution of India.

Hence, the Writ Petition is dismissed.

Miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

(M.GANGA RAO, J)

20th September, 2018
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