

(2016) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3640 of 2011.

Md. Jahangir S/o late Md. Suleman, Aged about 59 years, Retd.Suptd (M) (E-83017), APSRTC, Midhani Bus Depot, Kanchanbagh, Hyderabad, A.P. - Petitioner @HASH Regional Manager, APSRTC, Hyderabad Region, MGBS, Gowliguda, Hyderabad and another

Date of Decision : 23-08-2016

Acts Referred:

Andhra Pradesh State Road Transport Corporation Employees (Leave) Regulations, 1963 — Regulation 34(a)
Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 277 : (2017) 1 AndhLD 232

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

Bench : Single Bench

Advocate : Sri P. Venkateswhwar Rao, Advocate, for the Petitioner; Sri N. Vasudeva Reddy, Standing Advocate for APSRTC, for the Respondent

Final Decision : Disposed Off

Judgement

Sri. P. Naveen Rao, J. - Petitioner was appointed on 13.08.1979 as Millwright Mechanic (MWM). On the allegation that he has altered bill amount of Rs. 10/- as Rs. 20/- for an item/ items purchased by him, he was placed under suspension on 01.02.1990. Disciplinary proceedings taken up on the said allegation, resulted in removal from service on 26.07.1990. Aggrieved by removal from service, petitioner raised industrial dispute in ID No.14 of 1991 on the file of Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad. Labour Court passed award on 22.03.1993 and directed reinstatement into service with back wages, continuity of service and attendant benefits. The said award was challenged by the respondent corporation in W.P. No. 18526 of 1993. By order dated 21.02.1994, this Court affirmed the award passed, except to the extent of reducing the back wages to 50%. Petitioner was reinstated to service on 30.10.1993. Petitioner earned promotions as Leading Hand, Mechanical Charge Man and Superintendent (Maintenance). He has retired from service, on attaining the age of superannuation, on 30.04.2010. The grievance of the petitioner necessitating institution of this writ petition is, for the purpose of computation of

gratuity and earned leave, the period from date of suspension to removal from service was not taken into consideration.

2. By order dated 12.11.2015, this Court directed to compute gratuity payable to the petitioner taking into account the out of employment period.

3. During the course of hearing of this writ petition, learned counsel for petitioner as well as learned standing counsel for RTC informed the Court that in terms of the direction issued by this Court on 12.11.2015, gratuity was computed and paid. Learned counsel for petitioner, therefore, submitted that petitioner is now confining his grievance only for the purpose of computation of earned leave.

4. Heard Sri P. Venkateshwar Rao, learned counsel for petitioner and Sri N. Vasudeva Reddy, learned standing counsel for RTC.

5. Mr Venkateshwar Rao, contended that having found that false charge was levelled against petitioner, Labour Court declared the charge as failed and as a consequence, granted reinstatement into service with continuity of service and attendant benefits. As a consequence, petitioner was also granted increments for the period of his out of employment. He would therefore submit that not counting out of employment period for the purpose of accumulation of earned leave was illegal.

5.1. He would submit that the entire period of out of employment, as a consequence to the award passed by the Labour Court, ought to be counted as period spent on duty and, therefore, the said period also should be computed for the purpose of accumulation of earned leaves. In support of the said contention, learned counsel placed reliance on the decision of the Division Bench of this Court in Management of APSRTC, rep. by its Vice Chairman and Managing Director, Mushirabad, Hyderabad and others v. T. Govinda Reddy (WA No.1125 of 2002) dated 22.08.2003.

5.2. He would further submit that the Regulation 34 (a) of APSRTC Employees (Leave) Regulations, 1963 (for short, "Regulations, 1963"), which is relied upon to deny the benefit to the petitioner, was considered by the Division Bench and held that the denial is illegal. The Special Leave to Appeal (Civil) No.22830 of 2003 was dismissed by the Supreme Court vide order dated 12.12.2003. He would, therefore, submit that in view of the principle laid down by the Division Bench of this Court in T. Govinda Reddy petitioner is entitled to computation of the entire service of out of employment for the purpose of grant of accumulation of earned leave. He further submitted, following the said Division Bench judgment, learned single Judge of this Court also granted similar reliefs in W.P. No. 27499 of 2008.

6. Sri N. Vasudeva Reddy, submitted that since petitioner has not rendered service during the period of out of employment, he is not entitled to accumulation of earned leave for that period. As per Regulation 34 of Regulations 1963, unless a person actually works for a particular period, accumulation of

earned leave is not permissible. He would submit that though Division Bench of this Court held that such period also should be computed for the purpose of accumulation of earned leave, on account of subsequent decision of Full Bench of this Court in Andhra Bank rep. by its Chairman and Managing Director and another v. P. Balakrishna (died) per LRs, 2005 (3) ALT 771 (F.B.) the said principle is no more good law. He would submit that Full Bench of this Court held that unless a person is in actual service, he will not earn a privilege leave, which can be en-cashed.

7. The point for consideration is whether petitioner is entitled to accumulate earned leave for the period out of employment including the period of suspension as a consequence to award passed by the Labour Court?

8. It is not in dispute that the Labour Court held that the charge is not proved against the petitioner. The Labour Court directed reinstatement of the petitioner into service with back wages, continuity of service and attendant benefits. Though this award was challenged by the Management in W.P. No.18526 of 1993, this Court only restricted the back wages to 50% of the wages payable to the relevant period. Thus, award as modified has become final. It is not in dispute that increments for out of employment period i.e., from 26.07.1990 to 14.11.1993 were allowed, whereas increments are not allowed for the suspension period.

9. Respondents seek to deny benefit of the entire service prior to the reinstatement for the purpose of accumulation of earned leave on the ground that in accordance with the Regulation 34(a) of Regulations, 1963, a person is entitled to earned leave only when he performs duty physically and petitioner has not performed the duties physically during the said period. This very plea was raised in T. Govinda Reddy.

10. In T. Govinda Reddy, petitioner was placed under suspension on 14.04.1971 and later removed from service. Labour Court passed award setting aside the removal and directed reinstatement with continuity of service and full back wages. He was reinstated on 21.08.1983. The period from 14.4.1971 to 21.8.1983 was not computed for the purpose of grant of gratuity and earned leave. By construing the provision in Regulation 34 (a) of the Regulations, 1963 and the fact that the Management treated the period from 5.11.1971 to 22.08.1983 as in service and fixed his pay on reinstatement by duly giving notional increments for the above period, Division Bench held that "there is absolutely no justification whatsoever on the part of appellant - corporation not to treat the period of absence as qualified service for the purpose of payment of gratuity and encashment of earned leave".

11. In the case before the Full Bench, writ petitioner was Cashier in Andhra Bank. He was dismissed from service on 01.10.1982. Andhra Bank filed application for according approval under Section 32(2)(b) of the Industrial Disputes Act before the Industrial Tribunal (Central), at Hyderabad as I.D.No.28

of 1982 was pending before the Tribunal. The Tribunal did not approve the action of the Andhra Bank. Consequently, petitioner was reinstated into service on 17.06.1986. Petitioner made a representation for encashment of leave accrued to his credit during the period from 01.10.1982 to 17.06.1986. The said request was rejected by the Bank. Petitioner challenged the rejection in the writ petition filed before this Court, contending that as the order of dismissal was not approved by the Industrial Tribunal, the relationship between the employee and employer subsists continuously and, therefore, he is entitled to all the consequent benefits including the benefit of privilege leave.

11.1. The Full Bench was called upon to determine whether an employee is entitled to the benefit of leave encashment for the period, for which he was kept out of employment when such action was held illegal. In support of the claim for computation of the period of out employment for the purpose of earned leave, reliance was placed on the decision of the Division Bench of this Court in Govinda Reddy.

11.2. Reading of paragraph 7 of the judgment as reported in the journal would show that the decision of the Division Bench in Govinda Reddy was considered and distinguished. The Full Bench held as under:

"7..... The dispute in Vice-Chairman v. T. Govinda Reddy's case was between APSRTC and its employee. APSRTC in the cited case did not plead any rule in the service conditions under which workman has to render actual service to earn privilege leave. Therefore, the cited decision has no application to the facts of the case on hand."

11.3. The reference to Full Bench was considered having regard to the Sastry Award and Bipartite settlement, which govern the employees of nationalised Banks. Reading of paragraph 15 of the judgment as reported in the journal would make this aspect clear. At this stage it is appropriate to extract relevant observations. They read as under:

"15. After going through various settlements of memoranda between the workmen and the employer, we are in no doubt to conclude that the privilege leave is intended for rest and recuperation and the workman has to render active service and thereby earn privilege leave to his credit. A workman out of service for any reason whatsoever is not entitled to privilege leave".

11.4. It is, thus, seen that Full Bench has not overruled the decision in T. Govinda Reddy as sought to be contended by Mr. Vasudeva Reddy but was distinguished. It is also appropriate to note that Govinda Reddy judgment was upheld by the Supreme Court. The principle laid down in T. Govinda Reddy applies to this case.

12. The next issue is to what extent such a relief can be granted.

13.1. In APSRTC and another v. S. Narsagoud, (2003) 2 SCC 212, the issue for consideration was, whether an employee was entitled to claim periodical

increments for the period of out of service as a consequence to setting aside the punishment of removal.

13.2. In Narsagoud, disciplinary action was initiated on the allegation of unauthorized absence in two spells, that resulted in imposing punishment of removal. In the industrial dispute raised by him, Labour Court while upholding the disciplinary action, directed reinstatement with continuity of service and denied back wages for the period of out of employment. Aggrieved by the said portion of the order denying back wages, Narsagoud filed writ petition before this Court. During the course of hearing, plea raised was that though he was reinstated, while fixing his wages, on reinstatement, periodical increments for the period of out of employment were not taken into consideration. Learned single Judge of this Court directed computation of periodical increments he would have earned had he been in service and further directed to fix his wages, by computing his periodical increments. It was contended that when the absence from service by an employee is unauthorized, even though a direction was issued to reinstate him with continuity of service, but if there was no direction for release of consequential benefits, particularly the retirement benefits, such service cannot be counted to draw increments. Supreme Court upheld the said contention of the respondent corporation.

13.3. 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 unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific condition in that regard and merely because he has been directed to be reinstatement with the benefit of continuity in service.

10. The direction of the High Court entitling the respondent to earn increments during the period of unauthorized 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"

(emphasis supplied)

13.4. As noticed above, the disciplinary action against Narsagoud was upheld, but relief of reinstatement was granted on equities. Thus, it was not a case of exoneration from the disciplinary action.

13.5. In the instant case, the Labour Court recorded categorical finding that the charge was illegal and as a consequence, directed reinstatement with continuity

of service and attendant benefits.

14.1. In this context, it is useful to refer to the observations of the Supreme Court in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others*, (2013) 10 SCC 324.

14.2. Supreme Court held as under:

"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.

15. As the termination of the petitioner was held illegal and the Labour Court granted reinstatement into service with continuity of service and attendant benefits and full back wages, later converted into 50% of the back wages, the natural consequence that would follow is, employee is entitled to claim period of out employment as on duty for the purpose of accumulation of earned leave, gratuity, increments, etc. Since, disciplinary proceedings leading to removal from service is held illegal, the period of suspension also has to be treated as on duty for the purpose of computation of above benefits. The fact that the respondent corporation granted increments for out of employment period would show that the relevant period was treated as on duty. The respondent corporation has also revised Gratuity by computing out of employment period. Thus, the stand of the respondent corporation that unless period is spent on duty earned leave would not accumulate is no more valid and, therefore, the denial of the claim of the petitioner for accumulation of earned leave for the period of out of employment is illegal.

16. Writ Petition is accordingly allowed. The respondents are directed to compute the period from 01.02.1990 to 30.10.1993 as on duty for the purpose of computation of earned leave and to pay the petitioner amount payable towards encashment of earned leave accumulated during the above period within a period of six weeks from the date of receipt of this order.

17. Miscellaneous petitions, if any, pending shall stand closed. No costs.