

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.19440 OF 2010

DATED : 24.01.2018

Between :

P. Jayaramulu Rtd.ADC of APSRTC,
E-96550 S/o.Subbaiah,
Aged 60 yrs, R/o.Proddutur, Cuddapah District.
.. Petitioner

And

The APSRTC rep., by its Managing Director,
Musheerabad, Hyderabad & others.
.. Respondents



This court made the following :

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ORDER :

Heard learned counsel for the petitioner and learned Standing Counsel for the respondent-Corporation.

2. The issue for consideration in the writ petition is whether the petitioner is entitled to computation of entire service for the purpose of determination of gratuity payable to him on retirement?

3. The facts relevant to the issue involved are as under :

(i) Petitioner was working as conductor. Disciplinary proceedings were initiated against him on the allegation of cash and ticket irregularities, which resulted in removal from service, vide proceedings dated 27.04.1999. On dismissal of appeal and the review petition, petitioner raised industrial dispute before the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur (for short 'the Labour Court'), in I.D.No.04/2003. By the Award dated 06.07.2006, the Labour Court allowed the claim in part holding that the punishment of removal is disproportionate and directed reinstatement of petitioner into service with continuity of service and also granted attendant benefits, but denied back wages. In terms of the said Award, petitioner was reinstated on 26.01.2007. Challenging the said Award the respondent Corporation filed W.P.No.3378 of 2007. During the pendency of said writ petition, petitioner retired from service on attaining the age of superannuation on 30.06.2010. After the retirement, this writ petition is filed contending that petitioner is not paid full amount of gratuity to which he is

entitled. W.P.No.3378 of 2007 was dismissed by the order dated 14.10.2016 affirming the Award passed by the Labour Court.

4. Petitioner was removed on 27.04.1999 and reinstated pursuant to the Award of the Labour Court on 26.01.2007 and retired on 30.06.2010. As continuity of service and attendant benefits relief is granted to the petitioner by Labour Court, affirmed by this Court, it is deemed that the petitioner was in continuous service till he retired from service on 30.06.2010. Thus, his entire service has to be computed, of course, excluding any other service prior to 27.04.1999, if covered by any other decision, for the purpose of determination of gratuity payable to the petitioner. Whereas the gratuity amount is not fully paid and it is not denied that the service prior to reinstatement was not computed for the purpose of determining appropriate gratuity amount. This action of the respondents is *ex-facie* illegal.

5. Furthermore, as can be seen from Paragraph No.6 of the counter affidavit, the claim of the petitioner was resisted at that time, on the ground that as the W.P.No.3378 of 2007 was pending before this Court against the Award, the service cannot be computed until the writ petition is decided. It is also specifically averred that removal period would be taken into account for gratuity in case there is clear sanction of continuity of service. Thus, even according to the admission of the respondent, continuity of service would result in granting of higher gratuity amount but they were resisting the claim on the ground that W.P.No.3378 of 2007 was pending. Since the said writ petition is dismissed, this defence is no more available to the respondents.

6. Having regard to the above, the Writ Petition is allowed. The full gratuity amount shall be worked out and paid to the petitioner, within a period of two (2) months from the date of receipt of copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

24th January, 2018
Rds

P.NAVEEN RAO,J

