
(2016) 09 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No.28690 of 2016

Depot Manager, APSRTC

APPELLANT

Vs

P. Yadagiri

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 — Regulation 21(2)(a), Regulation 21(c)

Citation : (2017) 1 ALT 265 : (2017) 2 AndhLD 378 : (2017) LabLR 558 : (2017) LIC 284

Hon'ble Judges : Sri. A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri N. Vasudeva Reddy, Advocate, for the Petitioner; Sri A.G. Satyanarayana Rao, Advocate, for the Respondent No. 1; GP for Labour, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Sri A. Ramalingeswara Rao, J. - The important point arising for consideration in the present Writ Petition is with regard to entitlement of the first respondent-workman for Revision of Pay Scales consequent to the payment of back wages by orders of the Court in the absence of specific grant with regard to the same.

2. The facts in the present case are not in dispute. The first respondent-workman was working as a Cleaner in APSRTC, Medak Depot. While so, on 06.08.1981, he was directed to drive a bus bearing No.AAZ-1560 to attend to relief work of another bus which was failed en-route. The first respondent-workman drove the bus No.AAZ-1560 to the outer gate and stopped it there for the purpose of being checked by the Security Guard before it could be taken out from the depot premises. The Security Guard checked the bus and found five pipes which are meant for supporting the roof were kept in the Chassis of the bus and were tied to the Chassis. As the said material was not intended to be taken out, the Security Guard reported the matter to the head Security Guard. A report was

taken from the Security Guard and was forwarded to the Depot Manager for necessary action. A spot explanation of the workman was also taken. On the basis of the said report a charge sheet was issued to the workman alleging that he was stealing supporting rods and was caught red handed. A domestic enquiry was conducted and the workman was removed from service. The Labour Court-II, Hyderabad, by its order dated 23.11.1988, in I.D.No.93 of 1982 (Old I.D. No.764 of 1987) held that the domestic enquiry was invalid. Thereafter, the said Industrial Dispute was disposed of by an order dated 28.07.1993 holding that the charge against the workman was not proved and accordingly the order of removal was set aside. The petitioner, Depot Manager was directed to reinstate the workman into service without break in service but without back wages. Challenging the denial of back wages, the workman filed W.P.No.18518 of 1995. This Court allowed the said Writ Petition by an order dated 19.09.2006 with the following observations:

"The Labour Court having cleared the petitioner from the alleged delinquency with the categorical finding extracted above, in my considered view, ought to have restored the petitioner's position, as it would have existed had he not suffered the order of removal. In other words, the logical consequence of the setting aside the order of removal is to restore the benefits of service which the petitioner would have enjoyed, and have been entitled to but for the disciplinary proceedings initiated against him. The lower Court failed to give any reasons for denying the petitioner's back wages.

In the aforementioned circumstances, the petitioner is entitled to back wages along with other service benefits, which the labour Court has already awarded.

The writ petition is therefore, allowed and the award of Labour Court is accordingly modified."

3. Thereafter, the Workman filed E.P.No.14 of 2006 before the Labour Court-II, Hyderabad, seeking payment of an amount of Rs.2,01,737.30 ps., alleging that as per Regulation 21(2)(a) and (c) of the APSRTC Employees (CC&A) Regulations, 1967, whenever an employee is fully exonerated, the employee is entitled to full pay and allowances to which he would have been entitled had he not been removed and the period of absence from duty shall for all purposes be treated as a period spent on duty. Accordingly, he sought for payment of the enhanced wages consequent to revision of pay scales.

4. No counter affidavit was filed before the Labour Court and the Labour Court after considering the facts of the case allowed the EP on 15.06.2016 with the following observations:

"The calculation made by the respondent shows that the back wages of the petitioner was calculated basing on the last pay drawn by the petitioner but they have not calculated according to the Revision of Pay Scales in the year 1980, 1985, 1989 and 1993. It is to be noted that for every four years there is Revision of Pay Scales but the same was not applied to the petitioner which is erroneous.

When the back wages was ordered by reinstating him into service, the petitioner is entitled for back wages as if he was in service. Therefore, the calculation memo filed by the petitioner is correct and the calculation memo filed by the respondent is not correct.

In view of the above discussion, the respondent has to pay an amount of Rs.2,01,737.30 ps., out of which the respondent has to deposit an amount of Rs.31,556/- to the P.F. trust towards employee and employer contributions. The respondent has not paid the said amount therefore; the petitioner is entitled to attach the property as referred in the schedule.

In the result, the petitioner is entitled to recover an amount of Rs.2,01,737.30 ps., out of which respondent has to contribute Rs.31,556/- towards P.F. Account for the contribution of employee and employer and the remaining amount of Rs.1,70,181.30 ps., has to be paid to the petitioner. The respondent not only failed to calculate the back wages properly he also failed to pay the amount. Hence, the petitioner is entitled to attach the schedule property.

Issue attachment warrant under Order 21, Rule 43 on payment of process. Call on 15.07.2016."

5. Challenging the same, the Depot Manager filed the present Writ Petition and this Court heard the learned Standing Counsel for the T.S.R.T.C as well as the learned counsel for the first respondent-workman and with their consent this Writ Petition is being disposed of at the admission stage.

6. In the light of the above facts it has to be seen whether the order of reinstatement of the Labour Court includes the payment of wages consequent to the Revision of Pay Scales or not.

7. The above narration of facts clearly show that the order of removal was set aside and the first respondent-workman was directed to be reinstated into service without break in service but without back wages. The denied back wages were awarded by this Court in the Writ Petition filed by him. In the circumstances, the only point urged by the learned Standing Counsel for the Depot Manager is that in the absence of any specific grant of Revision of Pay Scales, the workman is not entitled for the same, whereas the learned counsel for the workman submits that when the workman was reinstated without any break in service he should have been treated as if he was in service and he is entitled to all benefits. The entitlement to the consequential benefits is the issue in the present Writ Petition.

8. In *M/s. Hindustan Tin Works Private limited v. The Employees of M/s. Hindustan Tin Works Private Limited* AIR 1979 SC 75, a three Judge Bench of the Hon"ble Supreme Court held that ordinarily a workman whose service was illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. It is in the discretion of the Tribunal which has to be exercised in a judicial and judicious manner. The reason

for exercising discretion must be cogent and convincing and must appear on the face of the record. Thus, the issue in the said case is with regard to payment of back wages and here there is no dispute with regard to the said entitlement by virtue of the orders of this Court in the present case.

9. In *APSRTC v. S. Narsagoud* (2003) 2 SCC 212, the Hon"ble Supreme Court considered the circular of the Corporation issued on 08.09.1992 laying down guidelines for implementation of the awards of the Labour Courts in the matter of fixation of pay of employees reinstated pursuant to the awards, which provided as follows:

"(2) When an employee is reinstated into service with continuity of service only, the last pay drawn by the employee has to be fixed at the appropriate stage in the revised pay scale 1989 without adding any notional increment for the period out of service.

..?

(4) On fixation of pay as on the date of reinstatement annual increment may be regularly drawn."

The said circular was replaced by another circular wherein it was directed that the pay of employee shall be refixed by giving notional increments for the period out of service though the monetary benefit of revised fixation shall be given only from the date of reinstatement. It was urged before the Hon"ble Supreme Court that the circular creates an incongruous situation of earning increments though there is no payment of wages for the period of absence when the employee was guilty of unauthorised absence from duty. The Hon"ble Supreme Court, considering the regulations framed by the Corporation, held that any direction for increments during the period of unauthorised absence from duty, though held liable to be punished in departmental enquiry proceedings would amount to putting a premium on the misconduct of the employee. The relevant portion of the observations of the Hon"ble Supreme Court is as follows:

"10. The Regulations referred to herein above clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of overstays after the expiry of leave or joining time cannot count towards increments unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of overstays into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of overstays. Ordinarily, the increments are earned on account of the period actually spent on duty or during the period spent on leave, the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period of unauthorised absence from duty though held liable to be

punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee."

10. In *APSRTC v. Abdul Kareem* (2005) 6 SCC 36, the issue raised in the present Writ Petition came up for consideration and it was held that the workman is not entitled to the benefit of increments notionally earned during the period when he was out of service in the absence of specific direction in that regard in the award of the Labour Court. It is also a case of unauthorised absence. The view taken in *S. Narsagoud*'s case (*supra*) was upheld.

11. Another two Judge Bench of the Hon'ble Supreme Court in *Rajasthan State Road Transport Corporation v. Shyamlal Bihari Lal Gupta* (2005) 7 SCC 406, followed the view in *Narsagoud*'s case (*supra*) and held that in view of *Rajasthan State Road Transport Corporation v. Ladulal Mali* (1996) 8 SCC 37 in the absence of any decree for monetary benefits, the workman is not entitled to the monetary benefits.

12. In *A.P.S.R.T.C. v. B.S. David Paul* (6)(2006) 2 SCC 282 entitlement of back wages was considered. The plea that consequent to the reinstatement, back wages was the natural consequence was rejected.

13. The "attendant benefits" consequent to back wages came up for consideration in *V.V.G. Reddy v. APSRTC, Nizamabad Region* (2009) 2 SCC 668, before the two Judge Bench of the Hon'ble Supreme Court. In the said case the Labour Court, in its award, directed reinstatement in service with continuity therein but without attendant benefits and back wages. Though he was reinstated in service he was not paid salary on par with his colleagues and when he filed execution petition and when execution petition was allowed, it was not implemented by the Corporation. When the workman filed Writ Petition for grant of notional increments it was allowed by the learned Single Judge following the decision in *APSRTC v. P. Nageswara Rao* (2001) 4 ALD 568. When a Writ Appeal against the said order was allowed, the case was taken to the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed that the award was passed by consent of the parties. It was held that the "attendant benefits" were in regard to a period for which he was denied back wages. Though the cases in *APSRTC v. Abdul Kareem* (*supra*), *APSRTC v. Narsagoud* (*supra*) and *Devendra Pratap Narain Rai Sharma v. State of UP* AIR 1962 SC 1334, were considered, ultimately, the relief sought for by the workman was denied on the ground that the basis for entering into a compromise was not known. Hence, the said decision is of no help for deciding the present case. But, the following observations of the Hon'ble Supreme Court are of use:

"12. The appellant, as noticed hereinbefore, had not only foregone back wages but also attendant benefits. The word "attendant benefits" should be given its natural meaning. The "attendant benefits" was in regard to a period for which he had been denied back wages. A person may be denied back wages which otherwise can be interpreted to mean that he would be entitled to claim the

benefit of increments notionally."

14. The issue with regard to entitlement of back wages and consequential relief came up for consideration in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.)* (2013) 10 SCC 324. In the said case a teacher who was working in a grant-in-aid post was suspended from service for disobeying the orders of the Headmistress. The Writ Petition filed by the teacher was disposed of by the Division Bench of the Bombay High Court by its order dated 21.03.2007 declaring that she is deemed to have rejoined her duties and entitled to consequential benefits. In the meanwhile, an enquiry was conducted by the management and the services of the teacher were terminated by an order dated 15.06.2007. When the matter went before the School Tribunal, Aurangabad, the termination of the services of the teacher was set aside and she was directed to be reinstated with full back wages from the date of termination till the date of reinstatement. The said order of the Tribunal was challenged by the management in the Writ Petition and the order of the Tribunal was set aside to the extent of payment of back wages by relying on the judgment in *J.K. Synthetics Limited v. K.P. Agrawal* (2007) 2 SCC 433. In that context the word "reinstatement" was considered and it was observed as follows:

"21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.II, 3rd Edition, the word "reinstatement" 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 Edition, the word "reinstatement" 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 "reinstatement" 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 Edition, "reinstatement" means:

"to reinstall, to re-establish, 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."

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. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of

nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

Further, decisions of the Hon"ble Supreme Court in Hindustan Tin Works Private Limited (supra), Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court (1980) 4 SCC 443, and other decisions were considered and it was held that the ratio in J.K. Synthetics Limited's case (supra) was held to be no longer a good law in view of Hindustan Tin Works Private Limited's case (supra) and Surendra Kumar Verma's case (supra). But, that is also a case of back wages.

15. In I. Laxma Reddy v. APSRTC (2007) 13 SCC 415, a two Judge Bench of the Hon"ble Supreme Court had not accepted the specific contention of the workman for fixation of pay after taking into consideration the notional increments which would have otherwise accrued on reinstatement, in view of Narsagoud's case (supra) and Abdul Kareem's case (supra).

16. In Fisheries Department, State of UP v. Charan Singh (2015) 8 SCC 150, a two Judge Bench of the Hon"ble Supreme Court considered the entitlement of full back wages and computing the same on the basis of Revised Pay Scales came up for consideration. In the said case the workman was terminated from service by giving one month wages in lieu of notice. When the matter went before the Industrial Tribunal, an award was passed in favour of the workman holding that the termination was illegal and directed his reinstatement without granting any back wages. At the time of termination he was working as Tubewell Operator and he was directed to be reinstated in any post equivalent to the post of Tubewell Operator. Pursuant to the said award, the workman was offered a letter of appointment on 03.05.1999 to the post of Fisherman but the workman did not join his duties in spite of repeated reminders. The Fisheries Department filed a petition before the High Court stating that in spite of reinstatement in the post of "Machhuwa" which is equivalent to the post of Tubewell Operator since he did not respond, he was not entitled to any wages for the period from 24.02.1997 to 31.01.2005 on the principle of "no work no pay". The High Court rejected the

said contention and directed the State Government to pay the entire amount due to the workman. It was held that though the State Government agreed to comply with the terms of the award dated 24.02.1997 passed by the Tribunal and had offered reinstatement to him, it is well within the right of the workman to refuse the new job offered to him and the same cannot be said to be unjustified or erroneous on the part of the respondent workman. It was further held that the principle of "no work no pay" has no significance to the fact situation of the case as the termination of the services of the workman from the post of Tubewell Operator is erroneous in law. Accordingly, it held that the workman is entitled for 50% of back wages from the date of termination till the date of award and full back wages from the date of award to the date of offer of employment on 31.01.2005. It was categorically held that the said back wages should be computed on the basis of Revised Pay Scales and pay all other monetary benefits as well. While coming to the said conclusion the Hon''ble Supreme Court followed the case of Deepali Gundu Surwase (supra).

17. A learned single Judge of this Court considered the above cases in *Md. Ghouse v. APSRTC* 2016(2) ALD 549, and repelled the contention of the learned Standing Counsel for the TSRTC based on *Narsagoud*'s case (supra). It was held as follows.

"????That was a case where the workman was found guilty of the charge of unauthorized absence and intervention by the Labour Court was only on the ground of proportionality of the punishment. He was accordingly directed to be reinstated with continuity of service but without back wages. In this factual context, the Supreme Court observed that there is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a case where reinstatement is accompanied by a specific direction that the workman shall be entitled to all consequential benefits which necessarily flow from reinstatement or accompanied by a specific direction that the workman shall be entitled to the benefit of the increments earned during the period of absence. The Supreme Court further observed that, in its opinion, the workman, having been held guilty of unauthorized absence from duty, could not claim the benefit of increments notionally earned during the period of such unauthorized absence in the absence of a specific direction in that regard, merely because he has been directed to be reinstated with the benefit of continuity in service.

The factual matrix obtaining in the present case is diametrically different from that in *APSRTC v. S. Narsagoud* ((2003) 2 SCC 212). In the case on hand, the charges of unauthorized absence and repeated irregular attendance were not established against the petitioner-workman as per the Labour Court. He was therefore given a clean chit in this regard unlike the findings recorded against the workman in *APSRTC v. S.Narsagoud* ((2003) 2 SCC 212). Further, when the Supreme Court observed that there is a difference between orders of reinstatement with continuity of service simpliciter and orders where reinstatement is accompanied with specific directions, it would obviously mean

that there should be a discussion in this regard by the Labour Court qualifying the relief granted and justifying the relief denied, expressly or by way of necessary implication.

In a case where the workman is ultimately held to be innocent of the charges levelled against him, thereby rendering his removal from service illegal, the law laid down in *Hindustan Tin Works (P) Ltd. v. Employees* (1979) 2 SCC 80) would apply and the order of reinstatement would mean that he has to be restored to his original position prior to such removal. After giving him a clean chit, denying him the benefit of increments at least notionally for the period that he was kept out of service though no fault of his, would mean that he is being inflicted with a punishment despite his being found innocent. Such an anomalous situation obviously cannot be the intendment of the law laid down by the Supreme Court in *APSRTC v. S.NARSAGOUD* ((2003) 2 SCC 212). The principle laid down therein therefore cannot have application to a case of the present nature, where termination from service is held to be illegal."

Though the said case decided by the learned single Judge of this Court was with regard to unauthorised absence from duty the benefit of *Deepali Gundu Surwase's* case (supra) was applied. Though something can be argued in cases relating to unauthorised absence, in respect of other cases, the decisions in *Narsagoud's* case (supra) and *Abdul Kareem's* case (supra) cannot be applied and the ratio in *Deepali Gundu Surwase's* case (supra) and *Charan Singh's* case (supra) cited above are applicable.

18. A Division Bench of the Delhi High Court had an occasion to consider in *Mahabir Prasad v. Delhi Transport Corporation* (2014) 144 DRJ 422 : (2014) 212 DLT 503, the case of workman of Delhi Transport Corporation who was removed from service and denied the notional fixation of pay and increments even after award of the Labour Court. The High Court of Delhi considered *Deepali Gundu Surwase's* case (supra), *Narsagoud's* case (supra), *Abdul Kareem's* case (supra) and *J.K. Synthetics Limited's* case (supra) and observed as follows:

"The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* (2013) 10 SCC 324), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the petitioner had to battle for over a decade and a half to secure justice. The Labour Court held the enquiry against him illegal; went into the material and found that the charge of misconduct was baseless. It consequently directed reinstatement without back wages. Whilst the denial of back wages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity

and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief. Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable. It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two scales. See *Kulwant Singh v. State of Punjab*, (1991 Supp (1) SCC 504). Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.

Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs."

19. The same line of thinking was adopted by the Madras High Court in *K.C. Vasudevan v. Director General, Central Industrial Security Force* 2006 Law Suit (Mad)942, decided on 07.04.2006 wherein the decisions in *Abdul Kareem's* case (supra), *Narsagoud's* case (supra) were distinguished and held that the ratio in those decisions cannot be applicable to the cases other than those relating to unauthorised absence.

20. The instant case is not a case of unauthorised absence but a case of theft. The labour court held the departmental enquiry as vitiated and set aside the order of removal. The workman was ordered to be reinstated in service without break in service and the denied back wages were awarded by this court which means that he continued to be in service. Consequently he is entitled to all benefits which a regular employee gets. In view of the above discussion, and the law laid down by the Hon'ble Supreme Court, I have no manner of doubt to hold in favour of the workman entitling him to the Revised Pay Scales consequent to his reinstatement in service pursuant to the award of the Labour Court and holding to be entitled to the benefits of back wages by this Court in the Writ Petition filed by the workman. Consequently, the order passed by the Labour Court in E.P. No.14 of 2016 dated 15.06.2016 is upheld and the Writ Petition is

dismissed. There shall be no order as to costs.

21. As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.