

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4631 of 2010

ORDER:

By order dated 22.08.1985, petitioner was removed from service. Aggrieved by the order of removal, petitioner raised Industrial Dispute in the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No.310 of 1987. The Labour Court observed that, even if the charges framed against petitioner are accepted as true, they are minor in nature committed under reasonable cause, and held that the respondent – Corporation was not justified in removing the petitioner from service for mere lapses committed under charge Nos.1 to 3. Set aside the order of removal and modified punishment to withholding of two future increments in the time scale of pay; directed reinstatement with continuity of service with back wages at 25%. The award has become final. Petitioner was reinstated into service. Seeking enforcement of the award, petitioner filed MP.No.6 of 2005.

2. In Miscellaneous Petition No.6 of 2005, petitioner claimed that though he was entitled to back wages as awarded, he was not paid back wages, wages for the delayed period of reinstatement and notional increments were not released.

3. The claim of the petitioner was opposed by the respondent – Corporation contending that application is not

maintainable as it was filed after 16 years and no explanation was forthcoming as to why petitioner kept quiet for such a long time.

4. The Labour Court posed following question for consideration: "*whether the petitioner is entitled for difference of wages of Rs.1,71,620/- in view of inclusion of notional increments in the basic scale as claimed by him or not*"?

5. The limited relief to the extent of back wages was granted and denied notional increments. Aggrieved thereby, this Writ Petition is filed.

6. Learned counsel for petitioner submits that, consequent to setting aside the order of removal and granting continuity of service, petitioner is entitled to notional increments for the period of out of employment and not granting the same is *ex facie* illegal.

7. Per Contra, learned Standing Counsel for the respondent – Corporation submits that claim of petitioner itself is liable to be rejected on the ground of delay and laches. He would further submit that petitioner earlier filed MP before the Labour Court claiming similar reliefs but was withdrawn, however, no explanation is forthcoming as to why he withdrew the said MP, and why he waited 16 years to file such an application.

8. There is merit in the contention of the learned Standing Counsel for the respondent – Corporation. Assuming petitioner is entitled to notional increments, such

claim would flow out of the award passed on 04.03.1989; petitioner was reinstated into duty on 27.07.1989. Therefore, the claim for increments ought to have been raised soon after he was reinstated into service. As rightly pointed out by the learned Standing Counsel for respondent – Corporation, there is no averment in the affidavit as to why the petitioner kept quiet for such a long time to claim the benefit.

9. Even otherwise, as seen from the award passed by the Labour Court, disciplinary proceedings are not declared as illegal, and full benefits were not granted by the Labour Court. As noted above, the Labour Court observed that the nature of charges leveled against petitioner could not have resulted in punishment of removal from service and modified the punishment to that of postponement of annual increments. Thus, this is not a case of complete exoneration. This award of the Tribunal has become final.

10. In the process of seeking enforcement of the award, petitioner is now asking larger relief than the relief granted by the Labour Court while adjudicating his claim under Section 2A(2) of the Industrial Disputes Act, 1947. Execution Court cannot go beyond the relief granted in the award.

11. As held by the Supreme Court in **APSRTC v. S.NarsaGoud**¹, there is difference between order of reinstatement accompanied by a simple direction for

¹ 2003(2) SCC 212

continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits. Supreme Court noted that having held guilty of unauthorized absence from duty, workman cannot claim benefit of increments notionally earned during the period of unauthorized absence, in the absence of a specific direction in that regard. In the instant case, the Labour Court granted reinstatement with continuity of service but did not grant consequential benefits. Therefore, the view taken by the Supreme Court in **S.NarsaGoud**¹ is applicable in all fours to the case on hand.

12. Learned counsel for the petitioner places reliance on a decision of this Court in **Depot Manager, APSRTC v. P.Yadagiri**² to contend that, as a consequence to the award of reinstatement and continuity of service, the petitioner is also entitled to notional increments. As fairly submitted by the learned Counsel, the Labour Court denied back wages and consequential benefits though removal order was set aside. Challenging the same, W.P.No.18518 of 1995 was filed. This Court allowed the writ petition awarding back wages and consequential benefits in additions to benefits already granted by the Labour Court and, accordingly, modified the award. The workman filed E.P.No.14 of 2006 seeking payment of amount contending that whenever an employee is fully exonerated the employee is entitled to back

² 2017(2) ALD 378

wages and other service benefits, had he not been removed from service. This relief was granted by this Court.

13. As noted above, in that case the Labour Court set aside the order of removal. There was no substitution of punishment as in the present case. In the case on hand, petitioner was not fully exonerated but was visited with less severe punishment and labor court did not grant consequential benefits. This award has become final. Thus, **P.Yadagiri**² cannot come to the aid of petitioner.

14. In view of the law laid down by the Supreme Court in **S.NarsaGoud**¹, petitioner is not entitled to notional benefits. I, therefore, do not see any error in the award passed by the Labour Court warranting interference.

15. The Writ Petition is, accordingly, dismissed. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No order as to costs.

P.NAVEEN RAO, J

Date:06.03.2018
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² 2017(2) ALD 378