

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.32967 OF 2012

ORDER:

This writ petition is filed seeking a Writ of Mandamus, declaring the action of the respondents in not considering the representation, dated 06.08.2012, with regard to payment of wages for the period from 05.08.2008 to 28.04.2012 as illegal and arbitrary and sought a consequential direction to the respondents to pay the wages for the period from 05.08.2008 to 28.04.2012.

Heard learned counsel for the parties.

It is contended that while the 1st petitioner (deceased) was working as a Mechanic with the respondents, owing to some ill-health and domestic terms, he had to remain absent from 16.01.1999 to 10.03.1999, but the disciplinary authority had construed the same as misconduct and initiated disciplinary proceedings and, after conducting detailed enquiry, had imposed the punishment of removal from service vide orders dated 20.10.2000. Challenging the same, the 1st petitioner has unsuccessfully preferred appeal and review and thereafter filed I.D.No.62 of 2005 before the Labour Court –II, Hyderabad. *Vide* award dated 18.06.2008, the Labour Court was pleased to set aside the order of removal dated 20.10.2000 and directed that the 1st petitioner be reinstated into service with continuity of service, but without back wages and attendant benefits. Thereafter, the award was published in the official Gazette *vide* G.O.Rt.No.1488

dated 05.07.2008, but the respondents have not complied with the award passed by the Labour Court. In those set of circumstances, the 1st petitioner has filed W.P.No.4587 of 2012 and the said writ petition was disposed of vide orders dated 02.03.2012 directing the respondents to consider the representation of the 1st petitioner in the light of the award passed by the Labour Court in I.D.No.62 of 2005 and pass appropriate orders. When the respondents have not complied with the orders passed in W.P.No.4587 of 2012, the 1st petitioner was constrained to file C.C.No.402 of 2012 and then only the respondents have reinstated the 1st petitioner into service vide orders dated 28.04.2012 and since then, the 1st petitioner had worked and after rendering a considerable length of service, he has retired from service on 31.12.2013. However, since the respondents have not paid wages from the date of award till reinstatement, the present writ petition is filed seeking wages for the said period.

Learned counsel for the petitioners submits that during pendency of this writ petition, the 1st petitioner has expired on 21.04.2016 and his legal representatives have been brought on record as petitioners 2 to 4 vide orders dated 05.07.2019 in WPMP.No.29961 of 2016. Learned counsel for the petitioners further submits that as per Section 17B of the Industrial Disputes Act, 1947, the 1st petitioner is entitled for wages from the date of award, but the respondents have denied the same. Therefore, learned counsel for the petitioners contends that appropriate orders be passed in the writ petition

directing the respondents to pay wages from 05.08.2008 to 28.04.2012.

Learned standing counsel appearing for the respondents had contended that though the award was published on 05.07.2008, the 1st petitioner has not approached the respondents till 2012 and, after directions issued by this Court in W.P.No.4587 of 2012 on 02.03.2012, the respondents have considered the representation of the 1st petitioner in terms of the award passed by the Labour Court in I.D.No.62 of 2005 dated 18.06.2008 and only after tracing the records of the 1st petitioner, appropriate action has been taken and the 1st petitioner was reinstated into service. Learned Standing Counsel further submits that since there is delay on the part of the 1st petitioner in approaching the respondents seeking reinstatement into service in terms of the award passed in I.D.No.62 of 2005 dated 18.06.2008, the 1st petitioner is not entitled for wages as sought by him; therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

Learned counsel appearing for the petitioners has submitted that the issue as to when the award passed by the Labour Court is liable to be implemented, fell for consideration before this Court in **E.Munu Swamy v. Depot Manager, APSRTC**¹, wherein at paragraphs 7 and 8 it was held as under:

“I am extremely sorry, I cannot agree to the above contention of the learned standing Counsel for the

¹ 2000 (4) ALD 595

Corporation. The Corporation which suffered an adverse Award is expected to send posting order to the workman immediately after publication of the Award in the Gazette. That was not the case here. Hence, the contention of the respondents' Counsel is rejected.

In my view, there is every justification for the petitioner to claim salary after the Award became final and for the lapses on the part of the respondents in reinstating the petitioner into service, he cannot be denied back wages. Accordingly, the official respondents are directed to pay salary to the petitioner from 15.12.1994, the day on which the Award became final, till the date of his reinstatement. The amounts due on both the claims have to be paid by the official respondents within four weeks from the date of receipt of a copy of this order.”

In another case of this Court in **M. Narsaiah v. Managing Director, APSRTC**², at paragraph 10 it was held as under:

“Therefore, the statutory provision itself has self dynamic proportion to the effect that the award gets automatically enforced after expiry of thirty days. It is immaterial whether the workman raises the dispute or the management fails to implement the award. The benefits arising out of the award would automatically accrue by virtue of the statutory provisions. As this provision was intended to protect the interest of the workmen wherein even though he gets award in his favour still if it is not implemented it should be treated as if it has been implemented and gets statutory enforceability. This aspect was not considered by the Division Bench while dealing with the matter in Writ Appeal No. 1458 of 1999 reported in 2000 (2) ALD 627 (DB). The Division Bench was carried away by the only fact that the workmen did not make any grievance about the fixation of pay duly taking into account the notional

² 2000 (4) ALD 581

increments that had accrued to him on the reinstatement with continuity of service. Obviously the Court's attention was not drawn to the relevant statute, per consequence, the decision of the Division Bench was rendered without reference to the relevant statutory provisions. Under those circumstances, the decision has to be treated per *incuriam* and I respectfully do so. Therefore, on the facts the judgment of the Division Bench is deemed to cover the situation arising in the said writ appeal and it did not intend to lay down the law having binding precedent. Hence I am of the considered view that the petitioner is entitled for the arrears of refixation duly taking into account notional increments. The learned Counsel, however, relied upon the judgment of the Supreme Court which states that the delay defeats the purpose but that will not be of much help to the Corporation. The statutory protection is given to the award in the Act and therefore it automatically gets enforceability after expiry of thirty days. Therefore, the decisions of the Supreme Court are not applicable to the present case.”

Learned counsel for the petitioners submitted that in view of the principles laid down in **E. Munu Swamy**'s case (1 supra) and **M. Narsaiah**'s case (2 supra), the 1st petitioner is entitled for wages from 05.08.2008 onwards. Therefore, appropriate orders be passed in the writ petition directing the respondents to treat the 1st petitioner to have been reinstated with effect from 05.08.2008 and accordingly pay benefits to the legal heirs of the deceased 1st petitioner from 05.08.2008 to 28.04.2012 in accordance with law.

This Court, having considered the rival submissions of learned counsel for both parties, is of the considered view that the deceased 1st petitioner is deemed to have been reinstated into service from

05.08.2008 and the respondents are directed to pay the service benefits to the legal heirs of the deceased 1st petitioner by treating the deceased 1st petitioner to have been reinstated into service from 05.08.2008 and accordingly pay the wages from 05.08.2008 to 28.04.2012 to the legal heirs of the deceased 1st petitioner, within a period of four weeks from the date of receipt of a copy of this order by following the principles laid down in **E.Munu Swamy**'s case (1 supra) and **M. Narsaiah**'s case (2 supra).

With the above directions, the writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

11th July, 2019
v v