SUPREME COURT OF INDIA

V.V.G. Reddy

Vs.

Apsrtc, Nizamabad Region

C.A.No.99 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

13.01.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellant is before us questioning the judgment and order dated 21.9.2007 passed by a Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No.658 of 2007 and others whereby and whereunder the said writ appeal preferred from a judgment and order dated 29.10.2002 passed in W.P. No. 21410 of 2002 filed by appellant and others was allowed.

3. Respondent - Corporation is constituted and incorporated under the *Road Transport Corporation Act, 1950* (64 of 1950). Appellant joined its services as a conductor in the year 1981. A disciplinary proceeding was initiated against him. He was placed under suspension in the year 1982. In the said disciplinary proceeding, he, having been found guilty was dismissed from services.

> "An industrial dispute was raised by him, which was eventually referred to the Labour Court by the State of Andhra Pradesh in exercise of its powers conferred upon it under Section 10(1)(c) of the *Industrial Disputes Act, 1947* (for short, "the Act")."

4. By reason of an Award dated 1.8.1988, the Labour Court directed his reinstatement in service with continuity therein but without attendant benefits and back wages.

5. Pursuant to or in furtherance of the said Award, appellant was reinstated in service. However, he was not paid his salary at par with his colleagues whose services had been regularized with effect from 1.10.1983.

6. He filed an Execution Petition being E.P. No. 18 of 1989 in I.D. No. 581 of 1987 before Labour Court, Hyderabad praying that his services be directed to be regularized at par with his colleagues with effect from 1.10.1983. The said Execution Petition was allowed.

7. As despite the same, his pay was not fixed at par with his colleagues and no notional increments had been granted, a legal notice was issued on his behalf by an Advocate on 2.3.1992.

> "He thereafter filed a writ petition before the High Court which was marked as Writ Petition No. 21410 of 2002 praying for grant of notional increments for the period between 1.10.1983 and 15.2.1989.
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> By reason of a judgment and order dated 29.10.2002, the said writ petition was allowed by a learned single judge of the High Court, directing:
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> "The controversy in this writ petition is no more res integra, in view of the decision of a Division Bench of this Court in APSRTC, Khammam Region and another Vs. P. Nageswara Rao. The Division Bench while dealing an analogous question has held that when an award was passed by the labour court directing the respondents to reinstate the petitioner into service, the action of the respondent - Corporation in fixing the pay without taking into consideration the notional increments is illegal. It is further held that the Corporation cannot rely on any circular or regulation that takes away the plain meaning of the award in the judgment."

8. A writ appeal was preferred thereagainst by the respondent herein. However, the said writ appeal was barred by limitation and an application for condonation of delay having not been allowed, the same was dismissed. A Special Leave Petition filed thereagainst being Special Leave Petition (Civil) No. 1114 of 2004 was allowed by a judgment and order dated 13.2.2007 in terms whereof the matter was remitted to the High Court for disposal of the case on merit. By reason of the impugned judgment, the writ appeal preferred by the respondent herein has been allowed.

9. Ms. T. Anamika, learned counsel appearing on behalf of the appellant would urge that in view of the fact that the appellant was denied back wages only by the Labour Court and having been reinstated in service with continuity, the High Court committed a serious error in declining to grant notional increments in his favour from the date of his dismissal till the date of passing of the Award. Strong reliance in this behalf has been placed on the decision of this Court in *Devendra Pratap Narain Rai Sharma vs. State of Uttar Pradesh & ors.*[1].

10. Mr. D. Mahesh Babu, learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment.

11. The award appeared to have been passed by the labour court on consent of the parties. Appellant himself stated so in his affidavit in support of the writ petition.

12. The terms of the consent order have not been produced before us by the appellant. We will, however, proceed on the premise that the parties thereto agreed that the appellant would be reinstated within a month from the said date. Appellant was, therefore, not only denied back wages but also the attendant benefits.

13. Interpretation of terms of consent will depend upon the nature of the lis and the background events.

14. 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.

15. We may, however, notice that in *A.P. State Road Transport Corporation & ors. vs. Abdul Kareem*[2], this Court held:

> ".....the Labour Court specifically directed that the reinstatement would be without back wages. There is no specific direction that the employee would be entitled to all the consequential benefits. Therefore, in the absence of specific direction in that regard, merely because an employee has been directed to be reinstated without back wages, he cannot claim a benefit of increments notionally earned during the period when he was not on duty during the period when he was out of service. It would be incongruous to suggest that an employee, having been held guilty and remained absent from duty for a long time, continues to earn increments though there is no payment of wages for the period of absence."

16. In *A.P. SRTC & Anr. vs. S. Narsagoud*[3], this Court held:

> "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 unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

17. In Devendra Pratap Narain Rai Sharma (supra), this Court upon referring to Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh, held as under:

“11. In our view, this contention is wholly misconceived. Rule 54, as amended in 1953, stands as follows:

"54.(1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order--

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be together with any allowances of which he was in receipt prior to his dismissal, removal or suspension.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe. Provided that the payment of allowances under clauses (2) and (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as the period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purposes." This rule has no application to cases like the present in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. This rule, undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous, The effect of the adjudication of the civil court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work." The said decision, in our opinion, has no application to the fact situation obtaining in the present case.”

18. Appellant has not been directed to be reinstated in service by reason of an Award holding that the order of termination was wholly illegal and, thus, void ab initio. On what

premise, parties entered into a compromise is not known. It is possible to hold that findings of the Enquiry Officer which might have been accepted by the disciplinary authority holding him guilty of misconduct had not been set aside; the Management might have thought that denial of back wages and attendant benefits would be sufficient punishment. If that be so, appellant being not in service during the period in question, namely, 1.10.1983 to 15.2.1989, in our opinion, would not be entitled to increment.

19. For the reasons aforementioned, the appeal is dismissed. No costs.

[1]AIR 1962 SC 1334 *[2](2005) 6 SCC 36* *[3](2003) 2 SCC 212*