
(2016) 09 AP CK 0067
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9017 of 2011

B.S. Raju

APPELLANT

Vs

APSRTC

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Citation : (2017) 1 ALT 105 : (2017) 1 AndhLD 649 : (2017) 2 CLR 130 : (2017) 152 FLR 832

Hon'ble Judges : Sri P. Naveen Rao, J.

Bench : Single Bench

Advocate : Government Pleader (AP), for the Respondent No. 3; Sri Aravala Rama Rao, Standing Counsel for APSRTC, for the Respondent Nos. 1 and 2; Sri S.M. Subhan, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri P. Naveen Rao, J. - Heard Sri S.M.Subhan learned counsel for petitioner, Sri Aravala Rama Rao learned standing counsel for respondents 1 and 2 and learned Government Pleader (AP) for respondent no.3.

2. Disciplinary proceedings initiated against petitioner on the allegation of cash and ticket irregularities resulted in imposing the punishment of removal from service by order of the disciplinary authority dated 03.05.2000. Appeal and revision filed against the said orders were rejected. Aggrieved thereby petitioner raised industrial dispute in I.D.No.196 of 2000 on the file of Industrial Tribunal-cum-Labour Court at Anantapur (for short "the Labour Court"). In the award dated 03.07.2002, the Labour Court while upholding the disciplinary action held that the punishment of removal is excessive and modified the punishment to that of withholding of three annual increments with cumulative effect, but denied back wages. In compliance of the Award, petitioner was reinstated into service on 17.10.2002. Challenging the Award to the extent of imposing the punishment of deferment of three annual increments with cumulative effect, this writ petition is filed.

3. On detailed consideration of the issue, the Labour Court concurred with the decision of Respondent Corporation holding the petitioner guilty of charge levelled against him. The allegation against petitioner was issuance of less value tickets after collecting the requisite fare from the passengers. However, Labour Court exercised its discretion to modify the punishment, holding the punishment of removal as excessive/disproportionate. Concurrently, the allegation levelled against petitioner is proved. This court cannot re-appreciate the evidence and come to different conclusion. There is no perversity in the finding of guilt. I do not see any illegality much less patent illegality on the award passed by the Labour court warranting interference by this Court.

4. When the Court expressed it's prima facie view, learned counsel for the petitioner fairly submits that even the modified punishment is not properly implemented and petitioner is also denied three annual increments due to him after his removal and till his reinstatement. He fairly submits that he would be satisfied if this is clarified and punishment is confined to deferment of three annual increments due to him as modified by the Labour Court are released.

5. Both counsel made submissions on the issue of scope of implementation of award of Labour court.

6.1. Mr. Suban would submit that the labour court set aside the punishment of removal and directed imposition of punishment of withholding three increments with cumulative effect. The effect of modified punishment should relate back to the date of punishment of removal, where as the modified punishment is imposed after petitioner was admitted to duty and the same amounts to deferment of six annual increments and the same is ex-facie illegal.

6.2. In support of his contention, Mr. Suban, placed reliance on the following decisions:

(i) Sharda Singh v. State of Uttar Pradesh (2009) 11 SCC 683;

(ii) Sham Lal v. Presiding Officer, Labour Court, Ambala 2009 Lawsuit (P&H) 2701

(iii) Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) (2013) 10 SCC 324

(iv) Mahavir Prasad v. Delhi Transport Corporation Laws(DLH)-2014-7-248/AD(DEL)-2014-6-82.

7.1. On this the learned Standing counsel submitted that petitioner was removed from service on 03.05.2000 and till he was reinstated he was not performing duties. He would therefore, submit that petitioner is not entitled to increments for the period when he was not performing the duties. He would further submit that after reinstatement in compliance of the award, three annual increments were deferred for the years October 2003, October 2004 and October 2005 and on completion of one year service thereafter, increments due were released on 17.10.2006. He would submit that this action is legal and valid and that

petitioner is not entitled to claim release of increments for the period when he was not discharging the duties in the respondent-Corporation.

7.2. In support of his contention Sri Aravala Rama Rao placed reliance on the following decisions:

- (i) A.P.S.R.T.C. v. S.Narsagoud (2003) 2 SCC 212,
- (ii) APSRTC v. Abdul Kareem (2005) 6 SCC 36
- (iii) J.K. Synthetics Ltd. v. K.P.Agrawal (2007) 2 SCC 433
- (iv) V.V.G. Reddy v. Andhra Pradesh State Road Transport Corporation, Nizamabad Region (2009) 2 SCC 668 and APSRTC v. N. Sudhakar Reddy WA No.108 of 2006 dt 24.10.2014.

8. It is not in dispute that the Award passed by the Labour Court has become final and in terms of the Award the petitioner was reinstated and the punishment of deferment of three annual increments with cumulative effect was implemented. The only issue is, from which date the modified punishment would come into effect.

9. In Narsa Goud, the issue for consideration was whether a workman can claim to draw increments for the period of out of employment when Labour Court only directed reinstatement with continuity of service but without back wages. Supreme Court observed as under:

"9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for 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, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

10. Same principle is reiterated in Abdul Kareem.

11. In J.K. Synthetics Ltd. Ltd., Labour Court holds that the order of termination is excessive and imposes punishment of stoppage of two increments. On an application filed by workmen, Labour Court, by way of clarification, directs payment of full wages for the period of out of employment. One of the questions considered by Supreme Court was,

"3. The said order of the learned Single Judge, is challenged in this appeal by special leave. On the contentions urged, the following questions arise for consideration.

(i) xxxxxx

(ii) When the punishment of dismissal is substituted by a lesser punishment (stoppage of increments for two years), and consequently, the employee is directed to be reinstated, whether the employee is entitled to back wages from the date of termination to the date of reinstatement.

12. On review of precedent decisions, Supreme Court held,

"19. ?..What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc. "

13. This principle is followed in all subsequent decisions. As noticed above, in all decisions relied by the learned standing counsel, Supreme Court and this Court was considering the entitlement of workmen who were initially terminated and subsequently reinstated into service by imposing a less severe penalty either by Appellate/Reviewing Authority or by the Labour Court to claim increments and back-wages for the period of out of employment. On the ground that the workman was not in service between the period of termination and reinstatement, it is consistently held that workman is not entitled to claim notional increments and back-wages as a matter of course merely because earlier termination was set aside and continuation of the service is ordered, unless a specific direction is issued by the Labour Court. An employee earns increment after rendering one year of satisfactory service and should be on duty to earn increment. Thus, if employee has not attended to duty, he can not earn increment. However, if termination is held wholly illegal, it would mean that employee was illegally denied to render service by the employer and in such cases, it is permissible to hold that the period of out of service be treated as on duty and to grant increments. Thus, the decisions relied by learned standing counsel deal with such cases. In the case on hand, the issue is, whether a substituted punishment relates back to the date of original punishment. The decisions relied by learned standing counsel do not deal with this issue and do not come to the aid of the respondent corporation.

14. It is settled principle of law need no reiteration that an order of disciplinary authority merges into order of appellate authority or reviewing authority as the case may be. Same principle would apply to judicial proceedings. This is based on the doctrine of merger. The underlying principle of this doctrine is concerning same issue there cannot be two different orders/decisions/decrees (M/s Gojer Brothers (P) Ltd. v. Shri Ratan Lal Singh, reported in AIR 1974 SC 1380; Kunhayammed v. State of Kerala, reported in AIR 2000 SC 2587). Similarly, as a consequence to decision of Labour court, the order of disciplinary authority is no more in force and the punishment as prescribed by the Labour court alone would apply. The punishment prescribed is withholding of three annual increments for three years with cumulative effect and this alone can be imposed.

15. At this stage, it is appropriate to extract the operative portion of the award. It reads as under:

"In the result an Award is passed setting aside the termination order. The respondent is directed to reinstate to petitioner without back wages. The Respondent is further directed to defer three annual increments with cumulative effect."

16. It is thus seen that the punishment of removal is set aside and the workmen was directed to be reinstated and be imposed with punishment of withholding three annual increments for three years with cumulative effect.

17. In Deepali Gundu Surwase, Supreme Court considered the meaning and scope of word "reinstatement". Supreme Court held:

"21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstate" means to reinstall; to reestablish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edn., "reinstatement" means:

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer?."

18. When the termination order is superseded by a less severe punishment, the said punishment should come into effect from the date of original order of

termination. As held by Supreme Court in Deepali Gundu Surwase "reinstatement" would mean putting the workman back to the stage when he was terminated. As a consequence to setting aside the order of removal, the petitioner gets back to his position as prevailing on the date of his removal. On such reinstatement, the punishment of removal gets substituted by the punishment of withholding of three annual increments for three years with cumulative effect. The annual increments due to the petitioner in the year 2000, 2001 and 2002 stands deferred in view of the Award passed by the Labour Court and after 2002, petitioner is entitled to annual increment after rendering one year satisfactory service. The action of Respondent Corporation in applying the punishment of deferment of annual increments only from the year 2003 is erroneous. It would amount to imposing punishment of withholding six annual increments of the petitioner with cumulative effect. When Labour court prescribed particular punishment to be imposed, no higher punishment can be imposed.

19. The writ petition is disposed of directing the respondents to apply the punishment of withholding of three annual increments for three years with cumulative effect from the date when he was removed from service. Petitioner is entitled to annual increment only after rendering one year satisfactory service after he was reinstated. Having regard to the facts of the case, petitioner is not entitled to payment of arrears of amounts payable to him on account of advancing the punishment to the date of removal.

Miscellaneous petitions if any pending shall stand closed.

There shall be no order as to costs.