

(2013) 08 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23613 of 2009

N.R.K. Murthy

APPELLANT

Vs

Andhra Pradesh State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 28-08-2013

Acts Referred:

Citation : (2013) 6 ALT 156 : (2014) 140 FLR 870

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : S.N. Subhan, for the Appellant; K. Satyanarayana Murthy, SC for APSRTC, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar, J.—The petitioner seeks for a writ of mandamus declaring the action of the respondents in not paying terminal benefits like gratuity during the period of removal of the petitioner from service from 29.10.1991 to 30.05.2001 as illegal and to direct the respondents to pay the gratuity for the said period to the petitioner. The petitioner was appointed as a conductor on 23.05.1972. On 29.10.1991 the petitioner was removed from service on the ground of cash and ticket irregularities. The petitioner raised I.D. No. 281 of 1997 questioning the removal of the petitioner from service. The labour Court passed award on 20.09.2000 ordering reinstatement of the petitioner with continuity of service but without back wages. The petitioner was consequently reinstated into service on 30.05.2001. The petitioner was, thus, out of employment from 29.10.1991 to 30.05.2001. It is the case of the petitioner that although the petitioner was not gainfully employed during this period, the respondents failed to pay gratuity for this period to the petitioner on the ground that the petitioner was out of service. He further submitted that the petitioner was also not paid gratuity from the date of joining service i.e., from 23.05.1972 till the date of removal i.e., on 29.10.1991. He seeks for payment of gratuity for the period of service from 1972 to 1991 and also gratuity for the period from 1991 to 2001, during which period

the petitioner was out of employment.

2. The learned counsel for the respondents contended that gratuity was paid for the period from 1972 to 1991 during which period the petitioner was in service. He submitted that the petitioner is not entitled to gratuity from 1991 to 2001 during which period the petitioner was out of service.

3. Thus, there is dispute regarding payment of gratuity from 1972 to 1991. There is no dispute that the petitioner was entitled to gratuity during this period. It would be appropriate to direct the respondents to pay gratuity from 23.05.1972 till 29.10.1991, if not paid already.

4. The main controversy, however, is regarding the period from 29.10.1991 to 30.05.2001. The petitioner was removed from service on 29.10.1991 and was reinstated into service on 30.05.2001. The labour Court ordered reinstatement of the petitioner into service without back wages but with continuity of service. The question is whether the petitioner would be entitled to gratuity or otherwise in such circumstances. In *M. Rama Rao Vs. Asst. Traffic Manager, APSRTC, Hyd. and Another*, an employee of APSRTC was removed from service. The labour court set aside the award of removal and directed reinstatement of the petitioner into service with continuity of service. A learned single Judge of this Court held that management cannot deny payment of gratuity to the petitioner on his retirement for the period during which the petitioner was out of employment as a result of order of removal. In the present case also, the labour court ordered reinstatement of the petitioner with continuity of service. Pursuant to the award, the petitioner was reinstated into service. The petitioner thus possesses continuity of service although he is not entitled to back wages. Where the petitioner is entitled to continuity of service, he certainly is entitled to gratuity for the period during which the petitioner was out of service i.e., from 29.10.1991 to 30.05.2001.

5. Consequently, this Writ petition is allowed directing the respondents to pay gratuity to the petitioner for the period of removal from 29.10.1991 to 30.05.2001 and shall also pay gratuity for the period from 23.05.1972 to 29.10.1991, if not paid already. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this writ petition shall stand dismissed.