

(2003) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19239 of 1997

G. Maisaiah

APPELLANT

Vs

A.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 28-01-2003

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Recruitment) Regulations, 1966 — Regulation 17

Citation : (2003) 3 ALT 644

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : A.K. Jaya Prakash Rao, for the Appellant; K. Harinath, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Heard Mr. A.K. Jayaprakash Rao, learned counsel appearing for the petitioner and Mr. K. Harinath, learned standing counsel for the APSRTC.

2. This case has a chequered history. It is the 5th round of litigation for the petitioner who is now before this Court by way of filing the present writ petition. For the purpose of understanding the controversy raised in this case, it is necessary to elucidate briefly the facts leading to filing of the present writ petition. The petitioner was appointed as a Conductor in the Andhra Pradesh State Road Transport Corporation by an order dated 5-1-1984. However, on certain alleged irregularities, his services were terminated with effect from 5-9-1984 without affording him any opportunity of explaining his case or conducting any enquiry into the alleged misconduct. Questioning the said termination order, he filed W.P.No. 14238 of 1984 before this Court, which was allowed on 18-12-1985 by this Court and the order of termination was quashed on the ground of violation of principles of natural justice and reinstatement of the petitioner was ordered. By virtue of the directions issued by this Court, the

petitioner was reinstated into service by order dated 19-2-1990 with effect from 21-8-1986 under Regulation 17 of the APSRTC Employees (Recruitment) Regulations 1966. It appears, thereafter, the petitioner approached the Labour Court claiming back wages. But on the ground that there was no direction to that effect in the judgment dated 18-12-1985 passed by this Court in W.P. 14238 of 1984, the Labour Court only allowed the claim of petitioner to back wages relating to the period subsequent to the judgment. Challenging the order of the Labour Court the petitioner filed W.P.No. 3357 of 1987 praying for the back wages to the extent they were disallowed viz., for the period from 5-9-1984 to 18-12-1985. However, the said writ petition was dismissed by a learned single judge of this Court by order dated 18-1-1990 on two grounds viz., (1) that there was no direction in the writ petition for payment of back wages; and (2) the order of removal dated 5-9-1984 was not a nullity nor did it suffer from want of jurisdiction or ultra vires. Accordingly, the prayer of the petitioner for back wages was rejected. Challenging the said order, the petitioner filed a Writ Appeal being W.A.No. 571 of 1990 before this Court. In the Writ Appeal, the Division Bench presided over by M.N. Rao, J (as His Lordship then was) exhaustively discussed the issue relating to payment of back wages basing on well settled legal principles by order dated 10-4-1996. Since the issue raised in the present writ petition has a direct bearing on the issues decided in W.A. 571 of 1990, it would be apposite to refer to the observations made by the Division Bench in its order dated 10th April, 1996 made in W.A. 571 of 1990 which read thus:

"What is the legal position if an employee is removed from service without complying with the principles of natural justice came up for consideration before the House of Lords in the celebrated case Ridge v. Baldwin, the House of Lords held that an order of dismissal without compliance with the principles of natural justice was null and void. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, the Supreme Court ruled:

"The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer.....Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule."

3. Thus, the Division Bench set aside the order passed by the learned single judge, allowed the Writ Appeal and directed respondents to pay back wages as prayed for. Placing strong reliance on the judgment of the Division Bench in W.A. 571 of 1990 he strenuously contended that in terms of the said judgment the

petitioner herein is entitled to regularization with effect from 15-1-1984. Learned counsel also submitted that pursuant to the Division Bench Judgment, the respondent-authorities paid the petitioner entire back wages from 5-9-1984. One more fact needs to be taken notice of here is that subsequent to the judgment of this Court dated 18-12-1985 in W.P.No. 14238 of 1984 the respondent-corporation conducted enquiry into the alleged misconduct of the petitioner and imposed a punishment of stoppage of two increments.

4. The question that arises for consideration in the present writ petition is Whether the petitioner is entitled to regularization of his services with effect from 15-1-1984 i.e., his initial appointment, prior to filing of this Writ Petition, it appears, on 12-3-1997, the petitioner had filed a representation to the respondent-authorities praying them to regularize his services with effect from 15-1-1984. Since no action has been taken on his representation, he filed the present Writ Petition in the month of August, 1997 seeking a Writ of Mandamus declaring the action of the respondent in regularizing his services with effect from 21-8-1986 instead of 15-1-1984 as illegal and prays for a consequential direction for regularizing his services with effect from 15-1-1984 and to pay him all consequential benefits.

5. Mr. Harinath resisted the Writ Petition on the ground that the petitioner challenged the order dated 19-2-1990 passed by the respondent in the year August, 1997, after a lapse of 7 years and on the sole ground of delay and laches alone the Writ Petition is liable to be dismissed. It is also contended that the appointment of the petitioner was temporary which cannot be regularized with effect from 15-1-1984 as prayed for by him.

6. The grievance of the petitioner, as already stated above, is that his services should have been regularized with effect from the date of his initial appointment i.e., dated 15-1-1984 instead of 21-8-1986. The petitioner submits that the services of three of his colleagues viz., P. Jagadeeshwar Rao, N.V. Madhava Chary and K. Ugrachetty have been regularized with effect from 15-1-1984 who have joined duty same day on which the petitioner entered into service. Applying the same analogy to his case, his services too should have been regularized with effect from 15-1-1984 is the contention of the petitioner.

7. As can be seen from the facts and circumstances of the case, however at the cost of repetition, it is an admitted fact that the petitioner was initially appointed as a Conductor after going through a regular selection process on 15-1-1984. On the alleged ground of committing certain irregularities, without giving even a show-cause notice and without conducting any enquiry the termination order dated 5-9-1984 was passed. Aggrieved by the same, he filed the writ petition W.P. No. 14238 of 1984 and the Writ Petition was allowed quashing the order of termination on the ground of violation of principles of natural justice. Accordingly he was reinstated into service on 21-8-1986. Thereafter an enquiry was conducted and the punishment of stoppage of two increments was imposed on the petitioner. Basing on the date of joining of the petitioner into service after his

reinstatement impugned order was passed regularizing his services with effect from the date of joining i.e., 21-8-1986 instead of 15-1-1984, i.e., date of his initial appointment. When once this Court has in the above said writ petition 142.38 of 1994 earlier quashed the termination order, he is entitled to be in service from the date of his initial appointment though his appointment was termed as "temporary". Therefore, the respondents are duly-bound to regularize the services of the petitioner from the date of his initial appointment to the service and not from the date of his reinstatement into service.

8. Apart from this, if the impugned order is allowed to operate the field, the petitioner would suffer double punishment in the hands of the Corporation. Firstly due to the fact that his services were regularized by the impugned order at a much later date than the one on which he reported to duty and secondly on account of the fact that he had already undergone the punishment of stoppage of two increments in the departmental enquiry conducted against him. Thus, the double punishment cannot be allowed to operate. Accordingly, a Writ of Mandamus shall be issued to the respondents to regularize the services of the petitioner from the date of his initial appointment i.e., 15-1-1984 and to pay all consequential benefits due to him. This exercise shall, however, be completed within 12 weeks from the date of receipt of a copy of this order. The petitioner is also entitled to all terminal benefits in accordance with law. The Writ Petition is accordingly allowed. No costs.