A.P.S.R.T.C. And Anr vs S. Narsagoud on 15 January, 2003

Equivalent citations: AIRONLINE 2003 SC 86, (2003) 2 ESC 116, (2003) 2 IND LD 854, (2003) 102 FJR 286, 2003 SCC (L&S) 161, 2003 (2) SCC 212, (2003) 1 LAB LJ 816, (2003) 2 SERV LR 120, (2003) 1 SCR 386, (2003) 1 CUR LR 511, (2003) 4 KCCR 2456, (2003) 1 LAB LN 812, (2003) 95 CUT LT 611, (2003) 96 FAC LR 582, (2003) 2 ALL WC 1287, (2003) 1 SCALE 336, (2003) 2 SERV LJ 32, (2003) 4 SCT 785, (2003) 1 JT 179, 2003 LAB LR 225, (2003) 4 SUPREME 174, (2003) 1 SCR 386 (SC), (2003) 3 ALL IND CAS 644 (SC), (2003) 1 JT 179 (SC), (2003) 3 ALLINDCAS 644

Bench: R.C. Lahoti, Brijesh Kumar

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           CASE NO.:
Appeal (civil)  6362 of 2000

PETITIONER:
A.P.S.R.T.C. AND ANR.

RESPONDENT:
S. NARSAGOUD

DATE OF JUDGMENT: 15/01/2003

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:
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JUDGMENT 2003 (1) SCR 386 The following Order of the Court was delivered The respondent was a Conductor, and hence a workman, in the employment of the appellant Andhra Pradesh State Road Transport Corporation. He remained absent from duty between 5.6.1982 and 8.8.1982 on the first occasion and again between 13.10.1992 and 1.11.1992 on the second occasion. A chargesheet was served on him alleging the period of absence to be an unauthorised absence from duty. The respondent pleaded that he had remained absent because of ill health-due to jaundice for the first period of absence and due to chest pain and fever for the second period of absence from duty. In the departmental inquiry proceedings the two charges referable to two periods of absence from duty framed against the respondent were found to be proved and the explanation for absence as offered by him was found not to have been substantiated. The respondent was inflicted with the punishment of removal from service.

The respondent raised a dispute under Section 2(A)(2) of the Industrial Disputes Act. 1947, as amended in its application to the State of Andhra Pradesh by A.P. Amendment Act No. 32 of 1987. The Labour Court by its Award dated 24.12.1997 held that no fault could be found with the

disciplinary inquiry proceedings or with the findings arrived thereat. However, the Labour Court concluded that though the respondent was guilty of the charges levelled against him but be had been without employment during the period of absence and has suffered thereby and so the penalty of not providing backwages would be the appropriate penalty in the facts and circumstances of the case, "while ordering for reinstatement with continuity of service". In the operative part of its Award the Labour Court reiterated that an Award was being passed "directing the respondent to reinstate the petitioner in service with continuity of service but without backwages".

Feeling aggrieved by the Award of the Labour Court, the respondent preferred a writ petition in the High Court which was heard and disposed of by a learned single Judge vide the judgment dated 16.9.1999. A grievance was raised before the High Court that although the respondent was reinstated, but while fixing the wages payable to him on his reinstatement, the periodical increments which would have been earned by him had he been in service during the period of absence were not taken into account. The High Court directed the appellant Corporation to compute the periodical increments that would have been earned by the respondent had he been in service during the period of absence from duty and to fix the wages payable to the respondent after his reinstatement by taking into account the said increments. The appellant preferred an intra Court appeal which has been dismissed by a Division Bench of the High Court by its impugned order. The appellant has filed this appeal by special leave.

The respondent has chosen to remain absent of notice having been served on him. Therefore, the hearing has been set down ex parte against him. The only submission made by the learned counsel for the appellant is that when an employee remains unauthorisedly absent from duty and though he has been directed to be reinstated with continuity of service by a judicial order unless and until there is a direction for release of consequential benefits and specifically for the benefit of increments being given which the employee might have earned during the period of unauthorised absence from duty merely because the employee has been allowed the benefit of continuity of service the benefit of such increments cannot be released to him. The benefit of continuity of service only means that for the purpose of seniority and pensionary benefits the period of absence shall be taken into account as spent on duty, submitted the learned counsel for the appellant. In support of his submission he has also invited our attention to the provisions of Andhra Pradesh State Road Transport Corporation Employees (Pay and Allowances) Regulations, 1964 and a circular issued thereunder by A.P.S.R.T.C. The said Regulations have been framed and promulgated in exercise of the statutory powers conferred on the Corporation. Para 13 of the Regulations provides inter alia as under:-

> "13. (1) All duty in a post on a time-scale counts for increments in that time-scale.
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> (2) Service in another post, whether in a substantive or officiating capacity, service on deputation and leave other than extraordinary leave or leave without pay count for increments in the time-scale applicable to the post on which the employee holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended:

Provided that the competent authority shall have the power in any case in which it is satisfied that the extraordinary leave or leave without pay, as the case may be, was taken on account of illness or any other cause beyond the employee's control, to direct that such period shall count for increments under this clause.

Explanation : Where an employee is appointed to officiate in a post on a time-scale of pay but has his pay fixed below the minimum of the time-scale under clause (5) of the regulation 9, the period of officiating service shall not count for increments under clause (2) above xxx xxx xxx XXX XXX XXX (8) A period of overstayal after the expiry of leave of joining time, as the case may be does not count towards increments unless it is commuted into extraordinary leave or leave without pay, as the case may be and extraordinary leave, or leave without pay is specifically allowed to count for increments."

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On 8.9.1992, the Corporation issued Circular No. 19/9 laying down guidelines for implementation of the Awards of Labour Courts in the matter of fixation of pay of employees reinstated pursuant to such Awards subject 'to result of writ petitions. The Circular provides inter alia as under: -

"(2) When an employee is reinstated into service with continuity of service only, the last pay drawn by the employee has to be fixed at the appropriate stage in the revised pay scale 1989 without adding any notional increment for the period out of service.

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(4) On fixation of pay as on the date of reinstatement annual increment may be regularly drawn."

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> However, it appears that consequent upon the judgement of the learned single Judge dated 16.8.1999. and other similar judgments disposing of the writ petitions, the Corporation was compelled to issue another circular whereby it directed that in view of the said judgments of the High Court it was necessary that in a case where an employee was directed to be reinstated with continuity of service the pay of the employee shall be re-

fixed by giving notional increments for the period out of service though the monetary benefit of revised fixation shall be given only from the date of reinstatement. The effect of the judgment of the learned single Judge, upheld by the Division Bench and the Circular issued consequent upon the judgment of the High Court is that the employee being reinstated, inspite of having been held guilty of unauthorised absence from duty, continues to earn increments though there is no payment of wages for the period of absence. This results into a incongruous situation, submitted the learned counsel for the appellant.

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 frem 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 benefit of continuity in service.

The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of over- stayal after the expiry of leave or joining time cannot count towards increments; unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of over-stayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of over- stayal. 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 account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period of unauthorised absence from duty though held liable to be punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee.

For the foregoing reasons, we are of the opinion that the impugned judgment of the learned single Judge of the High Court and upheld by the Division Bench cannot be sustained. The judgment of the learned single Judge and the Division Bench are, both, set aside. The appeal is allowed. No order as to the costs.