Andhra Pradesh State Road Transport ... vs Abdul Kareem on 2 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3791, 2005 AIR SCW 3809, 2005 AIR - JHAR. H. C. R. 2302, (2005) 5 KHCACJ 399 (SC), (2005) 6 ALL WC 5352, (2005) 6 JT 553 (SC), (2005) 33 ALLINDCAS 39 (SC), 2005 (7) SRJ 198, 2005 (5) SLT 628, 2005 (33) ALLINDCAS 39, (2006) 2 JCR 149 (SC), (2006) 1 ALLMR 70 (SC), 2005 (6) SCC 36, 2005 LAB LR 943, 2005 (3) SERVLJ 451 SC, 2005 (5) KHCACJ 399, 2005 (6) SCALE 7, 2005 (6) JT 553, 2006 (1) ALL MR 70, 2005 SCC (L&S) 790, (2005) 5 ANDHLD 100, (2005) 5 SUPREME 293, (2005) 6 SCALE 7, (2005) 107 FACLR 4, (2005) 3 LABLJ 477, (2005) 3 LAB LN 1078, (2005) 3 CURLR 207, (2005) 3 SCT 668, (2005) 6 SCJ 542, (2005) 5 SERVLR 368

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Bench: Arijit Pasayat, H.K. Sema

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           CASE NO.:
Appeal (civil)  7797 of 2003

PETITIONER:
Andhra Pradesh State Road Transport Corporation & Ors.

RESPONDENT:
Abdul Kareem

DATE OF JUDGMENT: 02/08/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
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J U D G M E N T WITH CIVIL APPEAL NO. 37/2005 D. Shanker Appellant Versus A.P.S.R.T.C., Nizamabad Region Respondent H.K.SEMA, J These two appeals arise out of a common question of law and fact and they are being disposed of by this common judgment.

Civil Appeal No. 7797 of 2003 is preferred by the Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Civil Appeal No. 37 of 2005 is preferred by the workman - D. Shanker.

In Civil Appeal No. 7797 of 2003, preferred by the A.P.S.R.T.C., the facts are as follows: -

> The respondent was appointed as Retainer Conductor under the appellant-Corporation in the year 1970. He was subsequently removed from the service in 1971. However, he was again appointed as Conductor on 12.06.1972. He secured a subsequent appointment without disclosing that he worked as a Conductor earlier under the department. When it came to the knowledge of the appellant that the workman had worked as a Conductor at Karimnagar Depot earlier and was removed from the service, a proceeding was initiated against him and he was removed from service on 01.05.1975. Respondent raised an Industrial Dispute before the Labour Court assailing the order of his removal from service. It may be noted that the dispute was raised at a belated stage in the year 1988. The Labour Court by an Award dated 28.12.1992 came to the conclusion that the dismissal of the respondent from service cannot be sustained and the Court directed the respondent be reinstated into service without back wages. It may be noted that the workman did not challenge the order of the Labour Court directing to reinstate him into service without back wages. Pursuant to the order of the Labour Court, the workman was reinstated on 28.05.1993.

Thereafter, the appellant passed an order dated 17.05.2000 stating that the respondent would not be eligible for notional increments from the date of his removal from service. Being aggrieved, respondent preferred Writ Petition before the High Court of Andhra Pradesh assailing the order dated 17.05.2000. In the said Writ Petition the respondent inter alia prayed for granting of notional increments for the period from 01.05.1975 to 10.06.1993. Learned Single Judge, following the earlier decision of the Division Bench of High Court in A.P.S.R.T.C. Vs. P. Nageshwar Rao, 2001 (4) ALD 568, directed the Corporation that the pay of the respondent should be fixed by taking into consideration the notional increments. Aggrieved thereby, the appellant preferred a Writ Appeal No. 1209 of 2002 without any result. Hence the present petition.

In Civil Appeal No. 37 of 2005 preferred by the workman D. Shanker, the facts are as follows: -

> The workman joined the Corporation as a Conductor in 1972 and on 16.03.1972 a disciplinary proceeding was initiated against him for not having collected an alleged amount of Rs. 1.20 paisa between two stages. Pursuant to the proceeding initiated against him he was removed from service on 24.08.1972. He raised an Industrial Dispute before the Labour Court and the Labour Court by its Award dated 24.11.1992 held that dismissal of the workman is disproportionate to the gravity of offence/charge and directed the reinstatement of the workman into service by maintaining continuity of service but without back wages. Petitioner was reinstated on 08.06.1993 as a fresh appointee without any increment in his salary. The representation of the petitioner was rejected by the Corporation. Thereafter, he filed a Writ Petition, which was allowed by the Learned Single Judge on 6.11.2002 holding that he is entitled for grant of notional increments.

Aggrieved thereby, the Corporation filed Writ Appeal before the Division Bench which was allowed by the order dated 07.08.2003 on the ground that the point of law is well settled by the judgment of

this Court.

The question that revolves around for determination is, whether Labour Court's Award of reinstatement without back wages would imply continuity of service and whether notional increments are to be given to the employee for the period for which he was not in service, in absence of specific direction in that regard?

At this stage, we may notice the operative portion of the Award of the Labour Court in Para 4 of its Award, which reads as under:

> " .the dismissal of the petitioner from service cannot be sustained and he has to be reinstated but without back wages."

We have heard learned counsel for the parties.

It is contended by the counsel for the appellant that it is a well established principle in Labour Industrial Law that upon setting aside an order of termination, the workman is reinstated as if the contract of employment originally entered into had been continued. The counsel further contended that in such cases the terms and conditions of the contract which was obtained when the workman was in the employment of the employer prior to his wrongful dismissal which has been set aside continue to govern the relationships between the parties and the workman continues to be in the employment of the employer in the terms and conditions of the contract. According to counsel denial of consequential relief is in exception, unless such denial was being specifically spelt-out, otherwise, the natural and consequential relief must follow. Counsel would further contend that in the given facts, this would be competent enough to mould the relief as the workman was reinstated after more than a decade.

In our considered opinion, the argument advanced by the counsel is not tenable in law in the view taken by this Court in the recent decision. In the case of A.P. SRTC and Anr. Appellants Vs. S. Narsagoud Respondent (2003)2 SCC 212, this Court had occasion to deal with the identical controversy and succinctly crystallized the point of law. In that case the respondent was a Conductor in the employment of appellant - A.P.S.R.T.C. He remained absent from duty between 05.06.1982 and 08.08.1982 and again between 13.10.1992 and 01.11.1992. A departmental inquiry was initiated against him on the charges of unauthorized absence which ended in the punishment of removal from service and a dispute was raised before the Labour Court. The Labour Court upheld the departmental enquiry and the findings arrived thereat, but the respondent was directed to be reinstated with continuity of service but without back-wages. The Learned Single Judge, on being approached by the respondent, directed the appellant to fix the wages payable to him on his reinstatement by taking into account the increments that he would have earned had he been in service during the period of absence from duty. This finding of the Learned Single Judge was affirmed in an appeal by the Division Bench. This Court allowed the appeal preferred by the A.P.S.R.T.C. The principle of law on point are no more res integra. This Court in S. Narsagoud (supra) succinctly crystallized principle of law in Paragraph 9 of the judgment on Page SCC 215:

> "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 unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized 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."

Reverting to the facts of the case at hand, as already noticed, 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 could claim a benefit of increments notionally earned during the period when he was not on duty or 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.

In view of what has been stated above, both the Learned Single Judge and Division Bench had erred in law in allowing the benefit of increments notionally to the employee during the period when he was out of service. Both the orders in C.A. No. 7797 of 2003 are set aside.

The net result is Civil Appeal No. 7797 of 2003 preferred by A.P.S.R.T.C. and Ors. is allowed and Civil Appeal No. 37 of 2005 preferred by D. Shanker is dismissed. Parties are asked to bear their own costs.