* **THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

+W.A. No.1398 OF 2016

% 06-03-2024

The Depot Manager, APSRTC, Medak

....Appellant

Vs.

P. Yadagir and another.

.... Respondents

!Counsel for the petitioner : Sri A. Srinivas Reddy

Counsel for the Respondent No.1 : Sri A.G. Satyanarayana Rao

<Gist :

>Head Note:

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

W.A. No.1398 OF 2016

Between:

The Depot Manager, APSRTC, Medak

....Appellant

Vs.

P. Yadagir and another.

.... Respondents

ORDER PRONOUNCED ON: 06.03.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : Yes

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NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT APPEAL No.1398 OF 2016

JUDGMENT: *(Per Hon'ble Sri Justice Namavarapu Rajeshwar Rao)*

This Writ Appeal is filed aggrieved by the order dated 28.09.2016 passed by the learned Single Judge in W.P.No.28690 of 2016.

2. Heard Sri A. Srinivas Reddy, learned Standing counsel for the appellant and Sri A.G.Satyanarayana Rao, learned counsel for the 1st respondent-workman.

3. The brief facts of the case are as follows:

(1) The 1st respondent was working as a Cleaner in APSRTC, Medak. While so, on 06.08.1981, he was directed to drive a bus bearing No.AAZ-1560 to attend the relief work of another bus which failed en-route. The 1st respondent drove the bus bearing No.AAZ-1560 to the outer gate, where the Security Guard found five pipes meant for supporting the roof, kept in the Chassis of the bus. The Security Guard reported the matter

to the head Security Guard, and consequently, a report was prepared and forwarded to the Depot Manager for necessary action. Based on the said report, a charge sheet was issued to the 1st respondent. A domestic enquiry was conducted and basing on the report, the 1st respondent was removed from service.

(2) Aggrieved thereby, the 1st respondent filed I.D.No.93 of 1992 (Old No.764 of 1987), and the same was disposed of vide order dated 28.07.1993 holding that the charge levelled against the 1st respondent was not proved and accordingly, the order of removal was set aside. Consequently, the appellant was directed to reinstate the 1st respondent into service without a break in service, but without back wages. Challenging the denial of back wages, the 1st respondent filed W.P.No.18518 of 1995. This Court allowed the said Writ Petition vide order dated 19.09.2006 by observing that the Labour Court failed to give any reasons for denying the 1st respondent's back wages when he was cleared from the alleged delinquency. Aggrieved thereby, the appellants therein preferred W.A.No.22 of 2007 before the Division Bench of this Court, which upheld the judgment of the learned Single Judge, vide judgment dated 18.12.2014.

(3) Thereafter, the 1st respondent filed E.P.No.14 of 2006 before the Labour Court-II, Hyderabad, seeking payment of an amount of Rs.2,01,737.30ps., alleging that as per Regulation 21(2)(a) and (c) of the APSRTC Employees (CC&A) Regulations, 1967, whenever an employee is fully exonerated, the employee is entitled to full pay and allowances to which he would have been entitled had he not been removed; and the period of absence from duty shall, for all purposes, be treated as a period spent on duty, and accordingly sought for payment of the enhanced wages consequent to revision of pay scales.

(4) The Labour Court vide order dated 15.06.2016 allowed the E.P. with the following observations:

> *"...The calculation made by the respondent shows that the back wages of the petitioner was calculated basing on the last pay drawn by the petitioner but they have not calculated according to the Revision of Pay Scales in the years 1980, 1985, 1989 and 1993. It is to be noted that for every four years there is Revision of Pay Scales but the same was not applied to the petitioner which is erroneous. When the back wages was ordered by reinstating him into service, the petitioner is entitled for back wages as if he was in service. Therefore, the calculation memo filed by the petitioner is correct and the calculation memo filed by the respondent is not correct.*

In view of the above discussion, the respondent has to pay an amount of Rs.2,01,737.30 ps., out of which the respondent has to deposit an amount of Rs.31,556/- to the P.F. trust towards employee and employer contributions. The respondent has not paid the said amount therefore; the petitioner is entitled to attach the property as referred in the schedule.

In the result, the petitioner is entitled to recover an amount of Rs.2,01,737.30 ps., out of which respondent has to contribute Rs.31,556/- towards P.F. Account for the contribution of employee and employer and the remaining amount of Rs.1,70,181.30 ps., has to be paid to the petitioner. The respondent has not only failed to calculate the back wages properly he also failed to pay the amount. Hence, the petitioner is entitled to attach the schedule property.

Issue attachment warrant under Order 21 Rule 43 on payment of process. Call on 15.07.2016."

(5) Challenging the same, the appellant herein filed W.P.No.28690 of 2016 before this Court. The learned Single Judge vide order dated 28.09.2016, dismissed the Writ Petition upholding the order of the Labour Court in E.P.No.14 of 2006, by observing as follows:

"The instant case is not a case of unauthorised absence but a case of theft. The labour court held the departmental enquiry as vitiated and set aside the order of removal. The workman was ordered to be reinstated in service without break in service and the denied backwages were awarded by this court which means that he continued to be in service. Consequently he is entitled to all benefits which a regular employee gets. In view of the above

discussion, and the law laid down by the Hon'ble Supreme Court, I have no manner of doubt to hold in favour of the workman entitling him to the Revised Pay Scales consequent to his reinstatement in service pursuant to the award of the Labour Court and holding to be entitled to the benefits of back wages by this Court in the Writ Petition filed by the workman. Consequently, the order passed by the Labour Court in E.P. No.14 of 2006 dated 15.06.2016 is upheld and the Writ Petition is dismissed. There shall be no order as to costs."

(6) Aggrieved thereby, the appellant filed the present Writ Appeal.

4. Learned Standing counsel for the appellant contended that the Labour Court-II, Hyderabad, which is the executing Court, granted relief which is not mentioned either in the I.D. Award or in the order passed by the learned Single Judge in W.P.No.18518 of 1995, which is impermissible, and as per the settled principle of law, an Executing Court cannot go beyond the decree in execution proceedings. He further contended that the Labour Court-II in I.D.No.93 of 1992 (Old I.D.No.764 of 1987) dated 28.07.1993, did not grant the relief of back wages and other attendant benefits to the 1st respondent. Further, the award passed by the Labour Court-II in I.D.No.93 of 1992 was modified by this Court in W.P.No.18518 of 1995 only to the extent of granting back wages.

5. Learned Standing counsel for the appellant further contended that the 1st respondent has claimed an amount of Rs.2,01,737-30ps

as per the calculation memo filed by him in E.P.No.14 of 2006. However, as per the calculation sheet of the appellant, the respondent is entitled only to the difference in wages after applying the Revision of Pay Scales as per the judgment of the learned Single Judge dated 28.09.2016. He further contended that even after applying the Revision of Pay Scales to the 1st respondent for his out of service period, he will not be entitled to annual increments in the absence of granting attendant benefits. Moreover, the said attendant benefits were neither granted by the Labour Court nor by the learned Single Judge in W.P.No.18518 of 1995. The learned Single Judge under the impugned order ought to have considered the fact that the 1st respondent did not make any claim for increments before this Court earlier, and it was sought only before the Executing Court for the first time.

6. Learned Standing counsel for the appellant further contended that the learned Single Judge ought to have considered the fact that the calculation memo filed by the 1st respondent in E.P.No.14 of 2006 was of the year 2006, which contains many calculation errors. He contended that the 1st respondent had filed the calculation memo which included yearly increments to which he was not entitled, and further, the same was not granted by the Labour Court in its order dated 28.07.1993, or by the learned Single Judge in its judgment in

W.P.No.18518 of 1995 dated 19.09.2006. Thus, the non-granting of increments or attendant benefits was never challenged by the 1st respondent.

7. Learned Standing counsel for the appellant further contended that the Execution Petition itself was not maintainable, as the 1st respondent ought to have filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, "the Act") to determine the amount payable to him by the appellant.

8. Learned Standing counsel for the appellant further contended that the learned Single Judge ought to have considered that there is a variation in the amount payable by the appellant according to its calculation and the amount claimed by the 1st respondent in his calculation memo. The 1st respondent has included annual increments for which he is not entitled. Therefore, appropriate orders be passed in the Writ Appeal by setting aside the order dated 28.09.2016 passed in W.P.No.28690 of 2016 and allow the Writ Appeal.

9. On the other hand, learned counsel appearing for the 1st respondent filed a counter-affidavit stating that the learned Single Judge has rightly upheld the order of the Labour Court passed in E.P.No.14 of 2006. Once the Labour Court comes to a conclusion that the 1st respondent is not guilty of the charges levelled against him, the

entire proceedings conducted against him would become infructuous and the 1st respondent must be deemed to be on duty for all practical purposes.

10. Learned counsel appearing for the 1st respondent further contended that since the Labour Court denied the back wages, the 1st respondent filed W.P.No.18518 of 1995 before this Court. The learned Single Judge rightly allowed the said writ petition by holding that the 1st respondent is entitled for back wages along with other service benefits, which the Labour has already awarded. The same was confirmed by the Division Bench of this Court in W.A.No.22 of 2007. Therefore, the learned Single Judge has rightly dismissed the Writ Petition and there are no grounds to interfere with the impugned order passed by the learned Single Judge and the Writ Appeal is liable to be dismissed.

11. This court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that the 1st respondent approached the Labour Court-II, Hyderabad, and filed I.D.No.93 of 1992 (Old I.D.No.764 of 1987) challenging the removal order passed against him. The Labour Court, while disposing of the said I.D., observed the following in its order dated 28.07.1993:

> *"5. In view of the above discussion and in the result, it had to be held that the charge against the petitioner is not proved and the order of*

removal is therefore set aside. The respondent is directed to reinstate the petitioner into service without break in service but without back wages in the circumstances of the case."

12. The Labour Court, vide order dated 28.07.1993, had directed the appellant to reinstate the 1st respondent into service, without any back wages. This Court, vide its order dated 19.09.2006, modified the said order to the extent of granting back wages to the 1st respondent, along with other service benefits. The same was upheld by the Division Bench of this Court in W.A.No.22 of 2007 on 18.12.2014. Pursuant to the same, the 1st respondent filed E.P.No.14 of 2006 in I.D.No.93 OF 1992. The said E.P. was ordered on 15.06.2016 directing to issue attachment warrant under Order 21 Rule 43 CPC on payment of process. The same was challenged in W.P.No.28690 of 2016 and the learned Single Judge dismissed the said writ petition on 28.09.2016.

13. The Labour Court ought not to have passed the order in E.P.No.14 of 2006, since as per the settled principle of law, an Executing court cannot go beyond the decree in the execution proceedings. As such, the learned Single Judge ought not to have upheld the validity of the same, since the 1st respondent had directly filed the said E.P. without filing an application under Section 33-C(2) of the Act to determine the amount payable to him by the appellant. The 1st respondent ought to have filed an application under Section 33-C(2) of the Act pursuant to the disposal of W.A.No.22 of 2007.

14. Section 33-C(2) of the Act reads as follows:

> *"(2)Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months: Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."*

15. When a specific relief was available to the 1st respondent in the form of filing an application under Section 33-C (2) of the Act, he should have proceeded with the said relief instead of filing an execution petition before the Labour Court. It is also pertinent to mention that the Labour Court ought not to have entertained such an execution petition and further, ought to have directed the 1st respondent to seek the ordinary course of remedy available under Section 33-C(2) of the Act. The mode of relief sought by the 1st respondent is unsustainable, and the same ought to have been rejected by the Labour Court-II at the very first instance. Further, the learned Judge erred by upholding the validity of the order passed in said E.P., and erroneously dismissed the Writ Petition. Therefore, the impugned order passed by the learned Single Judge is liable to be set aside, and accordingly, it is set aside.

16. Accordingly, the Writ Appeal is allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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ABHINAND KUMAR SHAVILI, J

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NAMAVARAPU RAJESHWAR RAO, J

Date: 06-03-2024

Prv

NOTE: L.R. copy is to be marked.