SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Depot Manager, Apsrtc Vs. I.V.S. Reddi, Ex-conductor of Apsrtc and anr.

Depot Manager, Apsrtc Vs. I.V.S. Reddi, Ex-conductor of Apsrtc and anr.

SooperKanoon Citation : sooperkanoon.com/437986

Court : Andhra Pradesh

Decided On : Jul-17-1997

Reported in : 1997(6)ALT77

Judge : P.S. Mishra, C.J. and ;P. Ramakrishnam Raju, J.

Acts : Constitution of India - Articles 12 and 226

Appeal No. : Writ Appeal No. 769 of 1997

Appellant : Depot Manager, Apsrtc

Respondent : i.V.S. Reddi, Ex-conductor of Apsrtc and anr.

Advocate for Def. : A. Bhaskara Chary, Adv. for Respondent No. 1 and ;Govt Pleader for Labour for Respondent No. 2

Advocate for Pet/Ap. : A.V. Sivaiah, SC

Judgement :

P.S. Mishra, C.J.

1. Heard.

2. It is not possible to say that the learned single Judge has not followed the correct principle and decided to interfere with the punishment, which the Labour Court has sustained by ordering fresh appointment to the petitioner- respondent.

Learned single Judge has rightly held that when the Labour Court has found that it was absolutely clear that there was no reason for misappropriation of funds, even temporarily, and charges thus were held not proved and the punishment of removal unjustified, the normal relief of reinstatement would have been granted. To grant backwages, however to an employee, in cases of this nature when the award in this respect is set aside, the Court is required to examine various aspects, including whether the concerned employee was gainfully employed and/or whether it would be in public interest to give entire backwages from the date of termination till the date of reinstatement. The learned single Judge has not been unaware of these principles, yet without there being any material whatsoever on the record to show that petitioner-respondent was not gainfully employed elsewhere, and without there being any examination whether entire backwages would be allowed on the facts and in the circumstances of the case in favour of the petitioner-respondent, the learned single Judge has directed as follows:

'In these circumstances, I set aside the award of the Labour Court and direct that the petitioner shall be reinstated into service with continuity of service and other benefits. Since the Management has failed to lead any evidence to establish that the petitioner was employed after termination of his service, the petitioner is also entitled for the backwages from the date of termination till the date of reinstatement'.

3. We are of the opinion that failure of the management to lead any evidence to establish that the petitioner was employed after termination of his service before the Labour Court, cannot be used as a ground to grant backwages and reinstatement to the petitioner-respondent. Backwages and reinstatement are ordered instead of fresh appointment. Backwages are ordered for the first time in the proceeding under Article 226 of the Constitution of India. The Court, thus before directing for backwages would have afforded opportunity to the parties to bring such materials which would show whether petitioner- respondent was gainfully employed during the period after termination and until reinstatement. We do, however, still hold the opinion that only a modification of the impugned order would serve the ends of justice by directing instead of payment of backwages as follows:

The petitioner-respondent shall make a petition within 15 days from today before the appointing/competent authority in the management. (A.P.S.R.T.C., for the purpose, is a State under Article 12 of the Constitution of India) with an affidavit to the effect that he was not gainfully employed after termination of his service and before reinstatement, and that there are no reasons except illegal termination of service, that he be not treated as one in continuous service for all benefits, including backwages. On such application by the petitioner- respondent, the management shall hold an enquiry and pass order stating whether for the reason of not being gainfully employed after termination of his service the petitioner-respondent is entitled for the backwages from the date of termination till the date of reinstatement. Even if any decision, however, for not paying the backwages is taken for any reason, reinstatement for all other purposes shall accrue as continuous service, and accordingly the petitioner-respondent shall be entitled to all other benefits in the service.

4. With the modification in the impugned order as above, the writ appeal is disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com