

CASE NO.:
Appeal (civil) 2956 of 2000

PETITIONER:
A.P.S.R.T.C. & Anr.

RESPONDENT:
B.S. David Paul

DATE OF JUDGMENT: 01/02/2006

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T
(With C.A. No. 2957 of 2000 and C.A. No. 2958 of 2000)

ARIJIT PASAYAT, J.

These appeals involve identical issues and are therefore disposed of by this common judgment.

Andhra Pradesh State Road Transport Corporation (in short the 'Corporation') calls in question legality of the judgments rendered by the High Court holding that the respondent in each of the appeals was entitled to back wages.

A brief reference to the factual position which is almost undisputed would suffice:

Respondents who claimed to be employee of the appellant-Corporation claimed before the Labour Court, Hyderabad (in short 'the Labour Court') that their services were illegally terminated. Reference was made by the State Government under the Industrial Disputes Act, 1947 (in short the 'Act').

Appellant-Corporation took the stand that they were not its employees and, in fact, were employees of independent contractors. The Labour Court did not accept the stand and held that the termination was bad and the concerned applicants were entitled for reinstatement. It is not in dispute that the appellant-Corporation has reinstated the respondents. Subsequently, the respondents filed application before the Labour Court stating that they were entitled to back wages for the period they were out of employment and they were entitled to be paid back wages in terms of Section 33-C (2) of the Act.

The Corporation resisted the claim on the ground that there was no direction for payment of back wages and, therefore, Section 33-C (2) had no application. The Labour Court did not accept the stand and directed payment. Such adjudication was challenged before the High Court which dismissed the writ application.

Learned counsel for the appellant submitted that when the only direction given by the Labour Court was reinstatement, there was no question of payment of any back wages and in any event Section 33 \026C (2) had no application.

Learned counsel for the respondents on the other hand submitted that when the reinstatement was directed, back

wages were the natural consequence.

The principle of law on point is no more *res integra*. This Court in *A.P. SRTC and Anr. Vs. S. Narsagoud* (2003 (2) SCC 212) succinctly crystallized the 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."

The above position was re-iterated in *A.P. State Road Transport Corporation and Ors. v. Abdul Kareem* (2005 (6) SCC 36) and in *Rajasthan State Road Transport Corporation and Ors. v. Shyam Bihari Lal Gupta* (2005 (7) SCC 406). In the case of *State Bank of India vs. Ram Chandra Dubey & Ors.*, (2001) 1 SCC 73, this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can

approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages.

Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages"

The position was recently reiterated by three-judge Bench in State of U.P. and Another v. Brijpal Singh (2005 (8) SCC 58).

The orders of the Labour Court as affirmed by the High Court are indefensible, deserve to be set aside, which we direct.

The appeals are allowed but without any order as to costs.