
(2023) 04 TEL CK 0016
In the Telangana High Court
Case No : Writ Petition No. 28085 Of 2013

Y.B.Raghavendra Rao

APPELLANT

Vs

Tsrtc And Another

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 04 TEL CK 0016

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : D.Kodandarami Reddy, N.Praveen Reddy

Final Decision : Allowed

Judgement

1. Heard learned counsel for the Petitioner Sri D.Kodandarami Reddy, heard learned Standing Counsel for TSRTC, Sri Praveen Reddy, appearing on behalf of the Respondents

2. The main prayer sought for by the Petitioner is as follows :

"to issue writ, or direction especially one in the nature of writ of Mandamus declaring the action of the respondents in reinstating the petitioner into service with continuity of service for purpose of terminal benefits and seniority without back wages from 05.05.1992 to 15.11.2011 vide proceedings of the 2nd respondent in L1/785/(119)/2011-RM-MA, dated 15.11.2011 and consequently direct the respondents to pay all back wages and all attendant benefits till the date of reinstatement forthwith."

PERUSED THE RECORD :

3. The relevant portion of the order impugned dt. 15.11.2011 vide L1/785(119)/2011-RM-MR, of the 2nd Respondent reads as under :

"The Vice Chairman and Managing Director has accorded sanction to reinstate the petitioner into service with continuity of service for the purpose of terminal

benefits and seniority only as per the Proceedings in G.O.Ms.No.47, dated 15.07.2011 issued by Principal Secretary Government, Social Welfare (CV2) Department.”

4. Paras 5 & 6 of the Additional Affidavit filed by the Petitioner on 12.09.2022 read as under :

Para 5 : I submit that as my caste certificate is declared as genuine I am entitled for all the benefits from date of initial appointment to date of superannuation with proper fixation including salary for the interregnum period i.e., from date of removal to date of reinstatement. But this was not done by the Respondents.

Para 6 : I submit that I am not gainfully employed for the interregnum period i.e., from date of removal to date of reinstatement (5-5-1992 to 15-11-2011). For that extent I am filing this affidavit on oath. In the interregnum period I was approaching the authorities and also courts repeatedly by ventilating my grievance for getting justice.

5. The Additional Counter Affidavit filed on behalf of the Respondents in September, 2022, in particular paras 8 and 10, reads as follows:

Para 8 : With regard to the averments made in para-5 of the additional affidavit, it submitted that the Petitioner was removed from service based on the fact that the Revenue Authorities i.e., the Collector has held that the caste certificate produced by the Petitioner was a fake one and not genuine. Therefore, the Petitioner cannot attribute any liability on the Respondent Corporation for payment of back wages and other attendants benefits for the period no service was rendered by the Petitioner from 05.05.1992 to 18.11.2011 which is period of almost 20 years.

Para 10 : It is submitted that this Hon’ble Court cannot decide the disputed questions of fact whether the Petitioner was gainfully employed or not. It is submitted that the Respondent Corporation is disputing the fact that the Petitioner is not gainfully employed without the Petitioner filing any supporting documentary proof. It is submitted that scope of judicial review of this Hon’ble Court under Article 226 of the Constitution of India while dealing with the order of removal is very limited. Therefore, the averment in the additional affidavit filed by the Petitioner does not help the case of the Petitioner.

FACTS NOT IN DISPUTE :

6. The Petitioner was appointed as conductor in July, 1980 in the Andhra Pradesh State Road Transport Corporation. On a compliant lodged against the Petitioner before the District Collector, Nizamabad alleging that the Petitioner obtained a false caste certificate the Petitioner was removed from service on 05.05.1992 and Caste certificate cancelled by Joint Collector on 28.12.1992. Petitioner approached High Court vide W.P.No.2979 of 1993 and the Writ Petition was allowed on 15.03.1993 remitting the matter to the competent authority to give reasonable opportunity to the Petitioner and pass appropriate orders. The District

Collector again cancelled Petitioner's caste certificate vide order dt. 19.08.1993. The Petitioner filed Review Petition before the Government and the Review was also dismissed. Petitioner filed WP No.13265/2003 questioning the cancellation of the Petitioner's caste certificate before the Court and the Writ Petition was allowed by the High Court on 21.11.2008 duly setting aside the order of the District Collector, Nizamabad dt. 19.08.1993 and the matter was remitted to the Government directing to dispose of the Review Petition within 3 months after giving opportunity to the Petitioner. The Government of Andhra Pradesh vide G.O.Ms.No.47 Social Welfare (CV2) Department, dt. 15.07.2011 allowed the Review Petition filed by the Petitioner and held that the caste certificate issued by the then Tahasildar, Yellareddy to the Petitioner is in accordance with the rules. On Petitioner's representation the 2nd Respondent reinstated the Petitioner vide his proceedings dt. 15.11.2011 vide letter No.L1/785(119)/2011-RM-MA, dt. 15.11.2011.

DISCUSSION & CONCLUSION :

7. A bare perusal of the order impugned dt. 15.11.2011 vide letter No.L1/785(119)/2011-RM-MA, clearly indicates that the 2nd Respondent reinstated the Petitioner into service with continuity of service for purpose of terminal benefits and seniority without back wages from 05.05.1992 to 15.11.2011. Main contention put forth by learned Counsel appearing on behalf of the Petitioner is that on 20.03.2013 the Petitioner was promoted as ADC and posted to Sangareddy Depot and subsequently the Petitioner retired from service on 30.09.2013, but however, in view of the impugned proceedings dt. 15.11.2011 of the 2nd Respondent herein the benefit of continuity in service was extended to the Petitioner only for the purpose of terminal benefits and Seniority only. The Petitioner's main grievance is that the Petitioner was paid the service benefits for the period from 1980 to 04.05.1992 i.e., till the date of removal and for the period of service from 05.11.2011 to 30.09.2013 i.e., date of reinstatement to date of retirement, the Petitioner however was denied all the benefits from date of initial appointment to date of superannuation with proper fixation including salary for the interregnum period i.e., from the date of removal to date of reinstatement.

8. A bare perusal of the proceedings dt. 15.11.2011 clearly indicates that though the Petitioner's specific representation to the competent authority was to reinstate him into service with all attendant benefits, full back wages, continuity of service for the out of duty period yet the 2nd Respondent extended the benefit of continuity of service to the Petitioner only for the purpose of terminal benefits and seniority and denied all attendant benefits and full back wages. Petitioner's specific plea at para 6 of the Additional sworn in affidavit on oath filed by the Petitioner in support of the present writ petition is that the Petitioner was not gainfully employed for the interregnum period i.e., from date of removal to date of reinstatement (05.05.1992 to 15.11.2011) and in the said period he was approaching the authorities and also courts repeatedly by ventilating Petitioner's

grievance for getting justice and prayed for passing appropriate orders for treating the period from date of removal to date of reinstatement i.e., 05.05.1992 to 15.11.2011 as on duty for all purposes including salary by directing the concerned respondents to pay all petitioner's service benefits by treating the said purpose as on duty for all purposes. The Learned Standing Counsel appearing on behalf of the Respondents by filing an additional counter affidavit on behalf of the Respondents in September 2022 contends that the petitioner cannot attribute any liability on the Respondent Corporation for payment of back wages and other attendant benefits for the period from 05.05.1992 to 18.11.2011 since the Petitioner did no service during the said period to the Respondent Corporation and further that the Respondent Corporation disputed the fact that the Petitioner is not gainfully employed since the Petitioner did not file any supporting documentary proof.

9. The Apex Court in the Judgment reported in (1980) 3 SCC 459 in Managing Director, U.P. Warehousing Corporation & Another vs. Vijay Narayan Vajpai at para 18 observed as under :

Para 18 : There appears to be force in this contention. It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an appellate tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order or the impugned illegal proceeding is quashed and put out of the way as one which should not be used to the detriment of the writ petitioner. Thus in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the order and quasi-judicial proceeding of an administrative authority-not being a proceeding under the industrial law/labour law before an industrial/labour tribunal-culminating in dismissal of the employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/Labour Law. The respondent employee never raised any industrial dispute, nor invoked the jurisdiction of the Labour Court or the Industrial Tribunal. He directly moved the High Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due opportunity to defend himself and to rebut the charges against him. Furthermore, whether a workman or employee of a statutory authority should be reinstated in public

employment with or without full back wages, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these two fold reasons, we are of opinion that the High Court was in error in directing payment to the employee full back wages.

10. The Apex Court in a Judgement reported in (2013) 10 SCC 324 in Deepali Gundu Surwase vs. Kranthi Junior Adhyapak Mahavidyalaya (Died) & Others – Respondents at Paras 22, 37 (18) and 38.1 observed as under :

Para 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 employee concerned, 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.

The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

Para 37 (18) : Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the

negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

Para 38.1 : In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

11. The High Court of Telangana in the Judgement reported in (2019) 2 ALT 264 (DB) in Depot Manager, APSRTC, Guntur District & Another vs. Ch. Suresh Babu & Another in W.A.Nos.1928/2017 and 174/2018 at paras 23, 24 and 27 observed as under :

Para 23 : It is therefore clear that it was not the intention of the Supreme Court to deviate from the law laid down in the judgments referred to. Similar is the case with the later judgment of the very same two Judge Bench in M.L. Singla's case (supra). Again, reference was made to the earlier case law, including Rudhan Singh's case (supra); J.K. Synthetics Ltd.'s case (supra) and Deepali Gundu Surwase's case (supra). Therefore, by no stretch of imagination can these two judgments be said to have laid down a principle contrary to that laid down in the earlier judgments. The observations made in these two judgments on the individual facts of those particular cases would not have the effect of deviating from or diluting the principles laid down in the earlier case law and more particularly, the Larger Bench judgments. The settled legal principle that still holds the field is that if the termination from service is shown to be illegal and the employee/workman concerned was regularly appointed and had put in substantial service, he would be entitled to full backwages subject to his not having been gainfully employed after his wrongful termination from service.

Para 24 : On facts, it as stated by Sri P. Durga Prasad, learned Counsel, that Ch. Suresh Babu, the petitioner in WP No.16727 of 2011, did not state in his claim petition filed in ID No.204 of 2004 that he was not employed after his termination from service. Perusal of the petition and the annexure filed in ID No. 204 of 2004 demonstrates that there was no categorical statement made by Ch. Suresh Babu to the effect that he was not gainfully employed after his termination from service on 23.7.2002. He however made a specific prayer for reinstatement in service with backwages, continuity of service and attendant benefits Despite his making a claim in this regard. the APSRTC did not advert to his entitlement to backwages on the ground that he was gainfully employed after he was removed from service On the other hand, in Para 22 of the counter, the APSRTC, speaking through the Depot Manager of its Bapatla Depot, stated that the petitioner was put to strict proof that he remained unemployed ever since the date of his removal and could not secure alternative employment. This is directly in conflict with the observations of the Supreme Court in Para 38.3 in Deepali Gundu Surwase's case (supra). of extracted supra. Therefore, given the be aforestated pleadings and counter pleadings in ID No. 204 of 2004 on the file of

the labour Court, Guntur, the failure would tilt more towards the APSRTC in adducing evidence of gainful employment of Ch. Suresh Babu after his termination from service. Admittedly, no such evidence was reproduced. Be it noted that the labour Court, Guntur, held the finding of the Enquiry Officer that the charge levelled against Ch. Suresh Babu was proved to be incorrect and therefore, his very termination from service was rendered unsustainable in law.

Para 27 : On the above analysis, as the termination from service was wholly unjustified in both the cases and was set aside on that count, this Court finds no grounds to interfere with the common order under appeal. The principle of entitlement to full back wages, being the normal rule, was squarely applicable. Given the fact that both the writ petitioners were regular employees and the length of their service was not meagre and as the erstwhile APSRTC failed to adduce any evidence to prove that either of them was gainfully employed after their termination from service, there were no mitigating circumstances warranting reduction in the payment of full backwages. The common order passed by the learned Judge holding to this effect therefore does not brook interference either on facts or in law.

12. The judgements relied upon by the Counsel for the Respondents are as follows :

- i. Para 9 of the Judgement reported in (1996) 7 SCC 83 in Anil Kumar Gupta & Others vs. State of Bihar & Others.
- ii. Para 8 of the Judgement reported in (1995) 2 SCC 474 in Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank and Others.
- iii. Para 10 of the Judgement reported in (2005) 5 SCC 591 in General Manager, Haryana Roadways vs. Ruhan Singh.

13. This Court is of the firm opinion that a bare perusal of the above referred Judgements relied upon by the Counsel for the respondents indicate that the same are not applicable to the facts of the present case in view of the law laid down by the Apex Court in the Judgements referred to and extracted above and also in view of the fact that the Government of Andhra Pradesh in G.O.Ms.No.47, Social Welfare (CV2) Department, dt. 15.07.2011 allowed the Review Petition filed by the Petitioner and held that the caste certificate issued by the then Tahasildar, Yellareddy to the Petitioner as being in accordance with the rules thereby the very order dt. 05.05.1992 removing the petitioner from service by the APSRTC is itself uncalled for and unwarranted. Under these circumstances taking into consideration the law laid down by the Apex Court in the Judgment reported in (1980) 3 SCC 459 in Managing Director, U.P. Warehousing Corporation & Another vs. Vijay Narayan Vajpai, (ii) the law laid down by the Apex Court in a Judgement reported in (2013) 10 SCC 324 in Deepali Gundu Surwase vs. Kranthi Junior Adhyapak Mahavidyalaya (Died) & Others – Respondents and (iii) the law laid down by the High Court of Telangana in the Judgement reported in (2019) 2 ALT 264 (DB) in Depot Manager, APSRTC,

Guntur District & Another vs. Ch. Suresh Babu & Another in W.A.Nos.1928/2017 and 174/2018, this Court opines that the Petitioner is entitled for back wages from 05.05.1992 to 15.11.2011 in view of the fact that the 2nd respondent herein failed to adduce evidence of gainful employment of the petitioner herein after his termination from service and therefore, the Respondents are directed to consider the case of the Petitioner duly taking into consideration the law laid down by the Apex Court and the Division Bench of High Court of Telangana on the subject issue, referred to and extracted above and pass appropriate orders within a period of three weeks from the date of receipt of the copy of the order for release of all the service benefits due to the petitioner treating the period from date of removal to date of reinstatement i.e., for the period from 05.05.1992 to 15.11.2011 as on duty for all purposes including salary and duly communicate the said decision to the petitioner.

14. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.