

G. Srinivas Vs. Apsrtc and anr.

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Court : Andhra Pradesh

Decided On : May-02-2003

Reported in : 2003(4)ALD18; 2003(4)ALT303

Judge : C.V. Ramulu, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 11A and 11B

Appeal No. : WP No. 5986 of 2003

Appellant : G. Srinivas

Respondent : Apsrtc and anr.

Advocate for Def. : G. Jyothi Kiran, Adv.

Advocate for Pet/Ap. : V. Narasimha Goud, Adv.

Disposition : Writ petition dismissed

Judgement :

ORDER

C.V. Ramulu, J.

1. This writ petition is filed seeking a mandamus declaring the action of the respondents in not adding notional increments, for the period the petitioner was out of service i.e. from 3-11-1989 to 21-11-1991 as arbitrary, unjust and violative

of Articles 14, 16 and 21 of the Constitution of India and consequently to direct the respondents to refix the pay of the petitioner by allowing the increments for the said period with all consequential benefits.

2. The brief facts of the case are that the petitioner while working under the control of the Depot Manager, A.P. State Road Transport Corporation, Manchiryal was removed from service with effect from 24-1-1990 after conducting a detailed enquiry into the misconduct alleged against him. Being aggrieved by the removal order, he had raised a dispute in LD. No. 209 of 1990 before the Labour Court, Godavarikhani, Karimnagar District. The Labour Court after elaborate consideration of the matter held:

'.....The explanation offered by the petitioner coupled with the fact that he did not close the SR against the stage No. 1 clearly goes to show that the petitioner is not having any mala fide or dishonest intention except there being some dereliction of duty on his part to attend to these passengers also as early as they boarded the bus for which he has to be, of course, punished suitably, but not by awarding the extreme punishment of removing the petitioner from service once for all which is neither just nor proper-under the facts and circumstances present in this case. The petitioner is without job from the date of his removal from service i.e., 21-4-1990. Therefore, denial of back wages and denial of all attendant benefits will be sufficient punishment for the petitioner.

Under those circumstances and in view of my discussion, I hereby set aside the orders of removal passed by the respondent-management against the petitioner on 21-4-1990 under Ex.M16 and I hereby direct the respondent-management to reinstate the petitioner into service with nominal continuity of service, but without any attendant benefits and the petitioner is also not entitled to any back wages and the petitioner is entitled to his salary from the date of publication of this Award. I decide points 1 and 2 accordingly, and the award is passed as aforesaid'.

3. In obedience to the Award passed by the Labour Court, the respondent-management had reinstated the petitioner into service on 22-11-1991. After more than 11 years of his reinstatement, the petitioner filed the present writ petition complaining that, compared to his colleagues, he is put on a scale short of three

incremental stages, and in spite of requesting the 2nd respondent to consider his case, for fixing his pay on par with his colleagues, it was not being considered. Further, he states that he must be deemed to be in service in view of the award of the Labour Court and he cannot be denied increments for the period he was out of service i.e., from 3-11-1989 and 21-11-1991 on the ground that he was not granted attendant benefits in the award passed by the Labour Court. Therefore, the action of the management in denying the increments/notional increments was not correct. He also submits that the issue as to granting of notional increments on reinstatement under an Award is automatic and is no more *res integra* and the issue is covered by the Judgment of this Court reported in APSRTC Khammam Region, Khammam v. P. Nageswara Rao, 2001 (4) ALD 568 (DB). The petitioner submits that the appeal filed before the apex Court against the said Judgment ended in dismissal by confirming the said Judgment. Therefore, he is entitled for increments for the period from 3-11-1989 to 21-11-1991.

4. Admittedly, in the guise of claiming the increments for the period from 3-11-1989 to 21-11-1991, the petitioner is requesting this Court to interpret and execute the Award passed by the Labour Court, Godavarikhani in I.D. No. 209 of 1990, dated 22-2-1991. It is very difficult to accept the request of the petitioner.

5. This Court is of the considered view that if really the petitioner was aggrieved by the action of the management in not sanctioning the notional increments for the period he was out of service and he is entitled for the same under the said Award, nothing prevented him from approaching the Labour Court for execution of the Award under Section 11B of the Act. Instead of approaching the Labour Court, the petitioner has ventured to file this writ petition, after lapse of more than 11 years claiming that he is entitled for increments during the period he was out of service i.e., from 3-11-1989 to 21-11-1991.

6. According to the petitioner, though he is denied the attendant benefits under the said Award, it must be deemed that he is entitled for increments for that period. Further, mere denial of attendant benefits does not include in itself the denial of increments for the period he was out of service. Once the reinstatement and continuity of service is ordered, the eligibility to draw increments is automatic even

for the period he was out of service. Mere denial of attendant benefits by the Labour Court itself will not disentitle him to claim the notional increments. He states that the denial of attendant benefits must be deemed the denial of certain allowances like dress allowance, chappal allowance etc., which are given to a workman for the active service rendered by him. Mere denial of these attendant benefits does not mean that the workman is denied the increments for the period he was out of service.

7. Before going into the merits of the case, it may be necessary to go into the scheme of the [Industrial Disputes Act, 1947](#) (for short 'the Act') in dealing with the industrial disputes and the powers vested with the Labour Court/Industrial Tribunal before whom the disputes are raised. Under Section 2-A(2) of the Act, a workman is entitled to maintain a claim petition directly before the Labour Court/Industrial Tribunal, which has jurisdiction to adjudicate upon the matter in dispute, challenging the termination/removal/dismissal order passed by the management and seeking appropriate relief in the circumstances of each case. After filing counter-affidavits and receiving oral and documentary evidence, the Labour Court/Tribunal may reject the claim of the workman in the facts and circumstances of that case. However, the Labour Court/ Tribunal is vested with wide discretionary powers under Section 11A of the Act, which reads :

'11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of Workmen :--Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section, the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the material on record and shall not take any fresh evidence in relation to the matter '

8. A plain reading of the above provision gives an unambiguous meaning that the Labour Court, if it is satisfied that the order of discharge or dismissal was not justified, it may, by its Award, set aside the order of discharge or dismissal and direct reinstatement of the workman, on such terms and conditions, if any, as it thinks fit, including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. From the said provision coupled with the Award passed by the Labour Court stated supra, it is seen that the Labour Court, in the circumstances of this particular case, required to pass an award directing reinstatement with nominal continuity of service, but without any attendant benefits. Once the Labour Court contemplates certain terms and conditions, if any, as it thinks fit, as the circumstances require, the Award passed by it has to be interpreted in its plain meaning like any civil Court decree, as, the Labour Court, in the circumstances of the case, as per the powers vested in it under Section 11A of the Act, has passed the Award. It can neither be tinkered with nor interpreted by giving any other meaning except extending its plain meaning. The Award of the Labour Court is a decree within the meaning of Section 11B of the Act, like any other Civil Court decree. It has to be strictly interpreted in the plain language employed by the Labour Court itself.

9. It may not be out of place to mention that in a given case, the Labour Court may pass Award as under:

(1) reinstatement with continuity of service and with back wages;

(2) reinstatement with continuity of service, but without back wages;

(3) reinstatement without continuity of service and without back wages;

(4) reinstatement with continuity of service and with attendant benefits, but without back wages;

(5) reinstatement with continuity of service, but without back wages and without any attendant benefits;

(6) reinstatement without continuity of service, without back wages and without any attendant benefits; and

(7) stoppage of four increments with cumulative effect on reinstatement.

10. These are all the various types of awards passed by the Labour Court in the circumstances of each case. Thus, a general interpretation cannot be made to come to the conclusion that whether in the teeth of the award passed by the Labour Court, the workman is entitled for any other benefits, which are not specifically mentioned in the Award of the Labour Court. Unless there is a specific mention as to a particular benefit, the workman is not entitled for the same. The mere reinstatement or continuity of service itself will not make the workman entitled for claiming notional increments for the period he was out of service, unless the same is categorically and specifically mentioned in the Award passed by the Labour Court. Here, it may be necessary to note the very purpose of the legislation inserting Section 11-A by Act 48 of 1950.

11. Section 11A was introduced after the Judgment of the apex Court reported in *Indian Iron and Steel Co. Ltd. v. Their Workmen*, (1958) 1 LLJ 260, wherein while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, it was observed that in cases of dismissal for misconduct, the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice etc., on the part of the management. The International Labour Organization, in its recommendation No. 119 concerning 'Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the

case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages should be paid adequate compensation or afforded some other relief. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new provision - Section 11-A was proposed to be inserted in the Act.

12. From this statement of objects and reasons, it is clear that this provision was inserted in the Act not to limit the jurisdiction of the Tribunal as evolved by the dicta of the Supreme Court, but it was inserted to confer power on the adjudicators to 'reappraise the evidence adduced in the domestic enquiry and to grant proper relief to workmen, powers which the Tribunal did not possess earlier'.

13. The general service law jurisprudence cannot be extended to the labour law jurisprudence. It must always be kept in mind that the general principles of service law are not applicable, in all respects, insofar as labour law service principles are concerned. The labour law service principles are more liberal and are looked from a different angle. That is why Section 11-A of the Act itself was introduced in the year 1971 with a view that the Labour Court can take into consideration many aspects and pass an award to give succour to the workman.

14. As noticed above, necessarily, when a matter of dismissal or discharge from service was referred to the Labour Court/ Tribunal, it has to give its finding, at the outset, that the order of discharge or dismissal was not justified and it may by its Award, set aside the same and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit. The introduction of very Section 11-A is in the

nature of adjudication on lines of an arbitration and 'on such terms and conditions, if any, as it thinks fit'. Thus, the Labour Court/Tribunal has to take into consideration various aspects of the matter, such as, long service rendered by the workman, his past conduct, involving in a misconduct of trivial nature and the management's inability to substantiate charges on evidence recorded by it. More so, an element of adjudication and passing award on certain 'terms and conditions as it thinks fit', takes into its fold many a inputs and an Award is passed by the Labour Court. While holding that the discharge or dismissal was not justified, it comes to a particular conclusion and passes Awards of various kinds. Once an order is passed after taking all the aspects into consideration and as per the powers vested in it under Section 11A of the Act, such an Award passed by the Labour Court/ Tribunal cannot be tinkered with. The Award is nothing but a full and final settlement for the workman unless it is reversed by higher Courts, either way. In the instant case, as noticed above, the workman was directed to be reinstated with nominal continuity of service, but without back wages and without any attendant benefits. There is no ambiguity whatsoever, under the given circumstances of this case, the workman is not entitled for any other relief, except as was stated in the Award, including notional increments.

15. An order of reinstatement with continuity of service, but without back wages and an order of reinstatement with continuity of service, but without back wages and without any attendant benefits cannot be differentiated. What all needs to be seen in an Award, is whether any benefit other than the reinstatement and continuity of service is awarded at all, and whether it was without back wages and/or without attendant benefits will not have any bearing. The words 'on such terms and conditions, if any, as it thinks fit' have to be understood in their plain language. It must be deemed that the conclusions arrived at by the Labour Court are, reinstatement on such terms and conditions as it thought fit. Thus, the Award cannot be interpreted in either way.

16. Further, Section 11-B of Act, which was inserted by Section 5 of A.P. Amendment Act 32 of 1987, reads as under:

'11-B. Power of Labour Court or Tribunal to execute its award by decree :--A Labour Court or a Tribunal shall have the power of a Civil Court to execute its award or any settlement as a decree of a Civil Court.'

17. Thus, the Award of the Labour Court can be executed as that of a decree of the Civil Court. Once it is a decree of the civil Court, unless some more relief is granted, like reinstatement with continuity of service, but without back wages, the workman is not entitled for notional increments etc., under such circumstances alone, the workman is entitled for the benefit of notional increments. In the absence of any such specific relief as to entitlement to the notional increments for the period the workman was out of service was granted, the workman is not entitled for anything. Nothing less or nothing more can be read into the Award passed by the Labour Court.

18. Learned Counsel for the petitioner Sri V. Narsimha Goud relied upon a decision reported in DM., APSRTC, Kurnool Depot v. S.S. Reddy Jamal Reddy, : 2001(2)ALD92 (DB), wherein a Division Bench of this Court held :

'It is now a well-settled principle of law that a judgment cannot be read as a statute and must be read reasonably and in its entirety. The word 'reinstatement' carries with it a definite meaning, viz., the workman shall be deemed to be continuing in service without any break whatsoever. The logical corollary of it would be that he would continue in service as if his services have never been terminated. The Court while granting discretionary relief may or may not grant back wages although, normally, the rule is when a direction for reinstatement is given back wages is also directed therein. Thus, the direction for reinstatement of the workman must be read in the aforementioned context that except the back wages and attendant benefits, he was entitled to all other benefits to which he became entitled to by way of his reinstatement without break in service....'

He also brought to the notice of this Court another Judgment reported in APSRTC, Khammam Region, Khammam v. P. Nageswara Rao, 2001 (4) ALD 568 (DB), in which a Division Bench of this Court took a similar view. Whereas, the learned standing Counsel for respondents - Ms. Jyothi Kiran - placed strong reliance upon the Judgment reported in APSRTC and Anr. v. S. Narsagoud, 2003 LLR 225, and

submitted that in view of this judgment of the apex Court, the decision in P. Nageswara Rao's case (supra) is no longer a good law. She further submitted that the said judgment of the apex Court was followed by a Division Bench of this Court in W.A. No. 567 of 2003, dated 18-4-2003, copy of which is not made available.

19. In view of the recent Judgment reported in S. Narsagoud's case (supra), we need not go into the said judgments of this Court, which are relied upon by the learned Counsel for the petitioner. The apex Court, after elaborate consideration of various Circulars issued by the A.P. State Road Transport Corporation and also the Regulations of the Corporation held:

'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 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.....'

It was further held:

'..... ..Ordinarily, the increments are earned on account of the period actually spent on duty or during the period spent on leave, the entitlement to which has been earned on duty....'

From the above, it is clear that unless there is a specific direction that the employee shall be entitled to all consequential benefits or any other benefits other than reinstatement and continuity of service, it cannot be understood that the workman is entitled for notional increments also, whether such a direction was there or not in the award of the Labour Court, such as 'entitled to consequential benefits, entitled to attendant benefits etc.' and granting any notional increments according to the judgment of the apex Court amounts to paying premium on the misconduct.

20. Sri V. Narsimha Goud, learned Counsel for the petitioner, while referring to the Judgment of the Supreme Court in S. Narsagoud's case (supra), contended that in the said judgment, the case that arose for consideration of the apex Court was a case of absenteeism and as such, the notional increments were denied and the same cannot be applied to the facts of the case on hand. It is difficult to agree with the contention of the learned Counsel for the reason that the apex Court had taken into consideration two factors in the above Judgment. One is a direction of reinstatement with continuity of service and another is reinstatement with continuity of service and entitlement to consequential benefits flowing out of the reinstatement. Thus, in the absence of a specific direction as to consequential benefits that flow out of the reinstatement, the workman is not entitled for any benefits as claimed by him. Further, in the instant case, the Labour Court has denied even attendant benefits and as such, it cannot be said that the petitioner is entitled for notional increments for the period he was out of service.

21. Apart from the above, the Writ Petition is filed seeking implementation of the Award of the Labour Court, after a lapse of more than 12 years of passing the same. It suffers from irretrievable laches. Denial of notional increments was within the personal knowledge of the petitioner and he did not raise his little finger for about 12 years.

22. For all the above reasons, the writ petition fails and is liable to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs.

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