HON'BLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION No.23589 OF 2006

ORDER:

A.P.S.R.T.C., now presently T.S.R.T.C., filed this writ petition seeking writ of Certiorari calling for the records relating to the order dated 06.04.2006 made in M.P.No.52 of 2001 on the file of the Labour Court-I, Andhra Pradesh, Hyderabad, directing the petitioner Corporation to compute the salary of respondent No.1 by allowing notional increments for the period from 14.05.1994 to 02.04.2022 and make payment accordingly and quash the same as being illegal, without jurisdiction and contrary to the settled principles of law.

2. Heard Miss. Dornala Sai Mahatha, learned counsel, representing, Sri Thoom Srinivas, learned standing counsel appearing for the petitioner Corporation, as well as learned Assistant Government Pleader appearing for respondent No.2. In spite of service of notice, respondent No.1 has not chosen to enter his appearance.

3. Learned counsel for the petitioner submits that respondent No.1, while working as Conductor in the petitioner Corporation, was removed from the services with effect from 14.05.1994 on the ground that he committed cash and ticket irregularities. Aggrieved by the said

removal order, respondent No.1 filed I.D.No.85 of 1999 before the Industrial Tribunal-II at Hyderabad invoking the provisions of Section 2-A(2) of the Industrial Disputes Act, 1947 (for brevity, 'the Act'). The Industrial Tribunal after considering the contentions of the respective parties, documentary evidence i.e., Exs.M.1 to M.18 on record has modified the punishment holding that respondent No.1-workman is liable for punishment of postponement of one annual increment for the period of one year and further directed the petitioner Corporation to reinstate respondent No.1 into service with continuity, but without back wages. Pursuant to the said award dated 20.01.2000, respondent No.1 was reinstated into service on 01.04.2000.

3.1 Learned counsel further submits that respondent No.1 filed M.P.No.52 of 2001 before the Labour Court-I, Hyderabad, under Section 33 (C)(2) of the Act, seeking a direction directing the petitioner Corporation for computation of certain monetary benefits as per the Award in I.D.No.85 of 1999. In the said petition, the petitioner Corporation filed detailed counter denying the claim made by respondent No.1. She further submits that the Labour Court without

properly considering the contentions raised by the petitioner passed the impugned order on 06.04.2006 directing the petitioner Corporation to compute the salary of respondent No.1 by allowing the notional increment for the period from 14.05.1994 to 02.04.2000 and the same is contrary to the Award passed in I.D.No.85 of 1999 dated 20.01.2000 and without jurisdiction and also contrary to the law.

3.2 In support of her contention, learned counsel relied upon the judgments of the Hon'ble Supreme Court in **A.P.S.R.T.C. and another vs. S.Narsagoud**[1] and **A.P.S.R.T.C. and others vs. Abdul Kareem**[2].

4. Per contra, learned Assistant Government Pleader for Labour appearing for respondent No.2 submits that the Industrial Tribunal after considering the contentions of the respective parties and also material evidence on record rightly passed the impugned order by invoking the provisions of Section 33(C)(2) of the Act, and the same is in accordance with law.

---

[1] (2003) 2 SCC 212
[2] (2005) 6 SCC 36

5. Having considered the rival submissions made by the respective parties and upon perusal of the record, the following points would arise for consideration:

(1) Whether the application filed by respondent No.1 seeking computation of monetary benefits, especially notional increments from 14.05.1994 to 02.04.2000 under Section 33(C)(2) of the Act is maintainable, in the absence of specific direction in the Award dated 20.01.2000 in I.D.No.85 of 1999?

(2) Whether the award of the Labour Court for reinstatement without back wages would imply continuity of service and whether notional increments are to be given to the employee, for the period while he was not in service in the absence of specific direction in that regard?

(3) Whether the petitioner is entitled to the relief sought in the writ petition?

POINT NOs.1 TO 3:

6. It is an undisputed fact that respondent No.1 while discharging his services in the petitioner Corporation was removed from the services with effect from 14.05.1994 on the ground of cash and ticket

irregularities. Aggrieved by the said order, respondent No.1 has raised a dispute invoking the provisions of Section 2-A(2) of the Act, *vide* I.D.No.85 of 1999, on the file of the Industrial Tribunal-II at Hyderabad. The Industrial Tribunal after considering the contentions of the respective parties, documentary evidence on record passed Award on 20.01.2000 by setting aside the removal order and imposed the punishment of postponement of one annual increment for a period of one year and further held that respondent No.1-workman is entitled for reinstatement into service with continuity of service, but without back wages and the same has become final.

7. Pursuant to the said award, respondent No.1 was reinstated into service on 01.04.2000. Thereafter, respondent No.1 filed application *vide* M.P.No.52 of 2001 under Section 33(C)(2) of the Act, for computation of monetary benefits i.e., notional increments from 14.05.1994 to 02.04.2000. In the said application, the petitioner filed counter contending that petitioner Corporation has already paid all the benefits to respondent No.1 as per his entitlement pursuant to the award passed by the Industrial Tribunal-II, Hyderabad, in I.D.No.85 of

1999 and respondent No.1 is not entitled to any monetary benefits as claimed in the said application. The Industrial Tribunal allowed the application after considering the contentions of the parties and taking into consideration of the orders passed by the Division Bench of this Court in Writ Appeal No.945 of 2004 dated 22.06.2004 (Regional Manager and another vs. B.Chander Rao) directing the petitioner Corporation to pay notional increments for the period from 14.05.1994 to 02.04.2000.

8. It is very much relevant to extract the operative portion of the Award of the Labour Court, which reads as under:

> *"In the result, I hold that the order passed by the Respondent in removing the services of the petitioner is liable to be set aside and accordingly set aside. But the petitioner is liable for punishment of postponement of one annual increment for a period of one year. Petitioner is entitled for reinstatement into service with continuity of service but without backwages. Respondent is directed to reinstate the Petitioner into service with continuity of service but without backwages. Respondent is further directed to implement the punishment imposed on the Petitioner by this Tribunal."*

9. The specific contention of the learned counsel for the petitioner is that the Labour Court allowed the Section 33(C) application and directed the petitioner to pay the notional increments from 14.05.1994 to 02.04.2000, and the same is contrary to the Award dated 20.01.2000 passed in I.D.No.85 of 1999.

10. In Abdul Kareem's case (2 supra) the Hon'ble Apex Court formulated the question "whether the Labour Court's award of reinstatement without back wages would imply continuity of service and whether notional increments are to be given to employee for the period for which he was not in service, in the absence of specific direction in that regard." and the Hon'ble Apex Court following the principle laid down in S.Narsa Goud's case (1 supra) held that in the absence of direction in the Award the workman/employee is not entitled the benefit of increments notionally during the period when he was out of service.

11. It is very much relevant to mention here that in **V.V.G. Reddy v. Andhra Pradesh State Road Transport Corporation, Nizamabad**

Region and another[3], the Hon'ble Apex Court in paragraph Nos.13, 14 and 16 held that:

> **13.** We may, however, notice that in *A.P. SRTC* v. *Abdul Kareem* [(2005) 6 SCC 36 : 2005 SCC (L&S) 790] this Court held: (SCC p. 40, para 11)
>
> > "*11.* … 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."
>
> **14.** In *A.P. SRTC* v. *S. Narsagoud* [(2003) 2 SCC 212 : 2003 SCC (L&S) 161] this Court held: (SCC p. 215, para 9)
>
> > "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."
>
> **16.** The 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 the parties entered into a compromise is not known. It is possible to hold that findings of the enquiry officer

[3] (2009) 2 SCC 668

> 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, the 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.

12. The principle laid down by the Hon'ble Apex Court clearly envisages that in the absence of specific direction in the Award that the employee would be entitled to all the consequential benefits, he cannot claim a benefit of increments notionally earned during the period when he was not on duty.

13. It appears from the records that the petitioner Corporation has not brought to the notice of the Industrial Tribunal about the judgment of the Hon'ble Apex Court in Abdul Kareem's case (2 supra), due to the same the Industrial Tribunal passed the impugned order relying upon the order of this Court in Writ Appeal No.945 of 2004 dated 22.06.2004.

14. Reverting to the facts of the case on hand, as already noticed, the Industrial Tribunal passed the award in I.D.No.85 of 1999 dated 20.01.2000 by setting aside the removal order passed by the petitioner

Corporation and imposed punishment against respondent No.1 for postponement of one annual increment for a period of one year and further held that respondent No.1 is entitled for reinstatement of service with continuity of service but without back wages. In the absence of specific direction that respondent No.1 is entitled all the consequential benefits, he cannot claim a benefit of increments notionally earned during the period when he was out of service. In view of foregoing reasons and precedent decisions, the impugned order passed by the Labour Court-I, Hyderabad, in M.P.No.52 of 2001 dated 06.04.2006 is liable to be set aside, accordingly, set aside.

15. The writ petition is allowed without costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

J. SREENIVAS RAO, J

Date :21.06.2023
L.R. copy to be marked – Yes.
mar